

OPINION ENTERED: November 30, 2012

CLAIM NO. 200882239

STRIDE RITE CORP.

PETITIONER

VS.

APPEAL FROM HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE

LORETTA MULLINS  
and HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**STIVERS, Member.** Stride Rite Corp. ("Stride Rite") seeks review of the July 30, 2012, opinion and award of Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ") finding Loretta Mullins ("Mullins") to be totally occupationally disabled and awarding permanent total disability ("PTD") benefits and medical benefits. Stride

Rite also appeals from the August 17, 2012, order overruling its petition for reconsideration.

This appeal centers on whether the ALJ applied the methodology set forth in Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000) in determining Stewart is totally permanently disabled.

Mullins sustained a work-related injury on June 9, 2008, when she tripped over a fan cord and broke the fifth metatarsal bone in her right foot. Dr. Keith Myrick performed surgery consisting of "open reduction, internal fixation of the fifth metatarsal fracture." He subsequently performed surgery to remove "painful hardware." Mullins was referred to Dr. Elmer Dunbar with Pain Control Network, PSC, who diagnosed "CRPS Type I - right lower extremity." Mullins then underwent two surgeries for implantation of a spinal cord stimulator performed by Dr. Dunbar. Mullins returned to work at some point after each of the surgeries. Before quitting, Mullins worked at Stride Rite approximately four and half weeks after the stimulator was implanted.

Mullins introduced the medical records of Drs. Myrick and Dunbar, two medical reports of Dr. Warren Bilkey, and the vocational report of Robert G. Piper ("Piper"), a vocational consultant. In addition, Mullins

relied upon her and her husband, Roger Mullins' testimony. Stride Rite relied upon the medical reports of Dr. Navin Kilambi and the vocational assessment of Dr. Luca E. Conte, a vocational rehabilitation counselor.

After summarizing the lay, medical, and vocational evidence, the ALJ entered the following findings of fact and conclusions of law:

14. The Plaintiff and her husband testified credibly and convincingly during the final hearing regarding the Plaintiff's pain, her use of a spinal cord stimulator and the limitations and difficulties that she now experiences.

15. Dr. Bilkey conducted two independent medical evaluations of the Plaintiff; the most recent of which left him with the conclusion that she has an 11% whole person impairment. Dr. Bilkey differed with the opinion of Dr. Kilambi, who also performed two evaluations but concluded that the Plaintiff had a 6% whole person impairment. The primary difference in the two ratings is that Dr. Bilkey assessed a rating for Complex Regional Pain Syndrome while Dr. Kilambi did not. Dr. Kilambi instead stated that the Plaintiff should be further assessed by a pain management specialist for that purpose. This is despite the fact that he acknowledged that Dr. Dunbar had already made such findings. The ALJ therefore finds that Dr. Bilkey's reports are the most credible.

16. Both doctors Kilambi and Bilkey concluded that the Plaintiff

could not return to the type of work that she was doing at the time of the injury and there are competing vocational reports that opine about whether or not the Plaintiff is totally disabled. The report of Luca Conte correctly opines that the competing report of Robert Piper bases several conclusions on the subjective complaints of the Plaintiff. Mr. Conte therefore lists some jobs that he believes the Plaintiff is capable of performing. Mr. Conte however has completely discounted any of the Plaintiff's complaints. The Plaintiff's credibility has been established with the ALJ and it is clear from his report that Mr. Piper reviewed the independent medical examination report of Dr. Bilkey which adequately summarizes the Plaintiff's medical status. The report of Robert Piper therefore is the most reasonable and credible as it considers the medical evidence and the actual complaints of the Plaintiff.

17. The ALJ therefore finds that the Plaintiff is totally disabled.

Stride Rite filed a petition for reconsideration asserting the ALJ neglected to evaluate the "lack of reliability of Piper's findings" since he did not have the reports of Drs. Myrick and Kilambi in conducting his vocational analysis. Stride Rite argued Piper "did not properly use medical restrictions in formulating his opinions regarding [Mullins'] ability to return to the work force." It also argued Piper did not perform any testing.

