Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 4, 2015

CLAIM NO. 201401912

SPEEDWAY LLC PETITIONER/CROSS-RESPONDENT

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

JAMES ROSE RESPONDENT/CROSS-PETITIONER
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENT

OPINION
VACATING AND REMANDING
* * * * * *

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

STIVERS, Member. Speedway LLC ("Speedway") seeks review of the July 13, 2015, Opinion and Order finding Kentucky has extraterritorial coverage of James Rose's ("Rose") work-related right shoulder injuries occurring in West Virginia on May 9, 2014, and May 22, 2014. The ALJ determined Rose was "covered for workers' compensation benefits under the extraterritorial provisions of KRS 342.670," and awarded

temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits pursuant to KRS 342.730(1)(c)1, and medical benefits. Rose cross-appeals seeking remand for an award of permanent total disability ("PTD") benefits. No petition for reconsideration was filed.

On appeal, Speedway challenges the ALJ's decision on four grounds. First, Speedway asserts KRS 342.670 does not confer jurisdiction upon Kentucky for Rose's injury, as Rose was not principally working in Kentucky at the time of his May 2014 injury. Rather, Rose had stopped working in Kentucky prior to his injury and had been permanently transferred and assigned to a West Virginia store. Thus, it contends Rose's employment was localized in West Virginia, since Rose reported to work in West Virginia each and every day he was scheduled to work and did not return to work in Kentucky even on a temporary basis until after his injury. Speedway maintains it treated Rose as a West Virginia employee paying West Virginia unemployment compensation and related taxes.

Based on the undisputed facts, Speedway requests the Board find Rose regularly worked at the West Virginia store at the time of injury, and his employment was

localized in West Virginia. Consequently, the Board should dismiss Rose's claim.

Alternatively, Speedway asserts the Board should reverse the ALJ's finding of a work-related injury. It notes the records of St. Mary's Medical Center where Rose was seen on the night of May 19, 2014, indicates he had a pre-existing active right shoulder injury. That record specifically notes Rose began experiencing pain one month prior to the injury continuing through the date of his work injury. Speedway relies upon the opinions of Dr. Richard A. Suss who opined Rose's condition is degenerative and the MRI revealed no evidence of an acute or traumatic pathology or aggravation of a condition which can be attributable to events on a particular date. Thus, Rose's condition could not be due to the alleged May 19, 2014, work injury.

Speedway also attacks Rose's credibility asserting he was dishonest about his medical history and the filing of previous workers' compensation claims.

Next, Speedway raises the issue of notice as Rose delayed reporting the initial injury in May 2014. It notes Rose admitted he understood he was required to report all work-related injuries to the store manager. However, he did not report the alleged May 19, 2014, injury until three days later.

Finally, Speedway challenges the ALJ's determination Rose has a permanent impairment rating. It asserts the better medical evidence suggests Rose was not yet at maximum medical improvement ("MMI") and his condition could not be rated. Consequently, the ALJ should not have awarded PPD benefits enhanced by the multiplier. Although Speedway seeks to have the claim dismissed for lack of jurisdiction, it suggests: "[i]n the alternative, the Board should dismiss the claim for other reasons as noted above."

On cross-appeal, Rose contends he is permanently totally disabled. Rose seeks affirmance of the ALJ's decision except for the award of PPD benefits.

For reasons not raised by either party, we vacate the ALJ's finding of extraterritorial coverage pursuant to KRS 342.670 and the award of income and medical benefits. We will only discuss the testimony relating to the issue of extraterritorial coverage and the facts surrounding Rose's injury.

Rose's January 30, 2015, deposition, consisting of over a hundred pages, was introduced into the record. He also testified at the June 24, 2015, hearing. At his deposition, Rose testified that prior to moving to Louisville in July 2014 he had lived in Ashland between

seven and nine years. He began his employment with Speedway in August 2013 at the Ashland store on Lexington Avenue as a customer service representative. His job entailed waiting on customers, cleaning, changing trash, and stocking inventory. Because he wanted to move into management, Rose began shift lead training in March 2014. His manager at that store was Ron Petit ("Petit"). Rose married his wife, Kayla, who also worked at the Speedway Ashland store, on April 17, 2014. Prior to their marriage, Petit, the manager, and John Bush ("Bush"), the district manager were notified they were getting married.

