Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 25, 2015

CLAIM NO. 201401695

RIVER CITY MOTORSPORTS, INC. PETITIONER

VS. **APPEAL FROM HON. GRANT S. ROARK, ADMINISTRATIVE LAW JUDGE**

JAMES KERLEY,
UEF, and
HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, & REMANDING
AND ORDER

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. River City Motorsports, Inc. ("River City") appeals from the Opinion, Order and Award rendered May 22, 2015 by Hon. Grant S. Roark, Administrative Law Judge (ALJ"), awarding James Kerley ("Kerley") temporary total disability ("TTD") benefits, permanent partial

disability ("PPD") benefits, and medical benefits for multiple injuries sustained as a result of a July 25, 2013 motorcycle accident. The Uninsured Employer's Fund ("UEF") was also a party to this claim since River City did not have workers' compensation insurance at the time of the accident. Neither River City nor the UEF filed a petition for reconsideration.

The sole issue on appeal is whether the ALJ erred in finding Kerley's injury occurred within the course and scope of his employment with River City. Because the ALJ applied the correct analysis, and his determination is supported by substantial evidence, we affirm. However, because the ALJ failed to begin the award of PPD benefits on the date of the injury, we vacate, in part, and remand for entry of an amended award.

Kerley testified by deposition on October 21, 2014 and at the hearing held March 23, 2015. Kerley testified he worked for River City as a car salesman from April or May 2013 through July 2013. Jimmy Gentry ("Gentry") owns River City. At all relevant times, Jonathan Howard ("Howard") (Gentry's nephew) and Donald Evans ("Evans") also worked at River City as car salesmen.

Kerley testified he awoke at approximately 5:30 a.m. on July 25, 2013, to take a ride on his motorcycle

prior to reporting to work at River City. As he was riding near Kentucky Lake, he spotted a 2005 Chevy Corvette which had a for sale sign on it. Kerley stopped to look at the car, and called the owner to get additional information. Kerley completed his motorcycle ride, and reported to work at River City between 8:00 a.m. and 9:00 a.m. Evans was already at the dealership when Kerley arrived, but neither Howard nor Gentry were present. While at work, Kerley stated he had spoken to Cynthia Paschall ("Paschall") on the phone, and researched the Corvette to see if it was worth pursuing. During his deposition and hearing, Kerley also indicated he had spoken with Howard about the car, but it is unclear when this occurred.

Kerley called Gentry to discuss the Corvette. At his deposition, Kerley stated he called Gentry to discuss what "we wanted to do with the car." He noted all purchasing decisions were made through Gentry. Gentry asked Kerley to come to his home to discuss the car and the possibility of Howard taking over the business. When questioned further of his intent regarding the Corvette, Kerley stated as follows:

> Q: Weren't you intending to buy that Corvette for your own personal use to drive?

> A: That had - - that was - - that had came[sic] up in conversation. The reason to buy the Vette was for the car lot. And Jimmy was afraid that since it cost so much and if it didn't sell he didn't want to get tied up into it, and I told him I was comfortable - - if we purchased the car, I would be comfortable buying the car if it didn't sell. Which, the car sold. The car was bought even after I had my wreck and it sold fairly quickly.
>
> Q: Didn't they hold that car for you for a period of time prior to it being sold?
>
> A: Not to my knowledge.
>
> Q: Wasn't the purpose of your going to see Jimmy that day to finance it through DFWK for you?
>
> A: It was brought up if the car was sitting on the lot and it didn't sell.
>
> Q: Okay.
>
> A: We was[sic] worried about having - - he doesn't have a whole lot of cars in that price range on his car lot.
>
> Q: So, it had never been a common practice for you to go to Jimmy to discuss purchase of vehicles in the past?
>
> A: Yeah, all purchases were usually discussed with Jimmy.