Stride Rite asserted no physician expressed the opinion Mullins was permanently totally disabled due to the work injury.

Stride Rite posited pursuant to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004), Piper's vocational assessment cannot constitute substantial evidence concerning the issue of whether Mullins is permanently totally disabled, because it was based on an inaccurate and incomplete medical history. It requested the ALJ evaluate the claim "for more detailed findings of fact in light of the flaws contained in Piper's assessment." Stride Rite maintained an award based on the impairment rating assessed by Dr. Bilkey or Dr. Kilambi "is more appropriate" since Mullins failed to produce any medical evidence establishing she cannot return to active gainful employment. Significantly, in the petition for reconsideration, Stride Rite did not complain of the ALJ's failure to conduct an analysis regarding whether Mullins is totally occupationally disabled in accordance with the mandate of Ira A. Watson Department Store v. Hamilton, supra. The ALJ, without comment, signed Mullins' tendered order summarily overruling the petition for reconsideration.

On appeal, Stride Rite asserts the ALJ failed to apply the criteria set forth in Ira A. Watson Department Store v. Hamilton, supra, in determining whether Mullins is permanently totally disabled. It asserts Ira A. Watson Department Store v. Hamilton, supra, requires various factors to be considered in determining whether Mullins is permanently totally disabled. Although the ALJ assessed the medical evidence and summarized the vocational reports, Stride Rite posits he failed to address the likelihood Mullins "would be able to find consistent work." Stride Rite argues even though the ALJ found Piper's report more credible, the ALJ failed to discuss Mullins' ability to find other work based on her current physical condition. Stride Rite maintains the ALJ failed to adequately assess Mullins' ability to function in other employment areas. It contends Dr. Bilkey and Dr. Kilambi did not state Mullins is permanently and totally disabled and Piper's vocational assessment utilized restrictions which were not in accordance with Dr. Bilkey's medical report. Stride Rite maintains the ALJ failed to explain why Mullins would be unable to find work based on her physical restrictions.

Stride Rite also insists the ALJ erred in finding Piper to be more credible than Dr. Conte since Piper failed to evaluate all of the evidence including the reports of

Drs. Myrick and Kilambi. It insists Piper formed his conclusions regarding Mullins' return to work "without the support of objective medical evidence." Stride Rite contends Dr. Conte's report is more credible because he performed vocational testing and reviewed all of the medical evidence. Stride Rite complains Piper relied upon Mullins' subjective complaints in formulating her "medical work restrictions." Stride Rite asserts that although credibility can be a factor in determining permanent total disability, the ALJ is still required to consider the factors set forth in Ira A. Watson Department Store v. Hamilton, supra.

Stride Rite argues the fact Mullins cannot return to her pre-injury job does not prevent her from performing any work. It surmises that with proper vocational rehabilitation and work hardening, Mullins is predisposed to obtaining "employment with nearly guaranteed longevity." Stride Rite requests the ALJ's decision be remanded for an "assessment of appropriate findings" pursuant to Ira A. Watson Department Store v. Hamilton, supra.

Mullins testified at a June 18, 2011, deposition and at the May 30, 2012, hearing. Mullins was born August 31, 1959, and has a GED. At her deposition she testified that in 1982 she began working for Blue Boar where she

worked for four years as a server. Mullins was off work for four years and returned to work at Gateway Press for five years, where her job required her to feed materials into a machine which bound magazines. From May 1996 to November 2000, Mullins worked at Town Talk operating an embroidery machine. She was off work two and a half years and then went to work at Stride Rite working in ticketing. Her primary job in ticketing is to prepare shoes for shipment. Occasionally, Mullins worked as a material handler when that position was vacant. As a material handler, she drives a power jack hauling cases of shoes to ticketing.

Mullins testified she is having "a lot of problems" lifting the cases of shoes. When she drives the power jack, the vibration increases her pain. Mullins explained when she operates the power jack she "drives the whole building."

