

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: June 17, 2014

CLAIM NO. 201182474

TOYOTA MOTOR MANUFACTURING, KENTUCKY, INC. PETITIONER

VS. APPEAL FROM HON. JEANIE OWEN MILLER,  
ADMINISTRATIVE LAW JUDGE

CARRIE REED  
and HON. JEANIE OWEN MILLER,  
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION  
AFFIRMING IN PART, VACATING IN PART,  
AND REMANDING

\* \* \* \* \*

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

**STIVERS, Member.** Toyota Motor Manufacturing, Kentucky, Inc. ("Toyota") seeks review of the January 16, 2014, opinion and award of Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ") finding Carrie Reed ("Reed") sustained a work-related injury to her left thumb and awarding temporary total disability ("TTD") benefits, permanent

partial disability ("PPD") benefits enhanced by the three multiplier pursuant to KRS 342.730(1)(c)2, and medical benefits. Toyota also appeals from the February 12, 2014, order overruling its petition for reconsideration. On appeal, Toyota challenges the calculation of Reed's average weekly wage ("AWW") and the duration of the award of TTD benefits.

There was no dispute Reed sustained a compensable injury to her left thumb on July 7, 2011. Shortly before the injury, Reed had returned to work after being off work for almost a year for health reasons unrelated to her work. Her wage records reveal Reed had worked almost two weeks before she was injured on July 7, 2011.<sup>1</sup> On that date, Reed was cleaning sealer off the floor when a car came through the conveyor line and went over her left hand. Reed indicated she had been "told to train 4-S and then shut down." She explained she and other workers were surprised the line was operating at the time she was cleaning the floor and was unaware the car was on the conveyor line when it went over her left hand. Reed was rushed to St. Joseph Hospital East where surgery was performed on her left thumb. Pins were placed in her thumb and her thumb was

---

<sup>1</sup>The AWW-1 reflects Reed worked sixty hours.

placed in a cast. The surgery was performed by Dr. William O'Neill. She was referred to Dr. Suhil Thirkannad with Kleinert Kutz. Because the medical evidence is in large part irrelevant to the issues on appeal, we will only discuss the relevant portions.

Relative to Reed's AWW, the following stipulation entered into between the parties was filed in the record on January 6, 2014:

Plaintiff Carrie Reed was employed with Toyota Motor Manufacturing, Kentucky, Inc., for greater than 52 weeks prior to her injury. The parties stipulate that for all weeks prior to her injury that show \$0.00 in earnings in the wage record that was filed. Ms. Reed was not working due to non-work related personal conditions. The parties also agree that other workers performing the same job as her would have earned the hourly rate listed and average a 40 hour work week.

Consistent with the stipulation, Reed testified she had been off work almost a year prior to the injury for treatment of breast cancer and surgery on her right knee.

Concerning Reed's AWW, the ALJ entered the following findings of fact and conclusions of law:

The contested issues will be discussed in the order most reasonable that [sic] this administrative law judge.

**1. The facts as stipulated by the parties.**

## 2. Average weekly wage.

The Defendant/employer argues Plaintiff is entitled to only the wage earned the ten weeks she worked immediately before the injury. Plaintiff had been off prior to that for over nine months due to an unrelated medical condition. The Plaintiff argues she is a 20 year employee and, but for an unrelated absence from work, would have continued to earned the wage she was making for the ten week period but for this injury. The Defendant/employer offers \$524.59 as an average weekly wage; the Plaintiff avers a wage of \$1,073.60.

The purpose of the various methods for calculating AWW under KRS 342.140 is to obtain a realistic reflection of the claimant's earning capacity at the time of his injury. Huff vs. Smith Trucking, 6 SW3d 819, (Ky. 1999); see also C and D Bulldozing vs. Brock, 820 SW2d 482 (Ky. 1991). The computation must take into consideration the unique facts and circumstances of each individual case. The ultimate objective is to ensure the claimant's benefit rate is based upon "a realistic estimation of what the worker would have expected to earn had the injury not occurred." Desa International, Inc. vs. Barlow, 59 SW3d 872, 875 (Ky. 2001). KRS 342.185(1) permits the Administrative Law Judge to pick and choose from the testimony of witnesses and to draw reasonable inferences from the records.

