Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 29, 2016

CLAIM NO. 201593441

TERESA MARCH PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

ALGOOD FOOD COMPANY and
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, AND REMANDING

* * * * * *

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

ALVEY, Chairman. Teresa March ("March") appeals from the Opinion, Award and Order rendered February 19, 2016 by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"), finding she sustained a temporary low back injury on January 15, 2015, for which he awarded temporary total disability

("TTD") benefits. March also appeals from the May 5, 2016 order on petition for reconsideration.

On appeal, March argues the medical evidence compels a finding of a permanent partial disability. She argues the totality of circumstances compels a finding she sustained an injury under the Act. Similarly, March argues the medical evidence compels a finding her dormant, non-disabling condition was brought into disabling reality by the work injury. Finally, March argues the ALJ misconstrued the medical evidence. Because substantial evidence supports the ALJ's finding of a temporary injury resulting in no permanent partial disability, and a contrary result is not compelled, we affirm in part. We vacate in part and remand for the ALJ to address March's entitlement to both past and future medical benefits.

March filed a Form 101 alleging she injured her "lower back, annular disc bulge, tear of annulus disc" on January 14, 2015 when she slipped and fell on a recently mopped floor. Subsequently, the parties stipulated the date of injury was January 15, 2015.

March testified by deposition on August 25, 2015, and at the hearing held December 16, 2015. March worked in production for Algood Food Company ("Algood") from 2007 through February 23, 2015. Prior to her employment with

Algood, March injured her right knee while working as a carpenter in 2000 which did not result in any permanent restrictions. March also underwent an arthroscopic procedure to treat bone spurs in her left knee. While working for Algood, March injured her rotator cuff approximately four years prior to the injuries which are subject of this claim. March underwent two surgeries for that injury, and was off work for approximately one year. As a result of that unrelated shoulder injury, March was assigned permanent restrictions of no lifting over twenty to twenty-five pounds, and no pushing or pulling greater than thirty to thirty-five pounds.

On January 15, 2015, March slipped on a recently mopped concrete floor, and fell onto her buttocks. She experienced pain from her waist down into both legs. When her symptoms did not improve within ten days after the fall, Algood sent March to Occupational Physician Services, who referred her to Frazier Rehab for physical therapy. She was eventually referred to Dr. Stacie Grossfeld in February 2015. Dr. Grossfeld was the first physician to assign restrictions for March’s low back condition. March also sees her family physician, Dr. Sandra Roble.

March continued to work for Algood earning the same wages until February 23, 2015. She was able to

perform her job duties, but needed assistance with some tasks. She continued to work despite her worsening pain. March last worked on February 23, 2015 because Algood was unable to accommodate the restrictions imposed by Dr. Grossfeld. March currently experiences pain across her back, and down both legs. Prolonged walking and sitting worsen her symptoms. March continues to treat with Dr. Robles, who prescribes Norco and Meloxicam for her back symptoms. She also applies ice and uses a TENS unit.

Cody Fleming ("Fleming"), environmental and safety manager for Algood, also testified by deposition on November 11, 2015. He investigates all work injuries, including the one alleged by March. Fleming testified he was notified of March's fall a week after it occurred. As part of his investigation, he talked to March and two witnesses. Fleming indicated March's statement is inconsistent with those of the witnesses. The witness statements are not contained in the record. Fleming believes March slipped on the wet floor, but did not fall.

Algood filed Dr. Grossfeld's treatment records. On February 20, 2015, Dr. Grossfeld noted March complained of low back pain radiating down her right leg following a slip and fall at work. Her initial examination revealed paraspinal spasms and limited flexion and extension. Dr.

Grossfeld detected no radiculopathy during the examination. She ordered an MRI, and prescribed medications. Dr. Grossfeld restricted March from lifting, pushing or pulling greater than five pounds, and from climbing ladders or stairs. The February 27, 2015 lumbar MRI demonstrated, "at L4-5, there is a 2-3mm broad-based disc bulging with annular tear along the posterior margin of the disc. There is borderline narrowing of the spinal canal with mild lateral recess and proximal foraminal narrowing."