Rose worked at the Ashland store until the end of April 2014. At the end of April 2014, Rose worked one shift at the South Point, Ohio store, which is located across the Ohio River from Ashland.[1] He estimated he had a fifteen minute drive to get to this store. Rose testified that on that day he was an employee of the Ashland store but was a borrowed employee. Rose had shift lead responsibility at the store. His next work shift was at the Ceredo/Kenova, West Virginia store where his position was shift lead. He worked approximately two weeks at the Ceredo/Kenova store because the store manager was out due

[1] This store is also referred to in testimony as the Burlington, Ohio store.

to surgery. Rose explained he had completed all of his management classes and his position at the Ceredo/Kenova store was shift lead, but Speedway could not give him the formal title until it placed him in another store. Rose was then placed in the Huntington, West Virginia store, the first store where he officially held the shift lead position. He estimated he worked at the Huntington, West Virginia store approximately a week before he was hurt.

Rose testified that on Monday, May 19, 2014, he was required to work from 6:00 a.m. to 4:00 p.m. He was the only management personnel on duty that day because the store manager was out. Rose never met the co-manager. The "shift lead" from the midnight shift had left the store in a mess. Rose looked out into the parking lot and noticed one of Speedway's inspectors. As a result, he went into the cooler and started stocking the cooler. While lifting items in the cooler, he felt a rip in his right shoulder. Rose denied having any previous injuries to or problems with his right shoulder. He also denied having any previous medical attention for his right shoulder and arm.

After meeting with the inspector, Rose completed his shift and then went to the emergency room at St. Mary's Medical Center. Although he was aware he was required to report an injury to the manager, he did not the report it

that night because no other manager was present. Rose testified he did not return to work again until Thursday night. On Thursday, May 22, 2014, Rose gave Jarrod Huff ("Huff"), the store manager, his doctor's note and told him he hurt himself in the cooler and had gone to the emergency room. Huff gave him medical leave papers, but "left off the workers' comp thing."

That Thursday night, Rose was injured again when he felt a rip in his shoulder while moving items in the cooler. Rose did not go to the hospital. He was off work on Friday but was scheduled to work on Saturday. Rose described the sensation in his shoulder on Thursday as being a hundred times worse. He was in extreme pain and could not move his arm. Prior to going to work on Saturday, Rose went to King's Daughters Hospital where personnel set him up with an appointment to be seen by an orthopedic surgeon. He was given an off work excuse through Wednesday, the date he was scheduled to see the orthopedic surgeon. Because he was to work that night, Rose called Huff from the emergency room of King's Daughters Hospital and told him he had hurt his arm again on Thursday and had returned to the emergency room. He informed Huff he was to be off work for a few days until he was seen by the specialist. On Wednesday, the specialist

scheduled an MRI because he thought Rose had a rotator cuff injury. Rose was taken off work for three weeks. He then went to the store and talked with Huff who gave him the medical leave forms. Rose did not work again until he returned to work for approximately a week at the Louisville store to which he was transferred. He began working for Speedway in Louisville on June 20, 2014.

Rose testified he put in a request to transfer right after the marriage. He was not required to complete paperwork requesting a transfer to Louisville. Rather, he and his wife told their district manager and then talked to Donna Rowden ("Rowden"), the Human Resources person for the Louisville area.

Rose testified that shortly after the marriage they knew they would be moving to Louisville. He was emphatic that he was not required to fill out any paperwork in order to transfer to Louisville. Rather, he would verbally request a transfer to Louisville and provide the reason for the transfer. Rose explained he and Kayla stayed longer than anticipated in Ashland because his wife agreed to stay and run the Ashland store while the store manager was on vacation from June 1 through June 10 or 11. Kayla remained at the store until June 14.