The Plaintiff testified essentially to what the parties later stipulated, that being she would have been making \$26.84 an hour for 40 hours per week had she worked the full 13 weeks immediately before her injury.

This case presents "unique circumstances" wherein the employee had only worked 10 weeks in the past 52 weeks predating her injury even though she had been an employee for almost 20 years prior to this time. Therefore, the ALJ must consider the unique circumstances of the case and apply KRS 342.140(1)(e). In addressing the arguments of the parties on this issue, we note that determination of the AWW is controlled by KRS 342.140. The Defendant/employer argues the 52 weeks Plaintiff was employed at Toyota prior to her injury demonstrates a weekly wage of \$524.59. The Defendant/employer argues Plaintiff was employed at Toyota for the entire period filed into the record and her job was available for her to work during this period, but she missed due to other non-work related health issues. The Plaintiff argues she should be treated as if she had been back to work for entire 13 weeks immediately before the injury because she would have continued to make that wage, but for the work injury.

I find the most accurate method of determining "a realistic estimation of what the worker would have expected to earn had the injury not occurred" is to consider the wages she was making at the time of the injury and accept the stipulation of the parties that: [t]he parties agree that other workers performing the same job as her would have earned the hourly rate listed and average a 40 hour work week. Plaintiff was a 20 year employee of the Defendant/employer. There is no question that the hourly rate of \$26.40 for 40 hours a week would be the wage she would have expected to earn had the injury not occurred. For those reasons, I find the Plaintiff's average weekly

wage to be \$1,056.00 or \$26.40 multiplied times 40 hours per week.

Regarding Reed's entitlement to TTD benefits, the ALJ entered the following findings of fact and conclusions of law:

Based upon the above referenced calculations of the average weekly wage, the Plaintiff is entitled to a temporary total disability weekly rate of \$704.00 (66 2/3% of \$1,056.00). The Defendant/employer paid Plaintiff \$659.22 per week for TTD (see stipulations). I subtract \$659.22 from \$704.03 and find that the rate of temporary total disability was underpaid by \$44.81 per week.

As to the duration of TTD, I find Plaintiff is entitled to TTD from July 8, 2011 through February 27, 2013, the date Dr. Burke found she was at MMI. It is noted that in the previous Opinion dated September 7, 2012, the undersigned found Plaintiff should be allowed to continue receiving medical care and potentially undergo surgery. Therefore, it was determined she was not at MMI at least at that point in time. Therefore, I find Dr. Burke's opinion that Plaintiff had reached MMI on February 27, 2013 the most persuasive. Accordingly, Plaintiff shall be awarded TTD from July 8, 2011 to February 27, 2013.

Relying upon the opinion of Dr. Frank Burke, the ALJ determined the injury resulted in an 8% permanent impairment rating which converted to 6.8% permanent partial disability. Concluding Reed lacked the physical capacity

to return to the work performed at the time of the injury, the ALJ enhanced Reed's benefits by the three multiplier.

Relying upon the opinion of Dr. David Shraberg, the ALJ found Reed suffered a temporary psychological injury and was entitled to temporary treatment of that condition.

Toyota filed a petition for reconsideration arguing the decision contained a patent error since the ALJ relied upon KRS 342.140(1)(e) in calculating Reed's AWW. It asserted section (1)(e) is only applicable when the employee was employed less than thirteen weeks immediately preceding the injury, and could not be utilized in calculating Reed's AWW since she had been in the employ of Toyota for more than thirteen weeks at the time of her injury. It argued her AWW should have been calculated pursuant to KRS 342.140(d).

Toyota also argued the ALJ erred in awarding TTD benefits through February 27, 2013, the date she was evaluated by Dr. Burke. It noted the ALJ referenced her previous interlocutory decision that Reed was entitled to undergo additional surgery in support of her reliance on Dr. Burke's statement regarding the date of maximum medical improvement ("MMI"). Toyota maintained that after the ALJ determined the surgery was compensable, Reed's treating

physician decided not to perform the surgery. It argued without additional surgery, MMI had been achieved. Further, it argued the ALJ erroneously relied upon the opinion of Dr. Burke in determining Reed achieved MMI on February 27, 2013, as this was merely the date he evaluated Reed.