Subsequently, Dr. Grossfeld stated March is not a surgical candidate since there is no cord compression, nerve root compression or significant disc herniation. Dr. Grossfeld adjusted March's medications, and noted she declined the recommendation of epidural injections. Dr. Grossfeld recommended physical therapy which was subsequently discontinued after March reported it worsened her symptoms. Dr. Grossfeld then prescribed a lumbar wrap and TENS unit. Her restrictions remained the same, except her lifting restriction was increased to ten pounds.

March last treated with Dr. Grossfeld on April 7, 2015. She noted the MRI revealed a small disc bulge with an annular tear at L4-5 and a mild left posterior lateral protruding disc. She again stated March is not a surgical candidate. Dr. Grossfeld made the following notation for

the lumbar examination: “There is limited flexion and extension of the lumbar spine. DTRs are brisk at L4 and S1 with no beats of clonus. There is negative sitting and supine straight leg raise. There is no paraspinal muscle spasms present involving the lumbar spine.” Dr. Grossfeld diagnosed disc degeneration involving the lumbar spine with lumbar contusion secondary to a work-related injury.

March was found to have reached maximum medical improvement (“MMI”) and was referred for a functional capacity evaluation (“FCE”) performed on April 16, 2015 by Betsy Hyde, PT. The FCE report stated March can perform light to medium work with weights ranging from 15 to 22.5 pounds. The restrictions do not meet the physical demands of March’s job. It was noted March demonstrated four out of five positive Waddell signs.

In an April 23, 2015 letter, after reviewing the FCE, Dr. Grossfeld assigned permanent restrictions of light to medium work, maximum material handling up to twenty-two pounds, and no repetitive standing, walking, pushing, pulling, crouching, lifting or carrying secondary to pain. In a June 19, 2015 letter, Dr. Grossfeld assessed a 0% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). In a November 18,

2015 letter, Dr. Grossfeld stated March reached MMI on April 7, 2015, and additional medical treatment was not recommended. Although the FCE indicated March could perform light to medium work, Dr. Grossfeld opined she can return to full duty with no restrictions.

March filed the June 18, 2015 report of Dr. Jeffery Fadel. He found muscle atrophy below March's right calf. He also noted a decreased sensation over the S1 dermatone. Dr. Fadel diagnosed lumbar degenerative disc disease, exacerbated by the fall at work with myelopathy. Due to the muscle atrophy and neurological symptoms over the S1 nerve distribution, Dr. Fadel stated March qualified for DRE Category III, and assessed an 11% impairment rating pursuant to the AMA Guides. Dr. Fadel stated March's lumbar degenerative disc disease was dormant, and brought into medical reality, necessitating treatment. If she does not have the epidural injections, Dr. Fadel opined March reached MMI on March 4, 2015. He restricted her from lifting more than fifteen pounds occasionally; no twisting, pushing or pulling on a regular basis; no crawling or stooping; and occasional climbing of stairs and ladders. Dr. Fadel also prepared a September 1, 2015 rebuttal report explaining why March qualified for DRE category III. Dr.

Fadel disagreed with Dr. M. G. Schiller's assessment of impairment.

Algood filed Dr. Schiller's May 21, 2015 report. He noted March complained of low back pain and sudden, instantaneous bilateral leg pain. Following an examination, he diagnosed March with a buttock contusion and lumbosacral strain due to the slip and fall, which should have resolved on its own long ago. Dr. Schiller opined March is not at MMI since she continues to complain of pain. Dr. Schiller could not estimate when MMI will be achieved, and stated there is no good medical explanation for her symptomatology. Assuming she reached MMI, Dr. Schiller stated March would qualify for a DRE category I, 0% impairment rating pursuant to the AMA Guides.

