Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 29, 2014

CLAIM NO. 201267468

TOYOTA MOTOR MANUFACTURING KENTUCKY, INC. PETITIONER

VS. **APPEAL FROM HON. GRANT ROARK, ADMINISTRATIVE LAW JUDGE**

PATRICK FARLEY
and HON. GRANT ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Toyota Motor Manufacturing Kentucky, Inc. ("Toyota") seeks review of the March 31, 2014, Opinion, Order, and Award of Hon. Grant Roark, Administrative Law Judge ("ALJ") finding Patrick Farley ("Farley") sustained a work-related right shoulder injury and awarding temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits. Toyota

also appeals from the June 10, 2014, Order denying its petition for reconsideration.

Toyota challenges the decision on two grounds asserting the award is not based on substantial evidence and additional findings were required regarding the testimony Farley gave during his discovery deposition of September 27, 2013, which conflicts with his testimony at the February 12, 2014, hearing.

During his September 27, 2013, deposition, Farley recounted how he injured his right shoulder on Friday, June 1, 2012:

> A: I was removing a part from a jig and the part stuck on the jig. And as I tried to pick up the part, and then I do a 180 to put the part on a stand for the next process, the part didn't move but my body did. It felt like an explosion went off in my shoulder. My shoulder popped, and I knew something was wrong.

Although Farley experienced pain with different movements, he did not report the injury because he thought the pain would resolve over the weekend. When the pain continued, the following Monday he reported the injury to his immediate supervisor, Ted Smith. He acknowledged no report of injury was prepared. Farley had a June 6, 2012, appointment with Dr. Gary Mills, a chiropractor, for treatment of his lower back. At that time, he also

received treatment for his shoulder condition. He testified he explained to Dr. Mills how he hurt his shoulder and x-rays were taken at that time. He did not seek any other treatment until he went to Toyota's Early Symptom Investigation ("ESI") unit on approximately July 1, 2012. This had been arranged through his group leader after Farley informed him the shoulder was not improving. Farley testified he continued to perform his normal job during this time even though he was not improving.

On August 1, 2012, he went to Toyota's medical department because there was no change in his shoulder. At that time, he provided the department with details of his injury, his symptoms, and the jobs he performed in the last two months. Farley was put on restrictions, taken off the line, and an MRI of the neck and shoulder scheduled. He worked with restrictions from August until October 12, 2012, when he was sent home.

Farley acknowledged the Form 106, medical consent, filed with the Form 101, lists June 8, 2012, as the date of injury.[1] Farley also acknowledged that when he was first seen, he may have told Toyota's medical department the injury occurred on June 8, 2012. However,

[1] At his deposition, Farley's attorney indicated this date was mistakenly placed on the Form 106 by his staff.

he later corrected the date to June 1, 2012. He did not remember telling the adjuster the injury occurred on June 8, 2012. Toyota denied the claim on October 12, 2012.

Farley underwent right shoulder surgery performed by Dr. Keveh Sajadi, an orthopedic surgeon, on December 12, 2012. The postoperative diagnoses were right partial articular-sided supraspinatus tear and right AC arthropathy. The procedures performed were right arthroscopic rotator cuff repair, right arthroscopic distal clavicle excision including the articular segment, and right arthroscopic subacromial decompression.

Farley testified he experienced short-term shoulder problems in 2005. Farley explained he received some Cortisone shots and returned to work.

At the February 12, 2014, hearing, Farley testified Toyota had accommodated his physical restrictions for a short period explaining as follows:

> Q: And, did you notify anyone of the ongoing problems with your shoulder and what had happened on June 1st?
>
> A: Yes. I notified my team leader and asked if I could stay off the process that I'd hurt my shoulder on, that one was the most physical, as far [sic] using my right shoulder and they agreed and changed my rotation where I wasn't on that process that day.
>
> Q: So, you were on a rotational job?

A: Uh-huh. (Yes) Yes, sir.

Q: And, they let you avoid that – that one particular one that would involve a lot of lifting?

A: Yes.

Q: Through that day, did you go up higher than a team leader and speak to anyone else about what had happened?