Rose testified he knew he was transferring before he went to the Ceredo/Kenova store. He recalled talking to the people at that store about his transfer because he was excited about the new opportunity. Rose testified he spoke to Petit and asked him about moving. Petit and Bush knew he was transferring. Bush helped him transfer to the Louisville store by calling and setting it up with Rowden. Rose was not sure when Kayla told Bush both wanted to transfer to Louisville, but believed it was at the end of April right after they married.

Rose testified that because he planned to move to Louisville, he was not bothered by working wherever Speedway wanted him to work until he and Kayla moved. Rose testified there was no paperwork filled out when he was transferred to the Huntington store. Rather, Bush told him to work in the Burlington, Ohio store on that one day and he would later give him the rest of his schedule. That evening Bush called and told him he was going to the Ceredo/Kenova store where he would work for a little while and after that he would be moved to Huff’s store in Huntington.

Rose testified he had spent three days training in Huntington. He estimated he worked approximately a month as shift leader in training. He then had a three day

class in management training and took a food class taught in Ironton, Ohio. In March 2014, Rose was a shift leader in training at the Ashland store. He considered the position at the Huntington store a promotion.

Rose denied having any discussion with Bush as to whether the Huntington store was a temporary assignment. Rose testified since Bush's district encompassed three states, he could have been moved to any of the stores in Bush's district. He was placed where he was needed. The district manager always determined his assignment which Rose would never refuse since he was trying to move up in Speedway.

Rose denied having any conversation with Bush about transferring to Kentucky after his work injury because they were already transferring to Louisville once Kayla finished work in June.

Rose started working in Ceredo/Kenova on April 25, 2014, and first worked in Huntington on May 16, 2014. Rose did not believe Speedway withheld West Virginia taxes. Rose has always been a Kentucky resident.

Rose testified that after Speedway personnel were informed they were moving to Louisville, he was first placed in Shepherdsville. He then called Rowden and got

his locations switched so he could work at the Bishop Lane store in Louisville.

Rose underwent surgery in August 2014 performed by Dr. Michael Goodwin to repair his rotator cuff. At the time of his deposition, Rose assumed he was still an employee of Speedway on medical leave. While at the Bishop Lane store in Louisville, the district manager, Chuck Cubbage, told him to fill out an OI-9 and take medical leave. Rose last worked for Speedway from June 20, 2014, to June 26, 2014, in Louisville.

Rose denied completing documents relating to a West Virginia workers' compensation claim. Rose testified he never thought of filing a claim in West Virginia because he lived in Kentucky and spent most of his time working for Speedway in Kentucky.

Rose emphasized the request to move to Louisville was made sometime between April 17, 2014, and April 25, 2014. He had spoken to Rowden before Speedway began moving him to different stores. He testified that Speedway's system designates him as a borrowed employee. He explained that when he was at the Ashland store his name and number were in the system, and when a store needed someone to work from a different store it would choose the employee using the system. Rose testified Speedway knew he had been

assigned to a store in Louisville at the time of his injury because he had talked to Rowden about a location other than Shepherdsville “way before” his work injury. Rose asserted he was temporarily assigned to the Huntington store since he already knew he was moving to Louisville. Rose testified there is no paper trail relating to transfers from one Speedway store to another. When the Ohio store needed someone for a day, he worked there; when Ceredo/Kenova needed a shift lead, he worked for two weeks there. When a spot opened up in Huntington he was placed there. Similarly, when Rose expressed an interest to transfer to Louisville, Speedway found a store for him. Rowden found two stores so he could move to Louisville on approximately June 20, 2014. Rose testified an employee is told to be at a store on a certain date and when he appears either the manager or the district manager puts his name and number in the system.

At the June 24, 2015, hearing, Rose reiterated much of his deposition testimony concerning the injury, his borrowed employee status, and facts pertaining to his transfer. Rose testified he knew he was assigned to the Shepherdsville store at the end of April or first of May 2014.