As previously noted, the ALJ overruled Toyota's petition for reconsideration. Regarding the alleged error concerning the date of MMI, the ALJ reasoned:

First, it claims the undersigned erred in determining the Plaintiff reached maximum medical improvement on February 27, 2013. The report of Dr. Burke was reviewed and he stated on page 3 of his 5 page report in the section styled: IMPRESSION "This is a credible patient. She is at maximum medical improvement." This report is dated February 27, 2013, and I inferred from Dr. Burke's statement that Plaintiff was at maximum medical improvement on the day he examined her - that being February 27, 2013. I find no error in this determination.

Concerning the alleged error in the calculation of Reed's AWW, the ALJ stated as follows:

The second error averred by the Defendant/employer relates to the undersigned's finding on average weekly wage. The average weekly wage was determined after a review of the facts, the statute and the case law interpreting the statute. It reads in part:

The purpose of the various methods for calculating AWW under KRS 342.140 is to obtain a realistic reflection of the claimant's earning capacity at the time of his injury. Huff vs. Smith Trucking, 6 SW3d 819, (Ky. 1999); see also C and D Bulldozing vs. Brock, 820 SW2d 482 (Ky. 1991). The computation must take into consideration the unique facts and circumstances of each individual case. The ultimate objective is to ensure the claimant's benefit rate is based upon "a realistic estimation of what the worker would have expected to earn had the injury not occurred." Desa International, Inc. vs. Barlow, 59 SW3d 872, 875 (Ky. 2001). KRS 342.185(1) permits the Administrative Law Judge to pick and choose from the testimony of witnesses and to draw reasonable inferences from the records.

The Plaintiff testified essentially to what the parties later stipulated, that being she would have been making \$26.84 an hour for 40 hours per week had she worked the full 13 weeks immediately before her injury.

This case presents "unique circumstances" wherein the employee had only worked 10 weeks in the past 52 weeks predating her injury even though she had been an employee for almost 20 years prior to this time. Therefore, the ALJ must consider the unique circumstances of the case and apply KRS 342.140(1)(e). In addressing the

arguments of the parties on this issue, we note that determination of the AWW is controlled by KRS 342.140. The Defendant/employer argues the 52 weeks Plaintiff was employed at Toyota prior to her injury demonstrates a weekly wage of \$524.59. The Defendant/employer argues Plaintiff was employed at Toyota for the entire period filed into the record and her job was available for her to work during this period, but she missed due to other non-work related health issues. The Plaintiff argues she should be treated as if she had been back to work for [sic] entire 13 weeks immediately before the injury because she would have continued to make that wage, but for the work injury.

I find the most accurate method of determining "a realistic estimation of what the worker would have expected to earn had the injury not occurred" is to consider the wages she was making at the time of the injury and accept the stipulation of the parties that: [t]he parties agree that other workers performing the same job as her would have earned the hourly rate listed and average a 40 hour work week. Plaintiff was a 20 year employee of the Defendant/employer. There is no question that the hourly rate of \$26.40 for 40 hours a week would be the wage she would have expected to earn had the injury not occurred. For those reasons, I find the Plaintiff's average weekly wage to be \$1,056.00 or \$26.40 multiplied times 40 hours per week.

On appeal, Toyota argues the ALJ should have calculated Reed's AWW pursuant to KRS 342.140(d) and not (1)(e). It argues Huff v. Smith Trucking, 6 S.W.3d 819 (Ky. 1999), C & D Bulldozing Co. v. Brock, 820 S.W.2d 482

(Ky. 1991), and Desa International v. Barlow, 59 S.W.3d 872 (Ky. 2001) do not apply in the case *sub judice*. It asserts Reed's wage records support an AWW of \$524.59 which is based upon the highest quarter of the four quarters immediately preceding Reed's injury. Toyota maintains the ALJ erroneously determined Reed's AWW based upon what she would have earned "had she worked the weeks she did not work." It argues the "fill in the blanks" method violates the plain meaning of the statute and legislative intent. Therefore, the decision should be vacated and remanded for an award based upon the correct AWW.