However, at the hearing, Kerley testified he called Gentry, "and I told him I was interested in the car." Kerley drove from River City to Gentry's home on his motorcycle. At Gentry's house, Kerley told him about the

Corvette and that “I would be interested in this car if I could sell either one of my cars or my motorcycle, actually the motorcycle that I was riding at the time that day.” After some discussion, Kerley stated Gentry told him to “go get it.” Kerley stated as follows regarding his intentions when he went to Gentry’s home:

> Q: But you do admit that you intended to purchase this car for yourself?
>
> A: I would have liked to have purchased the car for myself. It was based on the contingency that I had sold either the motorcycle that I was on when the accident happened or another vehicle.
>
> Q: But this was not intended to be a car purchased to be placed on the lot for sale; this was a car intended to be purchased for your personal use?
>
> A: The car was to be placed on the lot until I was able to come up with the funds to purchase the car for myself.
>
> Q: So they intended to hold the car for you?
>
> A: I don’t know what they intended.
>
> Q: Did they ever tell you, either before or after the accident, that they would hold the car for you?
>
> A: I was told that the car was being held for me, yes.
>
> Q: So if it was being held for you, it was not being offered for sale, but was being held so you could purchase it?

A: That's what I was told.

Q: And you ultimately told either Jonathan or Jimmy that you could not purchase the vehicle?

A: Yes.

Kerley then called Howard to arrange a meeting at River City so they could ride out to the car and buy it. On his way back to River City from Gentry's house, Kerley was involved in a motorcycle accident in which he sustained multiple injuries. The accident occurred three to four blocks away from River City. Kerley testified the Corvette was purchased by River City the day after his accident, and later sold to a buyer for approximately $28,000. Prior to July 25, 2013, Gentry stated he had never requested Kerley come to his home to discuss business.

Gentry testified by deposition on November 18, 2014 and at the hearing held March 23, 2015. Gentry and his wife have owned River City since 2005, which primarily sells used cars and boats. If a customer requests financing, they typically work with Dealer Finance of Western Kentucky ("DFWK"), which allows him to "sign recourse on," as well as other banks in the area. Gentry explained when he signed recourse he remained responsible for payment of a vehicle in the event the buyer failed to make payments.

On July 25, 2013, Gentry stated Kerley called him while he was at home, and asked if he could come by. Gentry called Evans inquiring if he knew what Kerley wanted and was told he did not. Gentry insisted Kerley asked him if he could come over to his house. At the deposition, Gentry stated as follows regarding the conversation between him and Kerley:

> A: . . . Well when [Kerley] came out, he - - when he - - we sat down on our deck, and I said, "Whatcha need?" And he said, "I found this Corvette I want to buy, but would you buy it for me and finance it through this DFWK because I have bad credit? But I want the car. I want to buy the car. Would you buy it for me and let me finance it through DFWK?" And I said, "Gosh, I don't know." I said, "If we do, it has to be structured like I'd do anything else. I have to have a $3,000 profit and 30 percent down plus tax and license." And he said, "Well, that's no problem."

At the hearing, Gentry testified Kerley wanted to buy the Corvette. He asked if Gentry "would go ahead and buy this car and put it in inventory, and let him by [sic] this through this BFWK financing company, where that I sign recourse for it." After talking to Evans on the phone, Gentry told Kerley, "I'll go ahead and buy it." At the hearing, Gentry stated he and Evans thought the deal was "all right," and he told Kerley he would probably buy the car for him. Gentry stated Kerley left his house, and he

was unaware of a meeting with Howard to buy the Corvette. Gentry stated he understood he was buying the Corvette for Kerley's personal use, and was not going to put it on River City's lot to sell.

At the deposition, Gentry testified River City purchased the Corvette for approximately $20,000 the day after the accident. When asked if Kerley was going to pay more than $20,000 to Gentry for the Corvette, Gentry stated, "He was going to pay a $3,000 profit - - if he bought it, he was going to buy it - - he was going to pay a $3,000 profit and pay 30 percent down on the car - -." Likewise, at the hearing on cross-examination, Gentry testified as follows regarding the profit he potentially would make from buying the Corvette for Kerley:

> Q: But when he got there, he told you that?
>
> A: That he found a car that he wanted to buy for himself.
>
> Q: Okay.
>
> A: That's all that was discussed.
>
> Q: Okay, very good. Did he have the money to buy it himself at that time? Did he have $19,500?
>
> A: I think he might have had money, actually, but he wanted to finance this car. He said his credit was bad, and he wanted to know if I would buy it and let

> him finance it through this finance company that I sign recourse with.
>
> Q: Okay. Did you tell him that the deal had to be structured like every other purchase?
>
> A: Properly, yes.
>
> Q: Did you say properly or probably?
>
> A: Properly structured, right.
>
> Q: Properly structured. And you would need to make a $3,000 profit?
>
> A: Uh-huh.
>
> Q: I'm sorry, was that a yes?
>
> A: Yes.

