Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 11, 2016

CLAIM NO. 201373346

SANDRA ZIMMERMAN PETITIONER

VS. **APPEAL FROM HON. DOUGLAS W. GOTT, ADMINISTRATIVE LAW JUDGE**

CROWN TEMPORARY SERVICES and
HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
AND ORDER
* * * * * *

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

ALVEY, Chairman. Sandra Zimmerman ("Zimmerman") seeks review of the opinion and order rendered on September 10, 2015 by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ"), dismissing her claim against Crown Temporary Services ("Crown"). Zimmerman also indicates she is appealing from the ALJ's order on reconsideration issued on

September 25, 2015; however, a review of the file fails to show a petition for reconsideration was filed by either party. We note Zimmerman was represented in the claim before the ALJ; however, her appeal is *pro se*.

On appeal, Zimmerman has made several assertions which can be summarized into four categories. She first argues the ALJ's decision is not supported by substantial evidence, and a contrary result is compelled. Zimmerman next argues the ALJ erred by failing to render a final decision within sixty days after the hearing. Zimmerman also argues the May 27, 2015 hearing was not conducted in a fair and impartial manner. Finally, Zimmerman argues the ALJ failed to review the entirety of her evidence. We disagree and affirm for the following reasons. The ALJ's determination is supported by substantial evidence and a contrary result is not compelled. The ALJ issued an interlocutory decision within sixty days of the hearing ordering Crown to pay for a thoracic MRI. Subsequently, the ALJ issued a final decision less than sixty days following that order. A review of the hearing transcript reveals the hearing was conducted in a fair and impartial manner. A review of the summary of the evidence set forth in the interlocutory decision issued July 25, 2015 reveals a fair and accurate discussion of the evidence.

Zimmerman filed a Form 101 on December 18, 2014 alleging injuries to her neck and upper back, along with post-traumatic stress disorder ("PTSD") due to an incident at the Kentucky Correctional Psychiatric Center ("KCPC") in LaGrange, Kentucky, where she worked as a security guard through Crown. The Form 101 reflects Zimmerman has a GED, and two years of college coursework at Jefferson Community College. She also has a medical assisting certificate from Spencerian College. At the time of the incident, Zimmerman was allegedly called to the front of a room where a supervisor grabbed her hair and forcibly twisted her neck. The Form 104 attached to the Form 101 indicates Zimmerman began working as a security guard at that facility in February 2013. Other employment listed on the Form 104 indicates working as a certified nursing assistant for approximately four years, as a medical assistant for six months, and as a non-medical companion for approximately eleven months. She later testified she has also worked as a horse trainer.

Zimmerman testified by deposition on March 17, 2015, and at the hearing held May 27, 2015. Additionally, a deposition taken July 25, 2014, and other discovery materials from a civil suit filed by Zimmerman in U.S.

District Court against the Kentucky Cabinet for Health and Family Services, *et al*. were filed by Crown on May 1, 2015.

Zimmerman was born on November 9, 1973 and is a resident of Campbellsburg, Kentucky. Zimmerman previously sustained a neck injury in 2005 when riding a horse. She stated this improved after taking anti-inflammatory medications and muscle relaxers. She again injured her neck in 2010 or 2011 when she was assisting with moving a refrigerator. She stated she treated with muscle relaxers and Voltaren for this incident, and her symptoms subsequently resolved. She also sustained a head injury in a motor vehicle accident in 1992. She testified all of these problems had resolved prior to the July 13, 2013 incident. She denied having any psychological problems prior to July 13, 2013.

Zimmerman began working for Crown as a corrections officer at KCPC in February 2013. She worked 37 ½ hours per week on the second shift. Her job entailed supervising inmates at lunch and dinner, maintaining order, supervising recreational activities, and conducting pat downs and room searches. On June 16, 2013, she tendered a notice of her intent to resign her position. She intended to resign due to what she believed was harassment and unequal treatment by Lt. Kerry Pierce, based upon

favoritism displayed to other employees. Lt. Pierce frequently admonished her for standing to close to the inmates. She subsequently withdrew her intended resignation. She last worked for Crown on September 17, 2013.