Next, Toyota argues the ALJ erred in awarding TTD benefits through the date Reed was evaluated by Dr. Burke. It asserts that in his report, Dr. Burke stated Reed was at MMI on the date of his evaluation but made no comment as to her status prior to that date. Further, he did not state Reed had reached MMI on the date of his examination. Toyota argues the only medical opinion regarding the date of MMI was rendered by Dr. Ronald Burgess who stated she had reached MMI as of February 24, 2012. It also observes Dr. Burke did not take issue with Dr. Burgess' statement concerning MMI. Rather, he merely commented she was at MMI on the date of his evaluation and he offered no opinion as to her status prior to that. Toyota argues that had Dr.

Burke rejected Dr. Burgess' opinion and stated Reed was not at MMI in 2012 and specifically stated she had not achieved that status until the date he saw her, the ALJ could have based her decision upon his opinion. Since Dr. Burke did not express such an opinion, the ALJ could not rely on Dr. Burke's statement regarding MMI. Thus, the uncontradicted medical proof establishes Reed attained MMI as of February 24, 2012.

Toyota also observes the ALJ rejected February 24, 2012, as the date of MMI, noting her finding was consistent with her September 7, 2012, interlocutory order wherein she stated another surgery was being contemplated which was an indication MMI had not been achieved. It contends surgery had already been ruled out by then. Therefore, it posits since no additional surgery or extensive treatment occurred after February 2012 and no physician stated she was not at MMI at that time, the uncontroverted testimony establishes she attained MMI as of February 24, 2012. Therefore, as a matter of law, the award of TTD benefits should be reversed and remanded with instructions for the ALJ to find MMI was attained on February 24, 2012.

We agree the ALJ erred in calculating Reed's AWW pursuant to KRS 342.140(1)(e). KRS 342.140(1)(d) and KRS 342.140(1)(e) read as follows:

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

(1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:

. . .

(d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury.

(e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his or her average weekly wage shall be computed under paragraph (d), taking the wages (not including overtime or premium pay) for that purpose to be the amount he or she would have earned had he or she been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

There is no dispute Reed had been in the employ of Toyota for years prior to the injury. The history obtained by Dr. Shraberg, reveals she had been employed with Toyota for the past seventeen years. The report of Dr. Dennis Sprague, the psychologist, whose evaluation Reed introduced, provides a history that Reed had worked as a team member for approximately eighteen years at Toyota. Similarly, Dr. Luca Conte, who conducted a vocational evaluation for Toyota, testified Reed had been employed at Toyota as a team member on the assembly line since 1994. More importantly, the parties stipulated Reed had been employed with Toyota for greater than 52 weeks prior to the injury.<sup>2</sup> Thus, the provisions of KRS 342.140(1)(d) must be utilized in arriving at Reed's AWW.

The AWW-1 wage form filed by Toyota on February 7, 2012, reflects Reed was a full-time hourly employee at the time of the injury. It provided her earnings for the four thirteen week periods comprising the 52 weeks before her injury. The first thirteen week period prior to the injury spanned the period from April 3, 2011, through June 26, 2011, during which Reed earned \$1,584.00 yielding an

---

<sup>2</sup> Although the ALJ stated Reed testified to what the parties later stipulated that she would be making \$26.84 an hour for forty hours per week had she worked a full thirteen weeks immediately before her injury, we find no such testimony in her depositions or the hearing transcript.

AWW of \$121.85. The record reveals Reed only worked sixty hours during that thirteen week period. During the next two thirteen week periods, Reed had no wages. For the last thirteen week period, Reed's total earnings were \$6,819.66 which yielded an AWW of \$524.59. Consequently, the ALJ erred in relying upon Huff v. Smith Trucking, supra, C & D Bulldozing Co. v. Brock, supra, and Desa International v. Barlow, supra. Further, the fact the case *sub judice* may have presented unique circumstances does not permit the ALJ to calculate Reed's AWW pursuant to KRS 342.140(1)(e).