Gentry learned of Kerley's accident when he later went to River City on the day of the accident. Gentry and Howard went to the hospital, but he did not talk to Kerley. Gentry testified Howard told him Kerley still wanted the Corvette. Gentry purchased the Corvette the following day on July 26, 2013 for $19,500, and parked it in the back room of the car lot to hold for Kerley. Kerley ultimately could not buy the Corvette. Gentry sold the Corvette on November 1, 2013. A copy of a "Buyer's Order" from River City dated November 1, 2013 was introduced into evidence. It reflects Howard sold the 2005 Chevy Corvette for a total of $28,870.50- $26,575.00 represented the vehicle price, and $2,295.50 reflected fees and taxes.

Gentry testified he typically does not buy Corvettes or other similar sports cars on behalf of River City. The cars on the lot are typically listed at $10,000 or less. Gentry only purchased the Corvette for Kerley. Gentry stated at the time Kerley came to visit him he was not working for River City, and was not providing a benefit for the business.

Howard and Evans testified by deposition on November 18, 2014. Howard testified he arrived at the dealership around 11:00 a.m. on July 25, 2013. Before then, he had spoken to Kerley about a Corvette he had found in Marshall County, Kentucky. Howard stated, "He and I were going to go buy the car. I was meeting him at the dealership." Howard stated Kerley wanted the Corvette if possible, but needed financing. The financing was going to be done through River City, but Howard did not know whether the dealership would make a profit from it. After Howard arrived at the dealership, he received a call informing him Kerley had been involved in an accident. He visited Kerley in the hospital later the same day. Howard stated Kerley, "sent word through his nurse he wanted me to still go get the Corvette." Howard bought the Corvette the following day on behalf of River City. The Corvette was kept in the back area of the car lot for several months. Ultimately, Kerley

did not buy the Corvette, and Howard eventually sold it on behalf of the dealership.

Evans testified he reported to the dealership at approximately 8:00 a.m. on July 25, 2013. Evans testified he neither saw Kerley at work nor spoke to him on the phone on the day of the accident. Evans confirmed the Corvette was purchased and stored in the back of the shop for Kerley for over three months. The Corvette was going to be financed by River City through DFWK. However, Kerley did not end up buying the Corvette, and the car was placed on the car lot and sold.

Paschall, a friend of Kerley's, testified by deposition on February 4, 2015. Paschall stated she called Kerley at approximately 10:00 a.m. on July 25, 2013, and he told her he was working.

Brian Watson ("Watson") testified by deposition on February 27, 2015. He is part-owner of Heritage Auto, a wholesale car dealer. Heritage Auto regularly sold cars and trucks to River City worth around $10,000. Watson stated in early July 2013, Gentry had discussed the Corvette, and stated he was not interested in it. Watson had never sold a sports car to Gentry in the past.

In support of his claim, Kerley submitted the July 9, 2014 report of Dr. Warren Bilkey. At the time of his

report, Dr. Bilkey opined Kerley had attained maximum medical improvement ("MMI") and assessed a combined 38% impairment rating. Dr. Gregory Gleis examined Kerley on January 7, 2015, and found Kerley attained MMI on September 30, 2014. Dr. Gleis assessed a combined 27% impairment rating, attributing 4% to a pre-existing right ankle injury.

After summarizing the lay and medical evidence, the ALJ made the following findings relevant to this appeal:

> The most contested issue in this case is whether plaintiff's injury occurred within the course and scope of his appointment duties. The defendants contend plaintiff's trip to and from the home of Jimmy Gentry was for purely personal reasons: that being, to purchase the Corvette he saw on the way to work for himself. The defendants therefore maintain plaintiff was not performing any activity for the benefit for convenience of the employer; that plaintiff's travel to and from Mr. Gentry's house served no business purpose; and therefore the accident on the way back to the dealership cannot be considered work related.
>
> However, having gone over the evidence of record, and having separated those facts not germane to the issue, the Administrative Law Judge is persuaded of these facts. First, there seems to be no dispute plaintiff went to Gentry's house on July 25, 2013 for the purpose of asking Gentry to help him purchase the Corvette he had seen on the way to work for his own use. If this were the end of the story and

plaintiff drove back to work after getting a simple yes or no answer, then this trip to and from Gentry's house probably serves no business purpose and therefore the accident would not be work related.