Mullins returned to work after each of the surgeries performed by Dr. Myrick. Mullins testified she would like to continue working but she can barely get through an eight hour work day because of the pain in her right foot. She testified her foot burns continuously which she characterized as a "tingling, pins-and-needles sensation." Mullins testified ticketing involves a

significant amount of standing and the longer she stands the more her pain increases. Mullins testified Stride Rite pays a fifty cent per hour bonus when she makes eighty percent of her quota. After the injury, Mullins does not earn "nearly as much" bonus as she did before the injury.

Mullins testified she wants to have the spinal cord stimulator implanted in order to relieve her pain. Mullins testified she no longer does any cooking because standing is "horrible." She only does basic cleaning, and cannot participate in any of the outdoor activities she used to enjoy which she identified as fishing, camping, and outdoor games.

At the hearing, Mullins testified Dr. Dunbar has implanted a spinal cord stimulator and she has a programmer which permits her to make adjustments to the stimulator based on her pain.

Mullins testified Dr. Dunbar prescribes Gabapentin for her "nerve pain" and Tizanadine which is a muscle relaxer. She also takes Amitriptyline, an anti-depressant to help her sleep. When she returned to work after implantation of the spinal cord stimulator she developed "severe muscle spasms in [her] back" which is worse than her foot pain. Mullins had no muscle spasms before implantation of the stimulator. Although she is

able to control her foot pain with the stimulator, it never completely ceases. Mullins testified she worked approximately four and half weeks after the stimulator was implanted before quitting. Mullins testified she quit her job because of severe pain which caused her to leave work early every day. Mullins testified she has never performed any sit down jobs and cannot now perform any full time jobs.

Mullins performs some household tasks, but since she cannot be on her foot very long she cannot run a vacuum, wash clothes, or cook. She prepares "microwavable stuff and sandwiches." She keeps her foot elevated most of the day. Her daily activities consist of watching TV and reading. Mullins has trouble getting up and down the stairs and walking on rough terrain. She testified she can walk approximately half a block before she turns up the stimulator to relieve her pain.

Roger Mullins ("Roger"), Mullins' husband since 1992, testified Mullins is in constant pain and can only perform housework for fifteen to twenty minutes and then has to get off her feet. His wife props up her foot most of the time she is in house. Roger helps with the washing and cooking. Before implantation of the stimulator, Mullins "always had a supper plate there ready, and clothes

always done." He testified their situation is completely different now. Mullins has not been fishing or camping since the injury. Roger does most of the grocery shopping because Mullins cannot stay in the store very long. Roger will not let her carry the laundry. He estimated that during the time he is with her, his wife will adjust the stimulator approximately three times a day. He emphasized because he works he does not know how many times Mullins adjusts the stimulator during the entire day.

Mullins introduced Dr. Bilkey's March 9, 2011, independent medical evaluation ("IME") report generated after reviewing medical records and conducting a physical examination. Dr. Bilkey's impressions were a fracture of the right fifth metatarsal bone and RSD/CRPS, which had been treated with lumbar sympathetic blocks. Mullins has myofascial pain which affects the right lower extremity. He noted Mullins is awaiting approval for a spinal cord stimulator and had "acquired right foot and ankle chronic pain, limitation to motion and impairment." Dr. Bilkey believed all of Mullins' problems are due to the work injury and she had attained maximum medical improvement ("MMI") with respect to the fracture. Since Mullins had returned to regular duty, he issued no work restrictions. Dr. Bilkey assessed a 10% whole person impairment for the

right foot injury pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, ("AMA Guides").

Dr. Bilkey's January 9, 2012, IME report was also introduced. In addition to providing his findings after reviewing the medical records and conducting a physical examination, Dr. Bilkey also discussed the impairment rating of Dr. Kilambi. He noted Dr. Kilambi stated he would defer to a pain management specialist as to whether "there is an actual diagnosis for CRPS." Dr. Bilkey also noted Dr. Kilambi stated Mullins did not have the physical capacity to return to the type of work she performed prior to the work injury and had assessed a 6% impairment. Dr. Bilkey's impression is as follows:

6/19/08 work injury fracture of the 5<sup>th</sup> metatarsal bone. Ms. Mullins underwent an open reduction internal fixation surgery and had a second surgery to remove painful fusion hardware. Ms. Mullins developed RSD/CRPS. This was treated with lumbar sympathetic blocks, with improvement. She has since undergone implantation of a spinal cord stimulator device. There is myofascial pain affecting the right lower extremity. It appears overall, functionally, Ms. Mullins is no better, perhaps worse after implantation of the spinal cord stimulator device.