On July 13, 2013, Zimmerman reported to work and was in a break room prior to the start of her shift. During roll call, she was called to the front of the room by her supervisor, Lt. Pierce. Approximately twelve people were present in the room. She testified when she got to the front of the room, Lt. Pierce yanked her hair with such force she was pulled sideways. She explained this caused a violent shaking of her head. She was not taken to the ground in the incident. She testified she was “shocked” by the experience, felt a burning sensation, and was very humiliated. She returned to her table and sat down. She admitted at the time of the incident, Lt. Pierce was providing instruction regarding safety, personal space, and general awareness in the units.

Three hours later she reported she had pain at the bottom of her neck and across her shoulders, and requested to go to the doctor. At her deposition, Zimmerman testified she first sought treatment at Baptist Hospital East. At the hearing she testified she first

sought treatment at Jewish Hospital Northeast. She then went to Baptistworx. Because she was employed by Crown, and not KCPC, she was then referred to Occupational Physician Services ("OPS"). She was then referred to Dr. Ellen Ballard[1] who ordered an MRI and physical therapy. She testified Dr. Ballard released her to return to work on September 4, 2013 without restrictions. Zimmerman stated she received temporary total disability benefits while she was off work. She returned to the same job, the same hours, and the same rate of pay on September 4, 2013. At her deposition, Zimmerman testified when she returned to work, she could do most of her duties, but refused to engage in physical contact. At the hearing, she testified she worked for two weeks after she was released by Dr. Ballard, but could not perform all of her duties due to pain.

After Zimmerman resigned from Crown, she began working for Family Support Services. She testified she first experienced panic attacks in August 2013, which continue to occur one to five times daily. She initially testified at the hearing she had never experienced panic attacks prior to July 13, 2013; however, on cross-

[1] Although Dr. Ballard is referenced by Zimmerman, and in some medical documentation, her records are not in evidence.

examination, she admitted her first panic attack occurred on July 1, 2013. She also had difficulty with lifting and transferring patients.

Zimmerman has treated at numerous facilities since she was released by Dr. Ballard, including Baptist Hospital Northeast, Norton Brownsboro, and Carroll County Hospital. She saw Dr. Mark Barrett, a general surgeon, who administered trigger point injections, and prescribed various medications. She testified her psychological condition has deteriorated over the past two years, and she has been diagnosed with PTSD. She testified the workers' compensation insurer stopped paying for treatment in May 2014; however, she continues to experience neck pain.

Crown introduced a document at the hearing outlining various incidents relating to Zimmerman. On June 15, 2013, it was noted she intended to turn in a two week notice of intent to resign. On June 16, 2013, she turned in her notice of resignation. On June 29, 2013, Zimmerman experienced a medical issue consisting of a racing heartbeat and shortness of breath. On July 13, 2013, it was noted a shift officer on first shift had been hit by a patient. At roll call later that day, Lt. Pierce reminded his shift of personal space and general awareness on units. The note reflects as follows:

> Officer Sandra Zimmerman was called on to be involved in a role play. Officer Zimmerman's hair was down and as Lt. Pierce stepped towards her and then past her he reached up to simulate a hair pull his hand got caught in her hair causing her hair to pull. Lt. Pierce went on to explain about patients in the past hitting staff unprovoked, including himself [sic]. Lt. Pierce gave further examples, such as, officers letting people sit near or behind the officer's desk and leaning back in the chairs like they are friends. Roll call then ended and officers went to their post [sic].

Attached to Zimmerman's deposition from the civil claim are her responses to interrogatories, responses to requests for admission, Zimmerman's job application with Crown, a description of the job duties at KPCP, a listing of training Zimmerman completed at KPCP, a copy of the contract between Crown and KPCP, training documentation on nonverbal behavior and defenses against inmate contact, a copy of the listing introduced at the hearing, a grievance filed July 17, 2013 by Zimmerman, and a video displaying the events of July 13, 2013.