Rose again emphasized Speedway does not issue letters approving transfers and there is no paper trail evidencing his transfer. He testified Bush's district included Ohio, West Virginia, and Kentucky, and an employee within that district could at any time go to a store in those states. He denied being a permanent employee at the Huntington store.

Kayla testified at the hearing their marriage date is April 17, 2014. At the first of April or end of May she told Bush they were going to be transferring to Louisville. Because Petit, her store manager, scheduled his vacation for the beginning of June they moved the effective date of the transfer to June 15, 2014. She estimated that around May 8, 2014, Rowden called her to discuss the transfer. Rowden placed them in the Louisville stores. Kayla testified Rowden gave her the district managers' names and the stores where they would work. She believes she was given this information before Rose's work injury. Kayla testified when she told Bush they wanted to transfer to Louisville, he gave her Rowden's contact information. Bush contacted Rowden on their behalf and told her they would be transferring because they were moving to Louisville and wanted to stay with the company. Rowden then contacted Kayla and provided the names of the

district managers and store locations. Kayla testified she was unaware of the company policy requiring approval of a transfer. When Rowden notified her where she would be working in Louisville, she believed her transfer had been approved.

Rose introduced the April 24, 2015, deposition of Rowden. Rowden testified she is the Human Resources Representative for Speedway and her territory includes parts of Kentucky and Tennessee but does not include the Ashland area. She works as the liaison between field employees and corporate headquarters. Because she did not recall the nature of the conversations, Rowden brought her "Franklin planner" to the deposition. She noted that on May 13, 2014, she made a notation that Kayla had called her. As a result, she wrote in her planner on that date "transfer to Louisville." Rowden assumed Kayla had called to discuss a transfer. She testified she recalled discussing the transfer because the employees were married to each other. Rowden was familiar with the company policy which does not allow married employees to work in the same store. In fact, Speedway prefers they not work in the same district.

On May 22, 2014, Rowden noted a call from Bush, the district manager for the stores where Kayla and Rose

worked. She assumed the conversation with Bush was about their performance. Rowden did not believe their performance was an issue or they would not have been transferred.

Rowden acknowledged formal paperwork is not necessary for transfer approval. Rather, a Request for Personal Action ("RPA") is filled out by the district where the employee works. She explained the RPA form is used for a lot of transactions including payroll, promotions, and demotions.

Rowden's notation dated May 23, 2014, reflects she asked Bush to complete the RPA for Rose and the transfer would be effective June 15, 2014. She also believed there was an opening in Shepherdsville because her notation states Rose is to contact the store manager at Shepherdsville. Rowden testified she later found out this was not a good location for Rose. Rowden believed it was she who contacted Bush on May 23, 2014. Her note of May 27, 2014, reads "John Bush - Kayla and Rose transfer to Louisville – transferred employees 19th." She assumed this meant Rose and Kayla would be transferred to Louisville on June 19, 2014, which would be the date they start work in Louisville. She explained the date had been changed from June 15, 2014, to June 19, 2014.

Rowden's June 2, 2014, note reflects Rose's June 19, 2014, transfer had been changed from Shepherdsville to Louisville. She testified wherever Rose was working, it was only temporary because he would be transferring to Louisville on June 19, 2014. Although she had June 26 and June 30 notations, Rowden had no recollection of what took place on those dates. She assumed the notations related to coordinating the transfer.

When shown Kayla's cell phone bill showing a call from her office to Kayla on May 8, 2014, at 1:42 p.m., Rowden testified she had no reason to doubt her office called Kayla's phone on Thursday, May 8, 2014, at 1:42 p.m. She acknowledged the call may have related to the transfer.

Rowden testified Speedway does not want to lose good employees and tried to accommodate transfers. She testified that for someone who had "24/7 availability," Speedway could probably find a location pretty quickly.