All of Dr. Bilkey's diagnoses relate to the work injury. Based on the AMA Guides, Dr. Bilkey assessed a 9% impairment due to the ankle injury and "the effects of CPRS on gait." In addition, Mullins has a 2% impairment for loss of inversion motion and a 1% impairment for loss of eversion motion. Dr. Bilkey assessed an additional 3% whole person impairment for chronic pain which yielded "a combined 11% whole person impairment." Dr. Bilkey imposed the following restrictions:

Work restriction recommendations are for Ms. Mullins to avoid prolonged stance, gait, climbing, stooping and lifting over 10 lbs. These restrictions are due to the 6/19/08 work injury and they preclude Ms. Mullins from being able to resume the usual work duties successfully carried out prior to the 6/19/08 work injury.

The February 3, 2012, vocational assessment report of Piper was introduced. He indicated Mullins' counsel had provided "medical and vocational documents" for his review. Piper set forth Mullins' background information, education, training, and work history. He also set forth her medical history and current medical status "per Ms. Mullins." Piper's summary/conclusions are as follows:

Ms. Mullins underwent an open reduction internal fixation surgery to her right foot on 7/2/08 followed by fusion

hardware removal surgery on 10/14/08. The permanent implantation of the spinal cord stimulator took place on 5/12/11.

Ms. Mullins underwent an Independent Medical Evaluation by Warren Bilkey, MD on 1/9/12. His impression states that 'Ms. Mullins developed RSD/CRPS' and that she 'is no better, perhaps worse after implantation of the spinal cord stimulation device.' Dr. Bilkey recommended that she continue with pain management treatment. He found her to be suffering from chronic pain. Work restrictions provided by Dr. Bilkey were: 'to avoid prolonged stance, gait, climbing, stooping and lifting over 10 lbs.' These restrictions would limit Ms. Mullins to sedentary work.

The least physically demanding occupations are classified as sedentary work. Sedentary work is defined by the U.S. Department of Labor as: 'exerting up to 10 pounds of force occasionally and/or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking and standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.' Occasionally is defined as up to 1/3 of the time, frequently is defined as 1/3 to 2/3 of the time, and constantly is defined as 2/3 or more of the time.

All of Ms. Mullins' past work was more physically demanding than sedentary work. It is my opinion that she has not developed skills from her past work that would be transferable to either skilled or semiskilled sedentary work.

Therefore, she would be limited to unskilled sedentary work.

My opinion is that Ms. Mullins would not be able to perform even unskilled sedentary work, with the option to sit or stand as needed, because of the need to elevate her leg to waist level while seated for 2-3 hours during the day. This would place her in too awkward a position from which to perform work tasks. It would result in long unscheduled work breaks that would not be tolerated in a competitive employment situation. This would also be the case with the two-hour midday nap required by Ms. Mullins. In addition, the back spasms would interrupt her work pace as would the poor concentration due to pain and medication side-effects. Therefore, it is my opinion that Ms. Mullins is precluded from all full-time employment at the present time based on the issues identified above.

Regarding the determination of whether a worker is totally occupationally disabled, in Ira A. Watson Department Store v. Hamilton, supra, the Supreme Court instructed as follows:

However, determining whether a particular worker has sustained a partial or total occupational disability as defined by KRS 342.0011(11) clearly requires a weighing of the evidence concerning whether the worker will be able to earn an income by providing services on a regular and sustained basis in a competitive economy. For that reason, we conclude that some of the principles set forth in *Osborne v. Johnson, supra*,

remain viable when determining whether a worker's occupational disability is partial or total.