Yet, the evidence establishes that, when presented with the request to purchase the vehicle, Gentry discussed financing it through the company as he would any other regular sale of a vehicle on the lot through the finance company used by River City Motor Sports. Indeed, the evidence establishes Gentry made clear that in order for the dealership to purchase the car for plaintiff, the company would need to make a $3000 profit and plaintiff would have to put 30% down, meaning terms similar to any other sale of a vehicle from the dealership. Plaintiff acknowledged and agreed with these conditions and the Administrative Law Judge is persuaded Gentry then told plaintiff to meet up with Jonathan Howard and go purchase the Corvette. Plaintiff's accident happened on the direct route from leaving Gentry's house to go to the dealership to meet up with Howard to purchase the Corvette, which is confirmed by Howard's testimony. These facts transform what could have been solely a personal errand into a business transaction for the company.

When Gentry directed plaintiff and Howard to go purchase the vehicle it was with the express understanding that doing so would result in at least a $3000 profit to the company. This is clearly a benefit to the dealership. As such, it is determined plaintiff's travel from Gentry's house to the dealership and the accident that occurred during that travel are work

> related activities. As such, the accident is found work related and compensable.

The ALJ based the award of PPD benefits on the 38% impairment rating assessed by Dr. Bilkey, but found Kerley retains the physical ability to return to his job as a car salesman, and therefore is not entitled to the three multiplier pursuant KRS 342.730(1)(c)1. The ALJ awarded TTD benefits from July 25, 2013 through September 30, 2014, PPD benefits beginning on October 1, 2014 and continuing for 425 weeks thereafter, and medical benefits.

Neither the UEF nor River City filed a petition for reconsideration. Kerley filed a petition for reconsideration arguing pursuant to KRS 342.730(1)(b) and (d), the period of PPD benefits should be 520 weeks since the 38% impairment rating is multiplied by a factor of 1.70, resulting in a permanent disability rating of 64.6%. The ALJ sustained Kerley's petition, amending the Order and Award to reflect a PPD period of 520 weeks.

On appeal, River City argues the ALJ, "erred/ misapplied the law to the facts of the case and/or abused his discretion, when he determined that because petitioner received a clear benefit, the respondent's travel and the accident that occurred are work related activities." River City argues the standard of review is *de novo*. River City

asserts Kerley's injury arose out of his recreational and personal time errand when he located a Corvette he wanted to buy for himself. It asserts the accident occurred outside his regular employment duties of selling cars on behalf of River City. River City cites to section 27 of Larson Workers' Compensation Law, which "defines an act outside regular employment as 'an act outside an employee's regular duties which is undertaken in good faith to advance the employer's interests, whether or not the employee's own assigned work is thereby furthered, is within the course of employment.'"

River City argues Kerley's act of travel was personal, not necessitated by, and in furtherance of River City's business interests, and not an essential element required for completion of the essence of his employment duties. River City argues Kerley merely approached Gentry as a customer to buy a car with financing for his personal use, and traveled to advance his own interests only. River City insists Kerley's actions are that of a customer and not an employee, and he is not protected by any exception of the coming and going rule. River City also argues there is no evidence River City directly or indirectly encouraged or compelled Kerley to purchase the Corvette, therefore

compulsion is not present. *See* Spurgeon v. Blue Diamond Coal Co., 469 S.W.2d 550 (Ky. 1971).

River City argues the ALJ misapplied the employer benefit exception to the coming and going rule to the facts of this claim. It asserts the record is devoid of any evidence which would "support that [Kerley] received any certificate or certification or expert status, which would have benefited is [sic] employer and/or the employer's mission as a result of the purchase of the Corvette," and of "any specific advertising benefit or increased car sales which would have benefited the employer as a result of [Kerley's] purchase of the Corvette." Therefore, Kerley failed to show a specific employer benefit, or any vague or general benefit pursuant to Jackson v. Cowden Manufacturing Co., 578 S.W.2d 259 (Ky. App. 1978).