Rowden stated the regional manager must approve the transfer and as long as Rowden has checked out the employee the manager will approve the transfer if there is an opening. She did not recall speaking with the regional manager about Rose. It was likely she spoke with the district manager over Shepherdsville and later with the district manager over the area in Louisville about where

Rose would be transferring. She testified none of the three managers would complete any paperwork concerning the transfer request. Rather, Bush would prepare an RPA to show the start date. She retrieves all of the information about the employee before they transfer the employee. She will then share the information with either the regional or district manager depending on the position involved in the transfer. Rowden explained if there are no performance issues, "we just do it." The store losing the employee completes the RPA, and the district manager receiving the employee has to approve the employee. She was not sure if it is in writing but Speedway has a company policy to try to accommodate good employees who want to transfer.

At the hearing, Bush testified he has worked for Speedway for twenty-nine years and currently holds two positions - regional sales coordinator and district manager for five stores. He estimated he had held both positions for almost five years. His stores are located in the tri-state area. The stores within his district consist of one store in Ashland, one in Burlington, Ohio, two in Huntington, West Virginia, and one in Ceredo, West Virginia.[2]

[2] In the hearing transcript, Ceredo is spelled Serrita. This store is also known as Ceredo/Kenova.

Bush testified when a manager desires to transfer, the regional manager has to approve it. Human Resource employees do not approve transfers. Bush handled all of Rose's transfers to different stores. When Rose and Kayla married, Bush transferred Rose to the Ceredo/Kenova store which is less than ten miles from the store where Rose was working. Rose worked one day at South Point, Ohio as a fill-in, after which he was assigned to the Ceredo/Kenova store. As a trainee, Rose could be placed wherever he was needed. Bush talked to Kayla after she and Rose married about a transfer to Louisville. When Kayla told him she had called Rowden, Bush informed her that the transfer approval had to come from someone on "our end." He believed this conversation took place when Rose was at the Huntington location, after his alleged work injury. He explained "Lexington [sic] could not take the transfer unless we approved the transfer." Although he was unable to remember when the transfer request was made, Bush believed it was after the alleged injury. He explained Rowden, in Human Resources, could not approve the transfer and only a regional manager could approve a manager transfer. As a result, Rose could not work in Louisville without Bush's or his bosses' approval. Bush acknowledged he has moved employees from state to state and employees

will be placed anywhere needed within his district. Speedway transfers employees around the tri-state area all the time.

Bush testified when he spoke with Rowden he learned the Roses had already talked to her about the transfer. He did not remember the dates he spoke with Rowden.

When Bush spoke with Kayla informing her the approval had to go through management in his district, he told her he would set it up and contact the regional manager to make sure the transfer was approved. Bush called Paul Chambers, the regional manager, who told him to contact Rowden which Bush did. When asked how Kayla could have gotten Rowden's name and contact information, Bush explained Speedway has a directory of every employee.

In the opinion and award, the ALJ provided the following summary of the testimony of Rose, Kayla, and Bush:

> The plaintiff, **James Rose**, testified that while working for the defendant in Huntington, West Virginia on May 19, 2014, he was moving crates and felt a rip in his right shoulder. He went to the hospital. He stated that he had worked for the defendant in Ashland, Kentucky and also had worked for the defendant in Ohio and West Virginia. He was also injured while working for the defendant May 22, 2014,

> when he was moving crates and felt a rip in his right shoulder. He went to the hospital and came under the care of Dr. Goodwin, an orthopedic surgeon. The plaintiff testified that he had desired to transfer to Louisville, Kentucky and he had talked to the manager before his injuries. He worked for the defendant four days in Louisville, Kentucky. He had shoulder surgery in August, 2014. Use of his right arm is limited. His medical bills and expenses have not been paid and he has not received any temporary total disability benefits.
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> **Kayla Rose**, the plaintiff's wife, stated that she and her husband had been transferred to Louisville, Kentucky effective May 8, 2014.
>
> **John Bush** testified for the defendant at the Hearing. He has been employed by Speedway for 29 years. He is a district manager, supervising five stores. He stated that the regular manager approves employee's transfers. Mrs. Rose requested that the plaintiff transfer to Louisville, Kentucky.