An analysis of the factors set forth in KRS 342.0011(11)(b), (11)(c), and (34) clearly requires an individualized determination of what the worker is and is not able to do after recovering from the work injury. Consistent with *Osborne v. Johnson, supra*, it necessarily includes a consideration of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work consistently under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be able to work dependably and whether the worker's physical restrictions will interfere with vocational capabilities. The definition of "work" clearly contemplates that a worker is not required to be homebound in order to be found to be totally occupationally disabled. See, *Osborne v. Johnson, supra*, at 803.

Id. at 51.

We agree with Stride Rite that in the opinion and award the ALJ completely failed to discuss the factors as set forth in Ira A. Watson Department Store v. Hamilton, supra. However, we note the ALJ's failure to conduct an analysis of the factors enunciated in Ira A. Watson Department Store v. Hamilton, supra, was not raised in

Stride Rite's petition for reconsideration. Thus, the ALJ was not given the opportunity to perform that analysis after entry of the opinion and award. Therefore, we believe Stride Rite waived its right on appeal to argue the ALJ, in analyzing the issue of whether Mullins is totally occupationally disabled, failed to consider the factors set forth in Ira A. Watson Department Store v. Hamilton, supra. In the petition for reconsideration Stride Rite merely criticized Piper's report and asserted the report could not constitute substantial evidence based on Cepero, supra. The petition for reconsideration did not mention a failure to conduct the analysis mandated by Ira A. Watson Department Store v. Hamilton, supra.

That said, although the ALJ failed to mention the factors set forth in Ira A. Watson Department Store v. Hamilton, supra, in the opinion and award, we believe the ALJ did consider those factors in determining whether Mullins was totally occupationally disabled. In the opinion and award, the ALJ noted the parties stipulated Mullins was born August 31, 1959, had a tenth grade education with an accomplishment of a GED, and no specialized or vocational training. The ALJ found the testimony of Mullins and her husband credible and convincing regarding her pain, her use of the spinal cord

stimulator, and her current limitations and difficulties. The ALJ found the reports of Dr. Bilkey to be "most credible." Likewise, the ALJ found the report of Piper to be "most reasonable and credible" since it considered the medical evidence and Mullins' complaints. He pointed out Dr. Conte had completely discounted any of Mullins' complaints. In considering the testimony of Mullins and her husband, Dr. Bilkey's reports, and Piper's reports, the ALJ obviously considered the factors set forth in Ira A. Watson Department Store v. Hamilton, supra, which included Mullins' "post-injury physical, emotional, intellectual, and vocational status and how those factors interact." Id. at 51. The testimony of Mullins, her husband, and Piper dealt with "the likelihood that [Mullins] would be able to find work consistently under normal employment conditions." Id. at 51. Similarly, the testimony of Mullins, her husband, and Piper also dealt with the issue of whether she "will be able to work dependably and whether [her] physical restrictions will interfere with vocational capabilities." Id. at 51.

Further, we find no error in the ALJ's partial reliance on Piper's vocational assessment in determining Mullins was permanently totally disabled due to the effects of the work injury. In performing a vocational evaluation,

Piper indicated he reviewed medical records which had been supplied by Mullins' counsel. The fact Piper referenced only the reports of Dr. Bilkey does not necessarily mean he did not review other medical records. In fact, he noted Mullins had undergone surgery on her right foot followed by fusion hardware removal surgery, and permanent implantation of the spinal cord stimulator. Certainly, the ALJ was free to conclude Piper had reviewed the medical records of both Drs. Dunbar and Myrick. Significantly, Piper was not deposed regarding the medical records he reviewed. Piper provided the classification of the previous jobs Mullins performed and summarized Mullins' physical problems and limitations as recounted by Mullins. He explained why he concluded Mullins would be unable to perform full-time employment at the present time.

Piper's report qualifies as substantial evidence supporting the ALJ's conclusion Mullins is permanently and totally disabled as a result of the work-related injury. While an ALJ is not required to rely upon the vocational opinions of physicians or vocational experts in arriving at a decision with regard to permanent total disability, in his discretion as fact-finder, he may accept and rely on such testimony when and if he so chooses. See Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Seventh Street

Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976).