In C & D Bulldozing Co. v. Brock, supra, the employee, Brock, was first employed from August 9, 1985, through August 23, 1985, and then again from September 27, 1985, through November 15, 1985. The Supreme Court noted the evidence established Brock was not employed during the weeks he received no wages. The Supreme Court determined Brock's AWW should have been calculated based on the provisions of KRS 342.140(1)(e) as the proper calculation would be based on the wages earned for the seven weeks during the thirteen week period preceding the injurious exposure.

In Huff v. Smith Trucking, supra, the situation is similar to that in C & D Bulldozing Co. v. Brock, supra,

as Huff had worked much less than thirteen weeks before he was injured.

Desa International v. Barlow, supra, involved the calculation of AWW based on Barlow's seasonal employment. Notably, in Desa International v. Barlow, supra, the Supreme Court stated as follows:

KRS 342.140(1)(a)-(c) contain methods that are applicable to wages that are fixed by the week, month, or year. KRS 342.140(1)(e) and (f) contain special provisions that apply to workers who have worked fewer than 13 weeks or whose hourly wage has not been fixed or cannot be ascertained. KRS 342.140(1)(d) contains a method for wages that are fixed by the day, hour, or output. In instances where the worker's wages are fixed by the hour, the wages earned in each 13-week period of the year preceding the injury are added and then divided by 13. The average weekly wage for the period that is most favorable to the worker is used for calculating the benefit.

Id. at 873.

Thus, pursuant to the above-language, Reed's AWW must be calculated pursuant to KRS 342.140(1)(d).

Although it appears Reed may have earned greater wages had she continued to work at Toyota, we cannot engage in such speculation. The fact remains the parties stipulated Reed had been an employee of Toyota for greater than fifty-two weeks prior to her injury. Thus, her AWW

must be calculated pursuant to KRS 342.140(1)(d). Accordingly, the ALJ's determination of Reed's AWW and the award of income benefits must be vacated.

We find no merit in Toyota's argument regarding the duration of the TTD benefits awarded. In his October 28, 2011, report, generated as a result of an examination conducted on that same date, Dr. Burgess expressed the opinion Reed had not reached MMI. In his February 24, 2012, report, Dr. Burgess stated as follows: "The patient is felt to be at maximum medical improvement following crush injury to the tip of her thumb." Toyota's assertion to the contrary, Dr. Burgess did not specifically state the date he believed Reed was at MMI. Further, he did not specifically state Reed had attained MMI on the date he saw her. A review of Dr. Burgess' June 6, 2012, deposition reveals he offered no opinion as to the date Reed attained MMI. In fact, there is no discussion of MMI.

In Magellan Behavioral Health v. Helms, 140 S.W.3d 579, 580, 581 (Ky. App. 2004), the Court of Appeals addressed what must be shown in order to be entitled to TTD benefits stating as follows:

KRS 342.0011(11)(a) states that temporary total disability "means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a

level of improvement that would permit a return to employment." While the Board was correct in recognizing that that definition encompasses two analyses, it erred when it rephrased them in disjunctive terms of "or" when the statute is clearly written using the conjunctive "and." In order to be entitled to temporary total disability benefits, the claimant must not have reached maximum medical improvement **and** not have improved enough to return to work.

In this case, once the ALJ determined that Helms had reached maximum medical improvement, she ended her eligibility for TTD benefits. Whether she remained under restrictions which prohibited her from returning to work even after reaching maximum medical improvement is relevant to the issue of the extent and duration of impairment.