Dr. Schiller found March's bulging disc is insignificant since it is not corroborated by objective physical findings and she demonstrated several positive Waddell findings during the examination. He also stated the existence of a tear of the annulus is unimportant since it is commonly seen in asymptomatic individuals. Dr. Schiller was skeptical of March's pain complaints based on minimal objective findings and an essentially inconsequential MRI. Dr. Schiller recommended over-the-counter anti-inflammatory medication for her pain, and

opined a spine consultation would be reasonable. He noted a soft tissue injury of the type March sustained typically resolves on its own and requires light duty restrictions. However, Dr. Schiller doubted March can return to her former job due to her pain complaints and ongoing litigation. He discouraged pain management and the use of narcotic medication.

In an August 6, 2015 letter, Dr. Schiller critiqued the impairment rating assessed by Dr. Fadel asserting March does not qualify for a DRE category III impairment. He also stated March attained MMI on April 7, 2015, and agreed with Dr. Grossfeld's assessment of impairment.

Finally, Algood filed Dr. Ellen Ballard's October 14, 2015 report. She noted a history of diffuse back pain complaints, previous right shoulder surgery with complaints, right knee ACL surgery x2, and COPD. Dr. Ballard stated "the patient may have had a strain," and is at MMI. Dr. Ballard agreed with Dr. Schiller's assessment of impairment, but not with Dr. Fadel's since March does not meet DRE category III criteria. Dr. Ballard stated March does not need additional medical treatment. With regard to restrictions, Dr. Ballard noted March can return to work with the previous permanent restrictions assessed

for the unrelated shoulder injury. Those right shoulder restrictions included no overhead lifting, no lifting over twenty-five pounds, and no pushing or pulling over thirty-five pounds. Dr. Ballard noted March demonstrated multiple signs of symptom magnification.

A benefit review conference ("BRC") was held on December 10, 2015. The BRC order identified the following contested issues: benefits per KRS 342.730, extent and duration with multipliers, work-relatedness/causation, average weekly wage, injury as defined by the Act and TTD. At the hearing, the parties stipulated Algood voluntarily paid TTD benefits from February 24, 2015 to March 30, 2015 for a total of $2,590.75, and medical expenses in the amount of $3,212.55.

In the February 19, 2016 opinion, the ALJ provided a summary of the medical and lay evidence. The ALJ began his analysis by noting, "[t]hree respected physicians have opined that Ms. March does not have a permanent disability rating according to the [AMA Guides]. An inference, if not an outright accusation of symptom magnification is made against the Plaintiff." However, the ALJ found March credible regarding her report of injury and of her initial symptoms. The ALJ noted March's claim is only supported by a "one-time evaluator, Dr. Jeffrey

Fadel." After again summarizing the medical records, the ALJ reviewed March's burden of proof. The ALJ found March's injury arose in and out of the course of her employment with Algood based upon the testimony of March and Fleming.

The ALJ provided the statutory definition of an "injury" found in KRS 342.0011. He then noted an injury "need not be permanent in nature, leading to the conclusion that an injured employee could be temporarily, totally disabled, but not permanently disabled." He found March entitled to TTD benefits from February 23, 2015, when she stopped working, through her attainment of MMI on April 7, 2015. The ALJ made the following findings of fact and conclusions of law:

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Stipulations as made between the parties and set out herein above.

2. Findings of fact and conclusions of law made by the undersigned as set out in the foregoing "Analysis" that are incorporated by reference herein the same as if set out in words and letters.

3. Ms. March has failed in her burden to prove that she sustained any degree of permanent injury to her lower back as a result of the incident on January 14, 2014. KRS 342.0011 (1). In making this finding, I rely on the medical opinions

of Dr. Stacie Grossfelt [sic], M.D, Dr. M.G. Schiller, M.D. and Dr. Ellen Ballard, M.D., whose respective medical opinions I find to be the most comprehensive, complete and compelling medical evidence with regard to this issue and by which I am persuaded.

4. Ms. March has proved that she sustained a temporary injury to her lower back as a result of the incident on January 14, 2014. KRS 342.0011 (1), which in turn rendered her temporarily, totally disabled from February 23, 2015 through April 7, 2015. In making this finding, I rely on the medical opinion of her treating physician, Dr. Stacie Grossfelt [sic], whose medical opinion I find to be the most comprehensive, complete and compelling medical evidence with regard to this issue and by which I am persuaded.