Importantly, the ALJ did not summarize any of Rowden's testimony.

Concerning the issue of jurisdiction, under the heading of "findings of fact and conclusions of law," the ALJ entered the following:

> The plaintiff's attorney cited on the issue of jurisdiction *United Pipeline Construction Co. v. Kaelin*, 602 S.W.2d 176 (Ky. App. 1980) and *Davis v. Wilson*, 619 S.W.2d 709 (Ky. App. 1980). I am very familiar with both cases, having cited them many

times. In the *United Pipeline* case, the plaintiff sustained a work injury on April 12, 1976. He had been hired by the defendant at its home office in Louisville, Kentucky. Thereafter, the plaintiff worked in Indiana, in Kentucky and in Ohio, where he had his injury. The Workers' Compensation Board, then the initial decision maker, determined that the plaintiff was entitled to extraterritorial coverage in Kentucky under KRS 342.670. The Board relied upon KRS 342.670(1)(b) in determining that plaintiff at the time of his injury was working under a contract of hire made in Kentucky in employment not principally localized in any state. The Court of Appeals stated that although the plaintiff may have resided in Ohio at the time of his injury, it did not believe under the facts that he had established domicile in Ohio at the time of his injury, and that, therefore, the plaintiff was entitled to extraterritorial coverage under KRS 342.760(1)(b). The Court of Appeals, therefore, reversed and remanded the judgment of the Circuit Court with directions that the Board's decision be reinstated.

In the *Davis* case, the plaintiff was injured while working in Tennessee and filed a workers' compensation claim in Kentucky. The defendant resided outside Pineville, Kentucky and hired the plaintiff in Pineville on February 1, 1978. During the 11 weeks that Wilson worked for Clark, he worked 2 weeks in Kentucky and 9 weeks in Tennessee. The plaintiff claimed that he was entitled to extraterritorial coverage under KRS 342.670. The proof was that Wilson was domiciled in Kentucky and that 20% of his work experience with the defendant was in Kentucky. The Court of Appeals

> concluded that those factors made the plaintiff's employment principally localized in Kentucky and that his out-of-state injury was compensable under KRS 342.670(1)(a). The Court of Appeals, therefore, affirmed the Circuit Court which had reversed the Board's refusal to award benefits.
>
> I saw and heard both Mr. Rose and Mrs. Rose testify at the Hearing. I sat a few feet from them and carefully observed their facial expressions, carefully listened to their voice tones and carefully observed their body language during their testimony. I am the only decision maker who actually saw and heard them testify in person. They were both open and candid witnesses. **I make the determination that both Mr. Rose and Mrs. Rose were very credible and convincing lay witnesses and that their testimony rang true. Mr. Rose was hired and worked largely in Kentucky. (emphasis added).**
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> . . .
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> Based upon the credible and convincing lay testimony of both Mr. Rose and Mrs. Rose, as covered above, and the above-cited Court of Appeals decisions, I make the determination that Mr. Rose is covered for workers' compensation benefits under the extraterritorial provisions of KRS 342.670.

Based on the testimony of Rose and the "reliable medical evidence" from Drs. Goodwin and Barefoot, the ALJ concluded Rose sustained work-related injuries on May 19, 2014, and May 22, 2014.

The ALJ concluded there was no prejudice to the defendant and notice was timely under both KRS 342.185, KRS 342.200, and Marc Blackburn Brick Company v. Yates, 424 S.W.2d 814 (Ky. 1968).

The ALJ awarded TTD benefits and medical benefits which included payment for the surgery performed by Dr. Goodwin. After conducting an analysis pursuant to Fawbush v. Gwinn, 103 S.W.3d 5 (Ky. 2003), the ALJ enhanced the PPD benefits by the three multiplier.

As previously noted, no petition for reconsideration was filed.