Zimmerman also filed Dr. Barrett's October 14, 2014 report. She first saw Dr. Barrett for treatment on August 7, 2014 for persistent neck and upper back pain stemming from the July 13, 2013 work incident. Zimmerman explained to him a supervisor had pulled her hair which

forced her head down sharply in a twisting motion to the left. Dr. Barrett noted the MRI ordered by Dr. Ballard showed only minor bulging, but she later treated for anxiety, and underwent trigger point injections. He diagnosed chronic cervical and thoracic spine pain with cervical radiculopathy and chronic muscle spasticity, along with anxiety disorder. He stated Zimmerman had reached maximum medical improvement ("MMI"), but will continue to experience chronic pain. Dr. Barrett assessed an 8% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Zimmerman later filed a subsequent report from Dr. Barrett dated September 2, 2015, which was critical of Dr. Bart Goldman's assessment.

Zimmerman filed records from First Stop Medical Care for treatment she received on eight occasions between July 18, 2013 and April 24, 2014. She treated with various physicians, ARNP's and PA-C's. The treatments were for complaints of neck pain, thoracic pain, myalgia, myositis, muscle spasm, generalized anxiety and insomnia. Her treatment included trigger point injections, and prescriptions including Clonazepam, Neurontin and Flexeril.

Thoracic x-rays taken March 13, 2014 showed no acute pathology or significant degenerative disk disease.

Zimmerman filed treatment records from Carroll County Hospital on November 8, 2013, and again on January 28, 2014. The November 8, 2013 visit was for flank pain, burning and swelling for which she was diagnosed with shingles. On January 28, 2014, she was treated for chest pressure, palpitations and dizziness. She was diagnosed with mild emphysema, an old healed granulomatous disease and bilateral nephrolithiasis.

Zimmerman filed records from Baptist Health in Louisville for treatment in the emergency room on May 11, 2015, where she was admitted to the CMU[2] with suicidal and homicidal ideation. She was diagnosed with PTSD and depressive disorder, NOS. On May 12, 2015, Dr. Charles Bensenhover diagnosed her with mood disorder, NOS and PTSD.

Zimmerman also filed records from Seven Counties Services, Inc. for treatment she received from February 9, 2015 through April 28, 2015 for anxiety, PTSD, panic attacks, anger, depression, and paranoia.

Dr. Goldman evaluated Zimmerman at Crown's request on January 30, 2014. He received a history of the July 13, 2013 incident, and noted she had undergone no

[2] No further explanation is provided for this abbreviation.

surgery. Zimmerman complained of pain from the base of her spine to the mid-thoracic region, in the middle, with the feeling of numbness, pins and needles circumferentially in both of her arms and left leg. He noted Dr. Ballard discharged Zimmerman from treatment after completing a course of physical therapy, and undergoing an MRI which was read as normal. Dr. Goldman noted the results of the physical examination were non-dermatomal and non-physiologic. He stated Zimmerman had reached MMI, and needed no additional treatment. He stated she was capable of returning to any work she could perform prior to the date of injury. He further opined she would qualify for a 0% impairment rating pursuant to the AMA Guides.

Dr. Goldman again examined Zimmerman on April 22, 2015. He noted she continued to complain of pain from the cervicothoracic junction to the mid-thoracic spine, along with intermittent tingling and numbness on the left. He noted she no longer exhibited non-physiologic and non-dermatomal findings. He found no objective abnormalities, and noted her subjective complaints were not quite as global as those exhibited when he examined her previously. He saw no obvious attempts at symptom magnification. He stated Zimmerman may well have reached MMI, “however prior to placing her there, I would recommend for completeness

sake, an MRI of the thoracic spine." He stated if this is negative, she has reached MMI, would have a 0% impairment rating, and need no additional treatment.