5. As to the issues of "Benefits per KRS 342.730", including "Extent & duration with multipliers", I find that the Plaintiff does not meet the criteria under KRS 342.730 for an award of permanent partial disability benefits or any statutory multiplier thereof because she has failed to carry her burden of proof that she has suffered a permanent, compensable work injury.

6. As to the issue of TTD as to rate and duration, the parties discussed the issue at the formal hearing and agreed that the Plaintiff had been paid TTD benefits at a weekly rate of $518.15 from February 23, 2015 until March 30, 2015 for a total of $3,212.55. She was found to be at MMI by Dr. Grossfelt [sic] on April 7, 2015. Pursuant to the provisions of KRS 342.740, Ms. Tyson was entitled to TTD benefits. She is therefore entitled to a period of TTD payable by the Defendant/Employer for

temporary injury to her lower back at a rate of $606.15 from February 23, 2015 until April 7, 2015. KRS 342.0011 (11) (a); KRS 342.730; KRS 342.740.

7. Because the Plaintiff failed to designate the issue of a claimed safety violation at the benefit review conference as a contested issue, the Order of February 9, 2015 is hereby ratified, re-published, and incorporated by reference herein, the same as if set out in words and letters. KRS 342.165 (1); 803 KAR 25:010, § 13 (14).

Both parties filed petitions for reconsideration. Algood requested the ALJ find Fleming did not testify the fall was confirmed by two witnesses, and to correct the amount of TTD benefits it had paid to $2,590.75 instead of $3,212.55.

In her petition, March stated the ALJ erred in failing to award past or future medical expenses. March argued the ALJ's finding that March's low back restrictions were the same as the permanent restrictions for her pre-existing shoulder condition is not supported by the evidence. Next, March asserted the ALJ erroneously "believed the Plaintiff needed to show evidence of radiculopathy in order to find permanent impairment." March argued the ALJ could not rely upon Dr. Schiller's opinion. March argued Dr. Grossfeld is not a back specialist and the impairment rating she assessed is not

supported by law. March asserted the ALJ did not set forth a specific basis for not applying McNutt Construction First General Services v. Scott, 40 S.W.3d 854 (Ky. 2001) or Finley v. DBM Technologies, 217 S.W.3d 361 (Ky. 2007). March asserted the ALJ failed to indicate why Dr. Grossfeld's restrictions were not caused by the work injury. March asserted the ALJ misconstrued Dr. Schiller's report when he opined it suggested Dr. Fadel stated March had a disc removal surgery. March asserted the ALJ erroneously discredited the opinion of Dr. Fadel.

In the order on reconsideration, the ALJ granted in part Algood's petition and corrected the amount of TTD benefits paid. He denied its petition regarding Fleming's testimony. With regard to March's petition, the ALJ stated as follows:

> The Plaintiff states that a failure to award past or future medical expenses constitutes error patently appearing on the face of the Opinion, Award and Order of February 19, 2016.
>
> The parties stipulated that the Defendant/Employer paid medical expenses for or on behalf of the Plaintiff in the sum of $3,212.55 at the benefit review conference of December 10, 2015. By like token, the Plaintiff failed to designate unpaid or contested medical expenses as an issue at the BRC. "Only contested issues shall be the subject of further proceedings". 803 KAR 25:010, § 13

> (15). There is no issue for the Plaintiff's past medical care.
>
> The remainder of Plaintiff's argument is a disagreement with my interpretation of the medical evidence in the record, which is not within the scope of my review under the provisions of KRS 342.281. Francis v. Glenmore Distilleries, 718 S.W.2d 953 (Ky.App. 1986). I summarized all of the medical evidence in the record and clearly stated the evidence upon which I relied. The Plaintiff is naturally disappointed that I did not make findings to support an award of benefits to her, but I made the findings that I thought were best supported by the evidence.
>
> My characterization of the facts is accurate and I find no error patently appearing on the face of the Opinion, Award and Order of February 19, 2016 as it relates to that characterization. As to Plaintiff's other allegations of error patently appearing on the face of the Opinion, Award and Order of February 19, 2016, they are hereby **DENIED** and **DISMISSED**.