Because the ALJ's summary of the evidence is inadequate and the ALJ did not engage in any fact-finding, particularly with respect to the evidence relating to the issue of extraterritorial coverage, we vacate the decision finding Kentucky has jurisdiction of Rose's claim and remand.

In Arnold v. Toyota Motor Mfg., 375 S.W.3d 56, 61, 62 (Ky. 2012), the Supreme Court instructed as follows:

> Mindful that Chapter 342 and the Kentucky Constitution require review of decisions in post–1987 workers' compensation claims by the Board, the Court of Appeals, and the Supreme Court, [footnote omitted] when requested, we conclude that KRS 342.275(2) and KRS 342.285 contemplate an opinion that summarizes the

> conflicting evidence concerning disputed facts; weighs that evidence to make findings of fact; and determines the legal significance of those findings. Only when an opinion summarizes the conflicting evidence accurately and states the evidentiary basis for the ALJ's finding [footnote omitted] does it enable the Board and reviewing courts to determine in the summary manner contemplated by KRS 342.285(2) whether the finding is supported by substantial evidence and reasonable. [footnote omitted]

In the case *sub judice*, the ALJ provided no summary of Rowden's testimony and only a minimal summary of the testimony of Rose, Kayla, and Bush relating to the issue of extraterritorial coverage. As directed by the Supreme Court in Arnold v. Toyota Motor Mfg., supra, the ALJ failed to summarize all of the conflicting evidence concerning the disputed facts relating to the issue of extraterritorial coverage. In light of the ALJ's blanket statement the testimony of Rose and Kayla were very credible and convincing, it was imperative the ALJ summarize in full their testimony. As can be seen from our summary of the lay testimony, the parties offered an abundance of evidence relating to the question of extraterritorial coverage.

The ALJ's failure to summarize the relevant testimony concerning jurisdiction is heightened by the fact

he incorrectly summarized Kayla's testimony in his one sentence summary of her testimony. Kayla did not testify she and her husband had been transferred to Louisville effective May 8, 2014; rather, she testified that around May 8, 2014, Rowden called her and talked about the transfer. Kayla did not remember the date Rowden supplied the names of the district managers and the stores where they were to work. She believed she was given this information before Rose's work injury. Kayla believed that when Rowden notified her where she was working in Louisville her transfer had been approved.

Significantly, the ALJ also failed to discuss KRS 342.670(1) which reads as follows:

> (1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which the employee, or in the event of the employee's death, his or her dependents, would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee, or in the event of the employee's death resulting from that injury, his or her dependents, shall be entitled to the benefits provided by this chapter, if at the time of the injury:
>
> (a) His or her employment is principally localized in this state; or
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> (b) He or she is working under a contract of hire made in this state in

> employment not principally localized in any state; or
>
> (c) He or she is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or
>
> (d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

There was no dispute Rose's contract of hire was made in Kentucky and he was injured while working at the Huntington, West Virginia store. KRS 342.670(1)(c) is clearly not applicable as there was no contention the workers' compensation law of West Virginia is not applicable to Speedway. KRS 342.670(1)(d) is also not applicable because Rose was not working under a contract of hire made in Kentucky for employment outside the United States or Canada. Thus, the ALJ was faced with determining whether Subsection 1 (a) or 1 (b) was applicable to the facts in this case. Consequently, the need to recite all of the testimony relating to the issue of extraterritorial coverage was paramount. The ALJ's decision does not comply with the Supreme Court's directive in Arnold v. Toyota Motor Mfg., supra, as he did not summarize the conflicting

evidence concerning the disputed facts and weigh the evidence in making findings of fact.

Worse yet is the lack of fact-finding by the ALJ concerning the issue of extraterritorial coverage. As noted, the ALJ did not engage in any discussion or analysis of the potential applicability of KRS 342.670(1)(a) or (b). The blanket statement by the ALJ that both Rose and Kayla were credible and convincing lay witnesses and their testimony rang true does not constitute a finding of fact. Similarly, the ALJ's statement Rose was hired and worked largely in Kentucky is a conclusion unsupported by a citation to any specific testimony within the record. Moreover, this statement does not resolve whether at the time of Rose's injury, his employment was principally localized in West Virginia or alternatively, not principally localized in any state.