A: At the end of the day, it was evident to me that something had happened more than just soreness. And, so I went to my group leader at the end of the day to tell him what had happened and that something was wrong and I needed to get looked at.

Q: And, this is Monday, June 4th.

A: Yes.

. . .

Q: Tell me exactly what you told him.

A: I – I told him the same thing I just said about how I'd lifted the part, how I turned, the part not moving and, you know, the sensation in my shoulder and the pain that I was experiencing.

Q: Did you attempt to keep working?

A: Yes.

Q: And, did they attempt or were they able to kind of avoid having you be [sic] on that one process?

A: For a short time they accommodated the hope that my shoulder would get better over time and kept me off that process.

Farley testified that when he was seen by Dr. Mills on June 6, 2012, he filled out the paperwork indicating he had an “issue” with his lower back and shoulder. At that time, Dr. Mills treated both conditions. Farley later reported to his group leader that Dr. Mills advised him the x-rays revealed some swelling in the bursa sac. Farley reiterated he participated in the ESI program and was seen by Toyota’s medical department on approximately August 3, 2012.

Farley did not deny he told individuals within the medical department he was injured on June 8, 2012, but explained he may have provided that date because he was not sure of the date. However, he also told them it happened approximately two months before his appointment with the medical department. He testified he told the medical department how the injury occurred and that he had an appointment with his chiropractor about a week later. Farley was put on light duty restrictions and taken off the line. He was later sent home because Toyota was disputing the claim and would not allow him to continue working on light duty.

One of the grounds raised on appeal concerns a workers’ compensation incident form filled out by Farley which was subsequently received by Toyota’s adjuster.

Although Dr. Mills denied the form was a form he used and was not a part of his records, the top of the form contains the date, Dr. Mills' name, and his fax number. The workers' compensation incident form is dated June 6, 2012, and indicates a work-related injury occurred on June 1, 2012. It also indicates notice was provided to Ted Smith, the group leader. The form also provides a brief description of the accident.

Farley testified he filled out the form in dispute. He explained when he had a meeting with Dr. Mills about the form, the form was found. He could not explain why a form containing a history of the injury concerning his back was not in Dr. Mills' records.

Kimberly Bond ("Bond"), the claims adjuster for Mitsui Sumitomo which adjusts Toyota's claims, testified at the hearing. Bond testified Farley told her the injury occurred on June 8, 2012. She then spoke with the group leader. She obtained Farley's medical records from Dr. Mills' office. Because a history form was not in Dr. Mills' record, she inquired about the existence of a history form and was told there was not one. Bond could not remember if the group leader provided a specific date when the injury was reported, however, she believed the injury had been reported to the group leader in late June.

Farley later called Bond after the claim was denied and informed her he had seen the chiropractor and all his documents had not been provided to her. She then received the one page history form. When shown the document containing the date, Dr. Mills' name, and fax number appearing at the top, Bond was unable to state whether she received the document from Dr. Mills or Farley. She acknowledged Toyota's medical record of August 3, 2012, notes Farley began seeing the chiropractor a week after the injury due to no improvement. The following exchange then took place:

> Q: And, I'd like to show you what is the August 3rd, 2012, Toyota medical department note.
>
> A: Okay.
>
> [transcript omitted]
>
> Q: Have you had an opportunity to do review this document as part of this claim file?
>
> A: Yes.
>
> Q: Okay. In the history of present illness, what was taken down by the – whoever took this down, am I correct that they noted TM, being a team member, began seeing chiro that week after the injury due to no improvement?
>
> A: Yes. That's what it says.
>
> Q: Okay. And, is that con— I'll go back to what I think you were going to tell me before, is that consistent with what

> the group leader told you that Mr. Farley was having problems before he went to the chiro?
>
> A: Based on that, that would be.

Before the ALJ, Toyota took the position that if injured, Farley was injured on June 8, 2012. It argued that even though Farley testified the sensation he experienced felt like an explosion went off in his shoulder, he did not notify anyone at Toyota on the date of the injury nor did he seek medical attention. Toyota contended Farley's statement when the injury took place was problematic for him since the June 6, 2012, chiropractic records document his shoulder pain. Thus, it argued after Farley learned the claims adjuster knew of the office visit and Dr. Mills' medical record indicated his shoulder pain predated the injury he changed the date of injury. Further, it contended that after being told the chiropractor had no history of the work injury, Farley forwarded an "apparently illegitimate history" containing the workers' compensation report. It emphasized Dr. Mills testified the form was not filled out in his office, is not used by his office, and is not a part of his medical records. Thus, the only documentation of his injury is an invalid form.