Dr. Robert Granacher, a psychiatrist, evaluated Zimmerman at Crown's request on April 13, 2015. Dr. Granacher found she had no psychiatric impairment due to the alleged July 13, 2013 work incident. He stated, "She is malingering a mental disorder for compensation." He found she requires no psychiatric or psychological treatment. Dr. Granacher specifically stated as follows:

> While she probably has some symptomatology from whatever occurred between her and her supervisor, this seems entirely blown out of proportion. On her mental status examination, she is hostile and aggressive, and she has an aggressive style that seems to be chronic in nature, even though she claims it is not. It is not psychiatrically conceivable that one incident of hair pulling would suddenly transform a person's personality to the degree that she is claiming. Generally personality structures form early in life and remain stable throughout life. Her complaints and behaviors are consistent with a chronically disordered personality.
>
> With regard to cognitive effort, Ms. Zimmerman produced adequate and normal effort. Thus her reading scores and her IQ scores are considered to be valid based on these data.
>
> On the other hand, her MMPI-2-RF testing is invalid. The reader should

> refer to the MMPI table on page 9. There it can be found that F-r = 120t; FBS-r = 105t; and RBS = 109-T. These scores are consistent with an invalid test characterized by her over-reporting of psychological, cognitive, and physical symptoms. Consequently, the results from this test are uninterpretable.
>
> She may or may not have had her hair pulled. Even if I assume that her hair was pulled, her response is extraordinary and disproportionate to what apparently happened. Most people have had their hair pulled at some time in their life as a youngster or in high school, in particular. This is not known in and of itself to produce a psychiatric disorder unless there is brutality involved, severe domestic violence, etc.
>
> Her responses on the MMPI-2-RF are consistent with malingering. In other words, she is embellishing the results of the bad act of pulling her hair to an unbelievable level. In my opinion there is no evidence that she has developed a permanent mental illness as a result of a hair-pulling incident.

Dr. Granacher stated he agreed with Dr. Ballard that Zimmerman reached MMI on September 3, 2013. He stated she has no psychiatric impairment or restrictions.

A benefit review conference ("BRC") was held on April 27, 2015. The BRC order and memorandum reflects the parties preserved as issues whether Zimmerman retains the physical capacity to return to the type of work performed as the time of injury; work-relatedness/causation; benefits

per KRS 342.730; pre-existing active; and compensability of her psychological claim. The hearing was held on May 27, 2015. At the conclusion of the hearing, the contested issues were amended to include whether there was the occurrence of an injury.

On July 25, 2015, the ALJ issued an interlocutory opinion and order. The ALJ outlined the stipulations by the parties, and contested issues as follows:

> The parties have stipulated jurisdiction under the Act; an employment relationship; notice of an alleged work related injury on July 13, 2013, payment of TTD at the rate of $278.80 per week from July 14, 2013, to September 7, 2013, totaling $2,618.80; payment of medical benefits totaling $7,058.70; an average weekly wage of $418.18; no current wages; a date of birth of November 9, 1973; and high school education plus some college, with vocational training as a medical assistant. Issues preserved for ruling are: work relatedness/causation; preexisting active; compensability of psych claim; and the claim for benefits under KRS 342.730.

The ALJ provided a detailed review of the evidence. Regarding the video, he specifically stated as follows:

> She said the video is of roll call at the start of her second shift at KCPC. She thought the video of the incident had been tampered with, because "It looks like it skipped around and slower." Her attorney intervened and

stipulated that the video was authentic. (p. 43-44).

. . .

The Defendant filed a **disc** with footage of the July 13, 2013, roll call and the actual hair pulling incident. The disc shows two camera angles of the roll call meeting. The first lasts three-and-a-half minutes and terminates before the hair pulling incident; the second one shows the same three-and-a-half minutes from a different angle, and continues on with the hair pulling incident. There is no audio.