The second prong of KRS 342.0011 (11)(a) operates to deny eligibility to TTD to individuals who, though not at maximum medical improvement, have improved enough following an injury that they can return to work despite not yet being fully recovered. In *Central Kentucky Steel v. Wise*, [footnote omitted] the statutory phrase "return to employment" was interpreted to mean a return to the type of work which is customary for the injured employee or that which the employee had been performing prior to being injured. However, the claimant in *Wise*, unlike Helms, did not reach maximum medical improvement until approximately one month after returning to his regular employment. [footnote omitted] As such, his situation was clearly different from that presented by Helms. Just as the statutory language regarding maximum medical improvement was

inapplicable in *Wise*, so is the statutory language regarding a return to employment inapplicable in the case at hand.

Accordingly, once the ALJ found as a matter of fact that Helms had reached maximum medical improvement, Helms was no longer entitled to TTD benefits as of that date.

In the case *sub judice*, Toyota does not argue Reed had reached a level of improvement that would permit a return to her employment. Rather, it argues Reed had attained MMI prior to the date Dr. Burke saw her. However, both Drs. Burgess and Burke stated that at the time they saw Reed she had attained MMI. Thus, the ALJ was permitted to conclude Dr. Burke did not believe Reed had attained MMI until he examined her on February 27, 2013. The record reveals Reed had continuing problems with her left thumb. The September 7, 2012, interlocutory order ruling on the compensability of the proposed surgery reveals the ALJ was aware the proposed surgery may no longer be under consideration. In the interlocutory order, the ALJ specifically noted:

The necessity and reasonableness of the proposed operation presents a different issue. The evidence from Dr. Burgess is that Dr. Thirkannad (after reading Dr. Burgess' report) no longer believed the surgery was necessary. Unfortunately, those records were not placed into evidence and therefore not

appropriately before the undersigned for consideration. Additionally, the Plaintiff apparently is treating with Dr. Thirkannad's successor at this time - therefore Dr. Thirkannad is [sic] longer the treating and requesting physician. For those reasons, a determination regarding surgery as to its necessity and reasonableness cannot be made at this time. It is in the furtherance of justice for the Plaintiff to be allowed to return to her treating physician for an updated examination and updated report as to her current condition. Surgery may indeed still be recommended - or it may not be this physician's opinion that surgery is needed. For those reasons, the Plaintiff shall be allowed to return to the treating physician and an updated report shall be submitted to the undersigned. The case shall remain in abeyance until such time as said evidence is submitted for consideration.

. . .

1. This claim shall be placed in **ABEYANCE**. The Plaintiff shall be allowed to treat with her physician and shall file updated medical evidence regarding any proposed medical treatment for her work injury. The Defendant/employer shall pre-authorize said treatment and shall be responsible for the payment of same. The parties shall file a status report within forty-five (45) days of the date of this Order.

As noted by the ALJ, her finding in the September 7, 2012, interlocutory order is consistent with Reed not having attained MMI as of the date of the order.

An ALJ may draw reasonable references from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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

from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

In light of the generic statements of Drs. Burgess and Burke regarding MMI and given the nature of Reed's injuries and her treatment, the ALJ was permitted to conclude she did not attain MMI until February 27, 2013. Therefore, Dr. Burke's opinion comprises substantial evidence supporting the award of TTD benefits. Thus, the award of TTD benefits must be affirmed.

Accordingly, those portions of the January 16, 2014, opinion and award and the February 12, 2014, order ruling on the petition for reconsideration relating to Reed's AWW and the award of income benefits are **VACATED**. Those portions of the January 16, 2014, opinion and award and the February 12, 2014, order ruling on the petition for reconsideration regarding the period of TTD benefits to which Reed is entitled are **AFFIRMED**. This claim is **REMANDED** to the ALJ for entry of an amended opinion and award recalculating Reed's AWW and the award of PPD benefits and TTD benefits in accordance with the views expressed here.

ALL CONCUR.

**COUNSEL FOR PETITIONER:**

HON KENNETH J DIETZ  
1511 CAVALRY LN STE 201  
FLORENCE KY 41042

**COUNSEL FOR RESPONDENT:**

HON THERESA GILBERT  
163 W SHORT ST #555  
LEXINGTON KY 40507

**ADMINISTRATIVE LAW JUDGE:**

HON JEANIE OWEN MILLER  
P O BOX 2070  
OWENSBORO KY 42302