It also noted the treatment initially provided by Dr. Mills was covered by Farley's health insurance and not by the workers' compensation carrier. Consistent with this fact, Farley received short-term disability benefits during the time he was off work rather than workers' compensation benefits.

Toyota also argued that during his deposition Farley testified he continued to perform his regular work duties for two months which is completely at odds with his hearing testimony that Toyota immediately accommodated his physical problems.

Regarding notice and causation, the ALJ provided the following analysis, findings of fact, and conclusions of law:

Notice

> As a threshold issue, the employer disputes that plaintiff provided timely notice of his alleged injury, as required by KRS 342.185. In support of its position, the employer points out that plaintiff testified his shoulder felt like an "explosion" inside when the injury occurred, yet plaintiff did not report it to Toyota on the date it allegedly occurred. The defendant argues plaintiff did not report the injury at that time because he did not actually suffer a work injury on June 1, 2012 or on June 8, 2012.
>
> However, plaintiff testified he notified his group leader of his injury

either on the day it allegedly occurred or the next work day. He also testified that his group leader responded by accommodating plaintiff's symptoms and modifying plaintiff's job duties to enable plaintiff to work with his injury. Nothing in the record refutes plaintiff's testimony that his work duties were modified as he indicated. Plaintiff's testimony in this regard persuades the Administrative Law Judge that plaintiff provided timely notice as he alleges.

Causation/Work-Relatedness

The employer also disputes that plaintiff's shoulder condition was caused by any work injury. In support of this position, it again points out that plaintiff testified his injury allegedly occurred when he attempted to pick up a part which was stuck and "it felt like an explosion went off" in his shoulder, yet he did not report it right away and did not seek medical treatment until almost a week later. The defendant argues if plaintiff truly injured his shoulder in the manner he alleges then he would have reported it or sought treatment right away.

The defendant also points out that plaintiff initially sought treatment with Dr. Mills, yet Dr. Mills' treatment notes do not provide any initial history of injury. The matter is further complicated by the fact that plaintiff later provided a history note to the employer dated June 6, 2012 and indicating a history of a June 1, 2012 injury, but Dr. Mills testified this note is not in his records; is not used by his office; and has never been used by his office and has never seen that particular form. The defendant suggests plaintiff manufactured this form after

initially reporting a June 8, 2012 injury when the adjuster advised plaintiff that Dr. Mills' records indicate a first treatment date of June 6, 2012, thereby motivating plaintiff to come up with an earlier injury date.

Ultimately, the Administrative Law Judge is not especially persuaded either way by the questionable medical history note referenced by the defendant. It could be it was fabricated by the plaintiff, but Dr. Mills also testified plaintiff's June 6, 2012 office visit occurred the same week his office was switching from paper files to a paperless system. On this point, it is also noted that there is no history of injury report of any kind in the paper records of Dr. Mills' office. Dr. Mills testified a medical history was taken that date. The fact that history report that was admittedly completed does not appear in any fashion is just as bizarre as the apparently illegitimate history form which was somehow faxed from Dr. Mills' office. Ultimately, the Administrative Law Judge is simply not able to reach any reasonable inference from these bizarre facts.

Instead, the Administrative Law Judge is persuaded by plaintiff's testimony as to how his injury occurred, combined with his unrefuted testimony that his job duties were modified after June 6, 2012 in accordance with how he reported his injury. These factors are considered persuasive when also combined with Dr. Primm's defense IME opinion that plaintiff's shoulder injury is consistent with the work injury plaintiff described to Dr. Primm. Dr. Primm concluded plaintiff had degenerative damage to the shoulder

> prior to the work injury, but that the work injury aroused the degenerative changes.
>
> For all these reasons, it is determined plaintiff's shoulder injury is causally related to the work injury alleged and is therefore compensable.