On appeal, March argues the evidence compels a finding of a permanent partial disability. She asserts the finding of muscle spasms and muscle atrophy, as well as the medical evidence of a disc bulge and annulus tear compels a finding of a DRE category above Category I.

March next argues the totality of the circumstances compels a finding she sustained an injury as defined by the Act. March had a torn L4-5 annulus and a

bulging disc. March states there was no evidence of a pre-existing, active lumbar condition. "Therefore, under the totality of the circumstances the ALJ was compelled to find a harmful work-related change in the human organism became active and disabling as a result of the fall."

Likewise, March argues the medical evidence compels a finding his dormant, non-disabling condition was brought into disabling reality by the work injury. March first asserts a torn annulus is a permanent condition. She states Dr. Grossfeld's 0% impairment is not in accordance with the AMA Guides since DRE Category I specifically exclude injuries with muscle spasms or guarding, documented alteration on structural integrity, or any other indication of impairment related to injury because both of these conditions were present. March asserts the ALJ ignored Dr. Fadel's assessment of impairment and that both Drs. Grossfeld and Schiller ignored the AMA Guides in arriving at their determinations. March concludes by stating the evidence compels a finding her torn annulus was brought into disabling reality as a result of her fall. March next asserts her post-injury restrictions increased after the January 15, 2015 fall. March also asserts there was no proof establishing a pre-existing, active lumbar condition.

Finally, March argues the ALJ misconstrued the medical evidence. March states, "[t]he ALJ erred in relying on Dr. Schiller's report to discredit Dr. Fadel which claims Dr. Fadel believed the Plaintiff had previously undergone a spinal fusion." March points out Dr. Schiller stated he had a skimpy record, and those records do not establish Dr. Fadel claimed March had undergone a spinal fusion. There was in fact no previous surgery, and Dr. Schiller's conclusion was based upon an erroneous interpretation of the medical records.

As the claimant in a workers' compensation proceeding, March had the burden of proving each of the essential elements of her cause of action, including extent and duration of disability. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because March was unsuccessful in her burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as that which is 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). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable based on the evidence they must

be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences

which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

In essence, March has asked this Board to re-weigh the evidence, and rely upon Dr. Fadel's opinion to find she sustained a permanent injury and impairment rather than a temporary injury. It is not the function of this Board to re-weigh the evidence. Whittaker v. Rowland, supra. The ALJ provided thorough summaries of the medical opinions and articulated his reasoning for finding the opinions of Drs. Grossfeld, Schiller, and Ballard most persuasive in finding March suffered a temporary low back injury resulting in no permanent partial disability.

In the last treatment note of record on April 7, 2015, Dr. Grossfeld noted March is not a surgical candidate. Her lumbar examination documented negative sitting and supine straight leg raise, and no paraspinal muscle spasms. Dr. Grossfeld diagnosed disc degeneration involving the lumbar spine with lumbar contusion secondary to work-related injury. She found March to have reached MMI. Although Dr. Grossfeld initially assigned restrictions mirroring those found in the April 16, 2015

FCE, she later opined March could return to full duty work with no restriction. Dr. Grossfeld assessed a 0% impairment rating pursuant to the AMA Guides, and recommended no additional treatment.

Dr. Schiller diagnosed March with a buttock contusion and lumbosacral strain due to the slip and fall, which should have resolved on its own long ago. Assuming she reached MMI, Dr. Schiller stated March would qualify for a DRE category I, 0% impairment rating pursuant to the AMA Guides. Dr. Schiller found March's bulging disc insignificant. He also stated the existence of a tear of the annulus is of no importance since it is commonly seen in asymptomatic individuals. Dr. Schiller was skeptical of March's pain complaints based on a minimum of objective findings and an essentially inconsequential MRI. Dr. Schiller later stated March attained MMI on April 7, 2015, and agreed with Dr. Grossfeld's assessment of impairment.