There are 14 people in the room, including Lieutenant Pierce, Zimmerman, and her husband Chad, who the ALJ assumes is the man in the black cap seated next to her at a two-person table in the back of the room; the two are sipping from fountain drinks with similar appearing cups. None of the officers are in rapt attention; one has his back to Pierce some of the time.

Pierce appears to be leading the meeting from a chair, at first. He then stands and paces the room, and settles on a spot in the center. An incident occurs outside the meeting room, and a few officers, including Chad Zimmerman, hurriedly rush out. They return two minutes later, and Chad goes back to his seat. At 5:05 of the tape, Zimmerman leaves her seat for the center of the room in front of Pierce. Pierce continues to talk. There is no reasonable doubt that Pierce intended to use Zimmerman for demonstration, or role play, and her suggestion that she did not know what was going on or was caught off guard is not credible. (Plaintiff's brief even acknowledges Pierce "called her to the middle of the

employee break room and demonstrated what could happen if an inmate got too close to a guard with long hair.”)

Zimmerman stands in front of Pierce for 15 seconds before he reaches up and grabs her hair. Her head twists slightly to the left (not the more severe action described to Dr. Barrett, who at present is the only physician to state work related causation and impairment). She does not have to steady herself with her arms or remotely lose balance. With the demonstration over, Zimmerman turns around to return to her seat; Pierce had extended his right arm in an ushering sense, as if to acknowledge her participation with a touch on the arm or pat on the back. She expresses no reaction of surprise or anger, or any emotion; she in no way acts as if she is hurt.

She sits down and resumes the same appearance and posture from before the demonstration. She crosses her legs as before and takes another sip of her drink. She has no reaction of having been touched in an unwanted, or unwarranted, way. She does not look at her husband as if to say, “Can you believe what happened?” Chad Zimmerman continues to observe Pierce and expresses no reaction to the hair pull. He does not look at his wife as if to say, “I can’t believe he did that” or “are you ok?”

There is no reaction from any of the other officers that they had witnessed anything unusual. The ALJ rewound the tape by the number of officers depicted to observe each of their reactions; there was none. This included the one officer who remained standing and continued tossing a water bottle back

> and forth between his hands during the entire episode as if nothing had happened. For Zimmerman to suggest or say there was an appearance of a "fight" or she had been handled "violently" or been "attacked" or acted "shocked" afterwards is a gross exaggeration of what appears on the video.
>
> The ALJ watched the disc on three separate occasions, and repeatedly so each time to give Zimmerman the benefit of doubt as to her version of events. But the consistent impression was that her testimony is substantially embellished; what she describes simply is not borne out on the video. The ALJ wishes to emphasize that he does not discount hair pulling as a mechanism of injury that could legitimately cause injury; as Plaintiff points out in her Brief, a low-impact motor vehicle accident can cause a whiplash-type injury in the cervical spine. But this was not, by comparison, a low speed collision into a stopped vehicle at an intersection; rather, it is more akin to a parking lot bumper tap that reasonable people might drive away from without even a police report.

After reviewing the evidence, the ALJ made the following findings:

> Turning to the issues, the parties have represented that the evidence on the physical injury is complete – they expect a ruling on the occurrence of an "injury", as defined by KRS 342.020, and whether it has caused impairment. Separately, they expect a ruling on whether a psychological injury has occurred, and, if so, whether Zimmerman is at maximum medical improvement. Zimmerman has not filed evidence as to

permanency of the psychological claim, and requests an interlocutory award of medical benefits because she is not at MMI. (HT p. 4-5). The ALJ finds the evidence does not lead to resolution of the issues as presented. For the reasons set forth below, an interlocutory award is compelled on the physical injury. While the psychological claim is highly suspect, the ALJ will withhold ruling on it until the resubmission of all issues for final disposition.