River City argues the ALJ erred when he ruled a clear benefit was derived from the $3000.00 profit. River City asserts the profit was a general benefit originating from an operation of the financial services Kerley requested from his employer; an operation of the financing agreement with his finance company; and the profit was a request of a personal favor. Since the purpose of the transaction was a request for a personal favor, it had no benefit or bearing on Kerley's status as an employee. River City argues

Kerley's trip does not meet the criteria for the dual purpose doctrine pursuant to Craddock v. Imperial Cas. & Indem. Co., 451 S.W.2d 658 (Ky. 1970) to make it compensable since there was no condition he was running a business errand.

As the claimant in a workers' compensation proceeding, Kerley had the burden of proving each of the essential elements of his cause of action, including whether his injury occurred within the course and scope of his employment. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Kerley was successful in his burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). The ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the

evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). In that regard, the ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). Although a party may note evidence supporting a different outcome than reached by an ALJ, this is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact finder by superimposing its own appraisals as to weight and credibility, or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

In addition, River City did not file a petition for reconsideration. When no petition for reconsideration is filed, the ALJ's award or order is conclusive and binding as to all questions of fact. KRS 342.285(1). Absent a petition for reconsideration, questions of fact, including the adequacy of the ALJ's findings of fact, are not preserved for appellate review. Brasch-Barry General Contractors v. Jones, 175 S.W.3d 81, 83 (Ky. 2005). *See also* Hornback v. Hardin Memorial Hospital, 411 S.W.3d 220, 223 (Ky. 2013). The issue is narrowed to whether the ALJ's decision is supported by substantial evidence in the record. Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

We note this is a novel factual situation which does not neatly fit within other scenarios which have previously been addressed either by this Board or the Courts. We also note the ALJ did not explicitly address whether the circumstances in this claim fall within the "coming and going" rule or whether an exception to the rule applied. Rather, the ALJ determined Kerley's activities surrounding the motorcycle accident were work-related.

KRS 342.0011 defines "injury" as "any work-related traumatic event . . . arising out of and in the course of employment . . . ." An injury arises out of an employment

if the employment causes it. An injury occurs in the course of an employment if it happens at a place where the employment may reasonably be, and while the employee is working or otherwise serving the employer's interest. Clark County Board of Education v. Jacobs, 278 S.W.3d 140, 143 (Ky. 2009).

In J.M. Spurgeon v. Blue Diamond Coal Co., 469 S.W.2d 550 (Ky. App. 1971), a miner was injured in a car accident traveling from a meeting to his home. The employer was a member of the Hazard Coal Operators Association, and sponsored an Institute. The Institute held monthly meetings in which various types of programs related to mining were presented at seminars. Attendance was not required, but urged by the employer. The employer paid for the meals of employees who attended the meetings, but did not pay compensation. The Board determined the "going and coming" rule applied, and therefore his claim was non-compensable. In reversing, the Court of Appeals remanded the claim to the Board for additional findings. Id. at 551-552.

The Court first noted it was addressing an injury sustained while the employee was off the regular working premises. Id. at 552. The critical issue is whether the employee was injured while performing some service for his employer. Id. The Court identified two principles to

consider in determining whether an injury occurred while performing some service for his employer, relying upon Larson, Workmen's Compensation Law, Section 27.31: whether the employer compelled, ordered or urged the activity and whether there was a specific employer benefit, as distinguished from a vague and general benefit. Id. at 553-555.

The Kentucky Supreme Court applied the factors identified in Spurgeon in Clark County Board of Education v. Jacobs, supra. In Jacobs, the claimant was injured while accompanying her students to a Beta Club convention. The Court noted, "[a]n injury sustained while performing an activity outside normal working hours, or off the employer's premises, or during a recreational activity cannot reasonably be found to arise in the course of the employment unless other substantial evidence indicates that the employer brought the activity within the scope of the employment." Id. at 143. The Court summarized the Spurgeon opinion as follows:

> Relying primarily on authority from foreign jurisdictions, the court set forth a test for determining if the activity arose in the course of the employment, stating as follows:
>
> > Employment connection may be supplied by varying degrees of employer encouragement or

> direction.... *[It] may also be bolstered by* the showing of a specific employer benefit as distinguished from a vague and general benefit.... (emphasis added). (Citing to Spurgeon, 469 S.W.2d at 553.)