Dr. Ballard noted a history of diffuse back pain complaints, previous right shoulder surgery with complaints, right knee ACL surgery x2 and COPD. Dr. Ballard stated, "the patient may have had a strain," and is at MMI. Dr. Ballard agreed with Dr. Schiller's assessment of impairment, but not with that of Dr. Fadel. Dr. Ballard opined March does not need additional medical treatment.

Dr. Ballard noted March can return to work with her previous permanent restrictions previously assigned for her shoulder. Dr. Ballard noted March had multiple signs of symptom magnification.

The opinions of Drs. Grossfeld, Schiller and Ballard constitute substantial evidence supporting the finding March did not sustain a permanent injury to her low back due to the work injury, and a contrary result is not compelled. The ALJ's findings are more than sufficient to apprise the parties of the basis for his decision with regard to finding a temporary injury. While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, he is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

In her brief to the Board, Counsel for March provides his interpretation of the AMA Guides, and argues the presence of muscle spasms and atrophy removes March from DRE category I. The assessment of an impairment

rating is a medical determination. Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003); George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004). The proper method to challenge an assessment is to depose the physician, or to offer a medical opinion addressing the propriety of the rating. Drs. Grossfeld, Schiller and Ballard were not deposed regarding their methodology. Likewise, no medical opinion was offered critiquing their use of the AMA Guides or establishing a proper application. Additionally, no medical opinion established the ratings from Drs. Grossfeld, Schiller and Ballard were not properly assessed according to the AMA Guides.

We find no merit in March's argument, "the ALJ erred in relying on Dr. Schiller's report to discredit Dr. Fadel which claims Dr. Fadel believed the Plaintiff had previously undergone a spinal fusion." A review of the records shows Dr. Schiller did not discuss Dr. Fadel's opinion in his May 21, 2015 report. However, Dr. Schiller critiqued Dr. Fadel's report in a subsequent August 6, 2015 letter stating March does not qualify for a DRE category III impairment. In order to qualify for an impairment within DRE category III, Dr. Schiller states the AMA Guides require significant signs of radiculopathy or successful

disc removal surgery or fractures. Dr. Schiller opined Dr. Fadel's report does not support any of the three scenarios, specially noting the second scenario "is not the case." We do not interpret the Dr. Schiller's letter as stating March had previously undergone spinal fusion surgery. In fact, Dr. Schiller stated this was not the case.

That said, this Board is permitted to *sua sponte* reach issues even if unpreserved but not raised on appeal. KRS 342.285(2)(c); KRS 342.285(3); George Humfleet Mobile Homes v. Christman, supra. In her petition for reconsideration, March raised the issue of entitlement to past and future medical benefits. However, in the order, the ALJ made no finding as to the period during which March is entitled to medical benefits.

In this instance, the ALJ determined March sustained a temporary low back injury warranting no permanent impairment. Since she incurred a temporary injury, she is entitled to a period of medical benefits. In FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the Supreme Court instructed KRS 342.020(1) does not require proof of an impairment rating to obtain future medical benefits, and the absence of a functional impairment rating does not necessarily preclude such an award. Therefore, the absence of an impairment rating does

not preclude the ALJ, on remand, from also awarding future medical benefits. Likewise, the ALJ failed to address March's entitlement to medical benefits for her temporary low back injury. Therefore, we vacate in part and remand for the ALJ to make a determination as to the extent March is entitled to medical benefits, including her entitlement of future medical benefits pursuant to FEI Installation, Inc. v. Williams, supra.

Accordingly, the February 19, 2016 Opinion, Award and Order and the May 5, 2016 order on petition for reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge, are hereby **AFFIRMED IN PART and VACATED IN PART.** This claim is hereby **REMANDED** for a determination as to March's entitlement to medical benefits in accordance with the views expressed herein.

ALL CONCUR.

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