12. The ALJ has a host of concerns about the merits of this claim, as the above recitation of evidence demonstrates. However, it must be acknowledged that Dr. Goldman, the Defendant's evaluator, retreated from the tenor of his first report and said in his second report that Zimmerman's thoracic spine complaints could prove work related, and that she should have an MRI "for completeness sake." More specifically, he said, "Absent information to the contrary," the condition could prove work related. The ALJ believes the video Dr. Goldman did not review might ultimately serve as sufficient contradictory evidence, but, regardless, if the Defendant's evaluator reported the claimant needs another diagnostic study to be able to firm up an opinion of relatedness then it should have immediately provided for that study and is precluded from the dismissal it seeks.

13. The ALJ will be hard pressed to reject Dr. Granacher's opinion and accept Zimmerman's claim that such a benign physical encounter has produced post-traumatic stress disorder. There is ongoing, unwarranted hostility toward a former supervisor. There was a panic attack just two weeks before

> the work injury. There is embellishment in the history and in the symptoms. There are significant discrepancies within the three offerings of testimony. However, given that Dr. Goldman said a positive thoracic MRI could tie thoracic complaints to the work incident, it would be inappropriate to resolve the psychological claim at this time.
>
> **Interlocutory Order**
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> 1. The Defendant shall immediately authorize the thoracic MRI recommended by its evaluator, Dr. Goldman, and a return appointment to her designated physician for review of its results. This order does not compel the Defendant to authorize any further medical treatment.
>
> 2. Allowing some 30 days for completion of the MRI, a follow-up office visit, and the filing of additional medical reports by both parties, the ALJ will initiate a telephonic status conference on August 24, 2015, at 8:30 a.m. CT, 9:30 a.m. ET.
>
> 3. This is an interlocutory order, not final or appealable.

The thoracic MRI was performed on June 9, 2015, between the date of the hearing, May 27, 2015, and the date of the interlocutory decision, July 25, 2015. Dr. Goldman reviewed the MRI on August 12, 2015. He opined the findings on the MRI were unremarkable. He also reviewed the video of the incident. He stated based upon his

review, the incident did not cause her continued complaints, she is at MMI, and she has a 0% impairment rating.

In his decision rendered September 10, 2015, the ALJ stated as follows:

> On July 15, 2015, the Administrative Law Judge issued an Interlocutory Opinion and Order requiring the Defendant to authorize a thoracic MRI that was recommended for Plaintiff by its evaluating physician, Dr. Bart Goldman. The Order also scheduled a follow-up telephonic status conference on August 24, 2015, for the purpose of setting a schedule for final submission of the claim.
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> At the status conference, the parties advised that Plaintiff, on referral from her new "Obamacare" doctor, had coincidentally obtained the thoracic MRI before the Interlocutory Opinion had been issued.
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> The Defendant had the diagnostic study reviewed by its evaluating expert, Dr. Goldman. In a supplemental report, he said the study was "completely unremarkable with some mild disc desiccation and mild disc bulging causing no stenosis of any kind." He said there were no objective findings to support Plaintiff's continued complaints. From review of the video, he said the hair pulling incident was not the cause of Plaintiff's complaints.
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> Plaintiff filed a supplemental report from its expert, Dr. Barrett, criticizing Dr. Goldman's opinion and reiterating his own that Plaintiff's

> complaints are work related since they started after the hair pulling incident. There is no indication that Dr. Barrett reviewed the recent thoracic MRI or the video of the hair pulling incident.
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> No evidence was filed from the current treating physician who ordered the MRI.
>
> For the reasons set forth in the Interlocutory Opinion, as further confirmed by the supplemental report of Dr. Goldman, the ALJ relies on Dr. Goldman, Dr. Granacher, the video disc, and Plaintiff's unconvincing testimony to find she did not suffer a physical or mental "injury" as defined by KRS 342.0011(1). Her claim is dismissed.

Although the notice of appeal filed by Zimmerman on September 25, 2015 reflects she was appealing from the September 10, 2015 decision, and an order on reconsideration issued September 25, 2015, no petition for reconsideration was filed. Likewise, no order was issued on September 25, 2015.