The ALJ's failure to engage in fact-finding is compounded by his failure to cite to the specific subsection of KRS 342.670(1) he found applicable in determining Rose was "covered for workers' compensation benefits under the extraterritorial provisions of KRS 342.670." The issue is whether at the time of Rose's injury his employment was principally localized in West Virginia or was not principally localized in any state. If

Rose's employment was not principally localized in any state, since he was working under a contract of hire made in Kentucky, Kentucky has jurisdiction. However, if Rose's employment at the time of the injury was principally localized in West Virginia, West Virginia has jurisdiction. Since the ALJ entered no findings of fact and failed to identify the applicable subsection of KRS 342.670(1), it is impossible to determine the basis of the ALJ's decision.

The ALJ's statement Rose was hired and worked largely in Kentucky does not resolve the issue of whether at the time of injury Rose's employment was principally localized in West Virginia or alternatively, was not principally localized in any state. There appears to be no dispute that from the time Rose was hired until he was injured, he worked the majority of the time for Speedway in Kentucky. However, the fact Rose may have worked a majority of the time in Kentucky does not resolve whether extraterritorial coverage existed. The ALJ was required to determine whether after Rose left the Ashland store his employment became principally localized in West Virginia. The ALJ failed to address this issue with the appropriate findings of fact. Since the ALJ failed to provide the evidentiary and legal basis for his decision, we are unable to ascertain which portions of Rose's and Kayla's testimony

and the subsection of KRS 342.670(1) the ALJ relied upon in determining Kentucky had extraterritorial coverage of Rose's claim.

The following language in Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440, 444 (Ky. App. 1982), is applicable:

> The case law dealing with administrative bodies clearly indicates that it is required that basic facts be clearly set out to support the ultimate conclusions. [citations omitted] The Workers' Compensation Board is not exempted from this requirement. It is not the intention of the Court to place an impossible burden on the Workers' Compensation Board but only to point out that the statute and the case law require the Board to support its conclusions with facts drawn from the evidence in each case so that both sides may be dealt with fairly and be properly apprised of the basis for the decision.

In the case *sub judice*, the ALJ did not comply with the above directive by clearly setting out the basic facts which support his ultimate conclusion. Therefore, the determination Kentucky has jurisdiction of Rose's claim and the award must be vacated.

We are cognizant of the significance of Speedway's failure to file a petition for reconsideration. As we have said many times, pursuant to KRS 342.285, in the absence of a petition for reconsideration, on questions of

fact, the Board is limited to a determination of whether there is substantial evidence contained in the record to support the ALJ's conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985). However, in the case *sub judice*, since the ALJ failed to summarize the evidence relating to extraterritorial coverage and to engage in any fact-finding, the failure to file a petition for reconsideration is not legally significant. The ALJ's failure to summarize the conflicting evidence concerning disputed key facts, weigh the evidence in making those findings of fact, and determine the legal significance of those findings, does not require this Board to review the evidence of record and engage in *de facto* fact-finding in order to determine whether there is substantial evidence in the record to support the ALJ's decision that Kentucky has extraterritorial coverage of Rose's claim.

Accordingly, the ALJ's determination Kentucky has jurisdiction of Rose's claim pursuant to the provisions of KRS 342.670 is **VACATED**. Similarly, the award of income and medical benefits is also **VACATED**. Our decision vacating the determination Kentucky has extraterritorial jurisdiction of Rose's claim renders all other issues raised on appeal and cross-appeal **MOOT**. This claim is **REMANDED** to the Chief Administrative Law Judge for designation of an

Administrative Law Judge for entry of an amended opinion and award resolving all contested issues including whether Kentucky has extraterritorial coverage pursuant to KRS 342.670(1) in conformity with the views expressed herein. We offer no opinion as to the result to be reached on remand.

ALL CONCUR.

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