Further, the fact that Piper may not have an opportunity to review the medical records of Drs. Dunbar and Myrick, as alleged by Stride Rite, does not render his opinions to be less than substantial. Rather, such information merely goes to the weight to be assigned Piper's testimony, which is a question solely to be decided by the ALJ in his role as fact-finder. Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky. App. 1995).

Although Mullins does not argue on appeal that Cepero, supra, is applicable, as it did in the petition for reconsideration, we believe Cepero, supra, to be inapplicable. Because permanent total disability is purely an occupational determination to be made within the ALJ's discretion after consideration of such factors as the workers' age, education, vocational skills, and medical restrictions, Cepero, supra, has no application. In Cepero, the Kentucky Supreme Court held that an opinion generated by a physician is not competent to constitute substantial evidence "where it is irrefutable that physician's history regarding work-related causation is corrupt due to it being substantially inaccurate or largely incomplete." Id. at 842. Here, all of the expert

witnesses of record were properly apprised concerning the work-related traumatic cause of Mullins' injury. It is undisputed that Piper is a vocational expert, not a physician. As such, by their very nature, Piper's expert opinions pertain to Mullins' post-injury capacity to engage in gainful employment and are unconcerned with causation. As is his prerogative, the ALJ chose to rely, at least in part, on Piper's opinions for purposes of determining the extent of Mullins' disability. Significantly, both physicians agreed Mullins was not capable of returning to her job at Stride Rite. Thus, the sole issue was whether Mullins was totally occupationally disabled.

Finally, authority has long acknowledged that in making a determination granting or denying an award of permanent total disability, an ALJ has wide ranging discretion. Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 219 (Ky. 2006); Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976); Osborne v. Johnson, 432 S.W.2d 800 (Ky. 1968). It is also well-settled that a claimant's own testimony as to his capabilities and limitations may be relied upon by the fact-finder in making a determination as to his physical capacity to return to work following an injury. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979); Ruby Construction Company

v. Curling, 451 S.W.2d 610 (Ky. 1970). So long as permanent impairment results from a work-related traumatic event, a claimant's testimony alone concerning his inability to provide services to another in return for remuneration on a regular and sustained basis in a competitive economy qualifies as substantial evidence sufficient to support a finding by an ALJ of permanent total disability. See KRS 342.0011(11)(c) and (34); Transportation Cabinet v. Poe, 69 S.W.3d 60 (Ky. 2001); Commonwealth of Kentucky, Transportation Cabinet v. Guffey, 42 S.W.3d 618 (Ky. 2001). As he is permitted to do, the ALJ relied upon Mullins' assessment of her capabilities and limitations in determining she was permanently totally disabled.

The same logic applies regarding the vocational expert's reliance upon what the claimant informs him are his or her capabilities and limitations. Consequently, it was permissible for Piper to consider and rely on the information Mullins provided to him regarding her physical problems and limitations in determining her vocational capabilities.

In the case *sub judice*, as authority mandated, the ALJ weighed the factors that Mullins was 52 years old at the time of the hearing, had obtained her GED, and had

no specialized or vocational training. Ira A. Watson Department Store v. Hamilton, supra. Further, the ALJ found Mullins' testimony concerning her pain, use of the spinal cord stimulator, limitations and difficulties to be credible. After considering these factors, the restrictions imposed by Dr. Bilkey, and Piper's assessment, the ALJ determined Mullins to be permanently totally disabled. Consequently, the outcome selected by the ALJ is supported by substantial evidence. Thus, we find no error. McNutt Construction/First General Services v. Scott, 40 S.W.3d 854 (Ky. 2001).

Based on the ALJ's recitation of the evidence upon which he relied, we cannot say the ALJ's determination Mullins' injury caused her to be totally occupationally disabled is so unreasonable under the evidence that it must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, supra.

Accordingly, the July 30, 2012, opinion and award and the August 17, 2012, order overruling the petition for reconsideration are **AFFIRMED.**

ALL CONCUR.

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