We first note, as the claimant in a workers' compensation proceeding, Zimmerman had the burden of proving each of the essential elements of her cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Since she was unsuccessful before the ALJ, the question on appeal is whether the evidence compels a finding in her

favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

In rendering a decision, KRS 342.285 grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). 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). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings are so unreasonable 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 reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 79 (Ky. 1999).

As noted above, Zimmerman 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).

That said, even if a petition for reconsideration had been filed, the outcome would be no different. Here, the ALJ set forth a clear review and understanding of the evidence. Zimmerman complains in her brief not all of the evidence was reviewed. Specifically Zimmerman referenced in her brief descriptions of activities which were not

submitted as evidence. She also referenced witness statements from other officers in the break room, which likewise were not introduced into evidence. Contrary to the assertions set forth in Zimmerman's brief, the ALJ clearly reviewed and summarized the evidence of record. While Zimmerman filed the evidence from Dr. Barrett, which is contrary to the opinions of Drs. Goldman and Granacher, this merely constitutes an opposing point of view. The ALJ's decision is supported by the evidence of record, and a contrary result is not compelled.

Zimmerman essentially requests this Board to re-weigh the evidence, and substitute its opinion for that of the ALJ which we cannot do. Whittaker v. Rowland, supra. It was the ALJ's prerogative to rely upon those portions of the evidence outlined in his decision. Zimmerman merely points to conflicting evidence supporting a more favorable outcome, which is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., supra.

Zimmerman's assertion the ALJ failed to render a decision within sixty days form the date of the hearing is incorrect. The ALJ specifically issued an interlocutory decision within that sixty day period, which he noted was not final and appealable. Crown was directed to obtain a thoracic MRI which the parties were allowed to have

reviewed. Unbeknownst to the ALJ, such MRI had in fact already been taken. Both Zimmerman and Crown subsequently introduced medical evidence. A telephonic conference was held on August 24, 2015, and the final decision was issued on September 10, 2015. Based upon this sequence of events, the ALJ did not violate the requirements of KRS 342.275, and he engaged in a sound execution of the discretion afforded to him.

Zimmerman's assertion the ALJ failed to properly conduct a hearing in a fair and impartial manner also rings hollow. A review of the transcript of hearing established the ALJ conducted the hearing in a usual and appropriate manner. The ALJ introduced himself, and the attorneys then introduced themselves. The BRC order was reviewed. The ALJ outlined the evidence of record in a hearing order, signed by counsel present. Zimmerman was sworn in, and provided testimony. There is no evidence she was prohibited from testifying in any fashion, and there was no attempt to introduce evidence which was prevented or denied by the ALJ. At the conclusion of the hearing, the ALJ thanked Zimmerman for her testimony. It was noted an exhibit previously filed was not attached, and the ALJ allowed the parties to attach it to the hearing transcript. The hearing order included a briefing schedule for the

parties. The record fails to reflect or establish anything extraordinary occurred at the hearing, and Zimmerman's argument the hearing was improperly conducted is held for naught.

Finally, we disagree with Zimmerman's argument the ALJ failed to review the entirety of her evidence. An ALJ is not required to provide a detailed summary of the evidence, nor include the minute detail of his reasoning in reaching his determination. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). However, in this instance the ALJ demonstrated his awareness of all the evidence of record, and we believe he made it sufficiently clear to the parties that which he found to be most probative and upon which his determinations rest. Again, we find the ALJ committed no error, and his decision shall remain undisturbed.

Accordingly, the decision rendered September 10, 2015, by Hon. Douglas W. Gott, Administrative Law Judge, is hereby **AFFIRMED**.

Finally, Zimmerman requested oral argument. Having reviewed the record, we conclude oral argument is unnecessary. **IT IS HEREBY ORDERED AND ADJUDGED** the request for oral argument is **DENIED**.

ALL CONCUR.

_____
MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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