Addressing the matter of employer encouragement in greater depth, the court acknowledged that "[t]he clearest case for coverage" occurs when the individual is "directed to attend" an educational activity away from the work station but noted that it is sufficient for attendance to be "definitely urged." The court noted also that "compulsion may be direct or indirect" due to an employee's subordinate position. It "may range in degree from a mere suggestion to a direct order" and "may even arise from encouragement only." The court concluded:

> If the slightest degree of compulsion is practiced by [the] employer then it must be presumed that the activity engaged in is incidental to the interests of the employer and therefore a part of the employee's work. (Citing to Spurgeon, 469 S.W.2d at 554.)

Spurgeon requires an analysis of the facts and circumstances focusing on two essential principles: 1.) that an employer must exercise a sufficient degree of compulsion to permit a reasonable finding that it brought the disputed activity within the scope of the employment; and 2.) that evidence of a specific employer benefit may bolster evidence of compulsion.

Id. at 143-144.

The principles identified in Spurgeon and its progeny are applicable to the unique facts and circumstance of this claim. Although the ALJ did not directly cite to the case law upon which he relied, his analysis addresses both principles pursuant to Spurgeon and its progeny. The testimony provided by Gentry and Kerley are contradictory and at odds with each other. As fact-finder, the ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Caudill v. Maloney's Discount Stores, supra. In this instance, substantial evidence supports the ALJ's determination that Kerley's travel from Gentry's house to the dealership and the accident which occurred during this trip was a work-related activity.

Regarding the factor of compulsion or urging, the ALJ ultimately found Gentry told Kerley to meet with Howard and go purchase the Corvette, and that the accident happened on the direct route from leaving Gentry's house to go to the dealership to meet up with Howard to purchase the Corvette. This finding of fact is supported by testimony from both Kerley and Howard, and will not be disturbed on appeal. Although River City can point to portions of

Gentry's testimony in which he stated he did not direct Kerley to go to the dealership to meet with Howard to purchase the Corvette, such is not an adequate basis for reversal on appeal. In this instance, the ALJ found a sufficient degree of compulsion allowing a reasonable finding it brought the travel within the scope of Kerley's employment.

The ALJ relied upon Gentry's deposition and hearing testimony in finding the activity resulted in a clear benefit to the dealership. It appears undisputed Gentry conditioned the dealership's purchase of the car upon River City receiving a minimum profit of $3,000 and a thirty percent down payment, to which Kerley agreed. The condition of a profit is a specific benefit to River City. This finding of fact is not altered by River City's labeling of Kerley as a mere customer.

The ALJ considered the two principles identified in Spurgeon and its progeny in concluding Kerley's travel arose out of and in the course of Kerley's employment, and provided sufficient findings of fact in support of his determination. Therefore, the ALJ's conclusion Kerley's injuries are work-related is supported by substantial evidence, and will not be disturbed.

With that said, this Board is permitted to *sua sponte* reach issues even if unpreserved but not raised on appeal. KRS 342.285(2)(c); KRS 342.285(3); George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004). The award of PPD benefits must begin on the date of the injury, July 25, 2013, to be interrupted by any periods TTD benefits are paid. *See* Sweasy v. Wal-Mart Stores, Inc., 295 S.W.3d 835 (Ky. 2009). The ALJ began the award of PPD benefits the day after TTD benefits ended on September 30, 2014. This is incorrect. The ALJ must begin the PPD benefits awarded commencing from the date of injury, interrupted by any appropriate period of TTD benefits pursuant to Sweasy.

River City requested an oral argument be held. After having reviewed the record, **IT IS HEREBY ORDERED AND ADJUDGED** an oral argument is unnecessary in arriving at a decision, and therefore the request is **DENIED**.

Accordingly, the ALJ's decision rendered May 22, 2015 by Hon. Grant S. Roark, Administrative Law Judge, is **AFFIRMED IN PART and VACATED IN PART**. This claim is **REMANDED** for entry of an amended opinion and award correcting the commencement date of PPD benefits.

STIVERS, MEMBER, CONCURS.

RECHTER, MEMBER, CONCURS IN RESULT ONLY.

_____
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