Toyota filed a petition for reconsideration pointing out the ALJ stated he relied upon Farley's "unrebutted" hearing testimony that his job duties were modified following the alleged July 1, injury. It argued although the ALJ noted nothing in the record refutes Farley's testimony that his duties were modified, this was a patent error as his deposition testimony differs completely from his hearing testimony. Toyota maintained Farley testified during his deposition he performed his normal job after the injury. Toyota asserted Farley's deposition testimony establishes there was no job modification. Consequently, the finding it is unrefuted Farley's job was modified immediately after his injury is erroneous and needed to be considered along with all the other inconsistencies in Farley's story.

Toyota also requested the ALJ make a finding of fact as to whether he believed Farley's testimony he filled out the history form in question on the date he saw Dr. Mills or Dr. Mills' testimony that his office never used

that form. It asserted if the ALJ believed Dr. Mills was telling the truth, he should “make inferences from this testimony.” Toyota contended the ALJ obviously believed the injury occurred as Farley testified, despite the apparent manufactured history form. However, it argued Farley’s deposition testimony contradicting his hearing testimony and his manufactured history form causes his testimony not to be credible. Therefore, Toyota requested further findings of fact based on these facts. It advocated that based upon these facts and for the reasons set forth in the original brief, the claim should be dismissed.

In the June 10, 2014, Order denying the petition for reconsideration, the ALJ stated he had already explained why he believed Farley’s testimony.

On appeal, Toyota again notes its medical department’s records and Farley’s conversation with Bond establish he was injured on June 8, 2012. Thus, an inconsistency existed since Dr. Mills’ record of July 6, 2012, documents shoulder pain. It contends that after talking with the adjuster and realizing this problem, Farley changed the date of injury. In addition, after being told the chiropractor had no history of his work injury, Farley called the adjuster and he, not Dr. Mills,

forwarded the history form in question. Toyota again cites to Dr. Mills' testimony regarding the history form in question. It also notes Dr. Mills' record of June 6, 2012, does not document a work injury.

Toyota also cites to Farley's deposition testimony which conflicts with his hearing testimony his duties were modified immediately after his injury. Toyota maintains the evidence taken as a whole does not establish an injury occurred on June 1, 2012.

Next, Toyota asserts the ALJ should have provided additional findings regarding Farley's deposition testimony that he performed his normal job for two months after the injury since this testimony is completely at odds with his hearing testimony. Toyota asserts the ALJ's opinion reflects the ALJ did not consider the contradictory deposition testimony. Because Farley's inconsistent history was not considered and no findings of fact were made in this regard, Toyota observes a petition for reconsideration was filed requesting additional findings of fact. However, the ALJ erroneously refused to provide further findings. Toyota argues "inferences must be made" regarding the "apparently illegitimate" medical history form Farley completed. It asserts that in addressing this issue the ALJ stated he was not able to reach any

inferences from the bizarre facts. Thus, it posits as follows:

> An ALJ's finding on an issue involving 'highly controverted evidence' should be reversed where 'the lower decisions were insufficiently clear for the reviewing body to determine what weight, if any, the fact-finder had given to particular evidence.' [cite omitted] In this case, the Administrative Law Judge admittedly failed to make inferences from highly controverted evidence. That is the role of an Administrative Law Judge. This case should be reversed.

Farley, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Farley was successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the

quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). An 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). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). 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).

We find no merit in Toyota's argument the ALJ's decision was not based upon substantial evidence. During

his November 7, 2013, deposition, Dr. Mills testified there was an undated form completed by Farley which provided some history. Dr. Mills testified even though Farley filled out a history form on June 6, 2012, he did not have the form. However, he had an office note regarding his treatment on June 6, 2012. He corroborated Farley's testimony that he had a scheduled appointment for June 6, 2012, for lower back problems. Dr. Mills stated his records do not reflect Farley told him he did something at work regarding his shoulder. However, Dr. Mills noted complaints regarding the low back, both hips, and the right trapezius or right shoulder area. Although the statement for the June 6, 2012, treatment was sent to Farley's private health insurance, he explained this was done because he had seen Farley previously and the information regarding his private health insurance was utilized in preparing the statement. When his office switched to the new computer system it automatically drew his information from the prior visit and the bill was sent to the same insurance company listed six years earlier. Dr. Mills also explained why he believed the undated history form related to Farley's June 6, 2012, visit:

> Q: Given the fact that in 2006 he weighed in at 296 pounds and given the fact that in June of 2012, he weighed

> almost 80 pounds less, going back to the notation on the Ouch form of losing 125 pounds in the last six or seven months, would it be your belief that the Ouch form is related to the June of 2012 visit?
>
> A: I will say yes, but with a couple of different reasons why: No. 1, it's in line in my file right behind the treatment plan that I wrote for him for June 6th, 2012. Plus, with the changeover of my computer system, very likely this might have been written out for that rather than my normal case history form, because we didn't quite know what we were doing with the new system yet, but not only just the weight, the weight does correlate that it would be related to the 2012 incident rather than the 2006.

Dr. Mills stated, based on his review of the record, it was his belief the treatment he provided for the right shoulder and upper trapezius in 2012 was a result of and necessitated by his work-related injury. Dr. Mills also testified he believed the form in question is a form Toyota uses which Farley brought into the office.

In addition, Dr. Mills' letter of November 6, 2012, reveals on June 6, 2012, Farley discussed his shoulder condition and told him he hurt his shoulder at work. He also noted Farley's condition and the treatment were consistent with the type of injury Farley described. Dr. Mills explained that as of June 4, 2012, his office converted from a complete paper file system to a complete

electronic system and the transition had not been easy or efficient. He explained why the statement for services rendered in June 2012 was not billed to the workers' compensation carrier and instead billed to his private health insurance.

In the Opinion, Order, and Award under the heading "Causation/Work-Relatedness", the ALJ clearly addressed the fact Dr. Mills' treatment notes did not provide an initial history of the injury, and the fact Farley later provided a June 6, 2012, history note to Toyota which it maintains is "apparently illegitimate." After noting Toyota's argument regarding this document, the ALJ concluded he was not persuaded either way by this medical history note relied upon by Toyota. Although the document could be fabricated, the ALJ noted Dr. Mills also testified Farley's office visit occurred the same week his office was transitioning from paper files to a paperless system and there was also no history of an injury report of any kind in his records. The ALJ also noted Dr. Mills testified a medical history was taken. Further, he noted the fact the history report which was completed does not appear anywhere in the records was just as bizarre as the "apparently illegitimate" history form which was somehow faxed from Dr. Mills' office. The ALJ stated he was not

able to reach any reasonable inferences from either fact.

We believe the ALJ's refusal to reach any such inferences was clearly within his discretion and he need not provide any further analysis regarding this issue. The ALJ had the right to disregard the form Toyota alleged was "apparently illegitimate" and rely upon other evidence in resolving the issue of causation in favor of Farley.

Significantly, Bond's hearing testimony and Toyota's medical records of August 3, 2012, reveal Farley informed Toyota he had right shoulder pain for approximately two months and how the injury occurred. Although the history in Toyota's record notes the injury occurred on June 8, 2012, while lifting, it also notes Farley told them he thought he would get better over the weekend but because there was no improvement he notified his group leader, Ted Smith, on Monday. Importantly, the note also contains the following notation: "began seeing chiro the week after the injury due to no improvement."

Bond's testimony, previously summarized, establishes Farley's group leader told her he was having shoulder problems before seeing Dr. Mills. Toyota's medical record and Bond's testimony supply additional evidence in support of Farley's testimony upon which the ALJ partially relied in determining Farley sustained a

work-related injury. Significantly, at his December 3, 2013, deposition, Dr. Primm testified Farley provided a history of an injury on June 1, 2012. After reviewing Dr. Mills' November 6, 2012, letter, Dr. Primm acknowledged the injury to Farley's right shoulder occurred prior to his appointment with Dr. Mills on June 6, 2012. Dr. Primm expressed the opinion "the last injury at work" may have further aggravated pre-existing degenerative changes which he characterized as an arousal. Pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), he assessed a 6% impairment rating. Thus, Farley's testimony and Dr. Primm's testimony constitute substantial evidence supporting the ALJ's decision concerning causation.

Further, we find no error in the ALJ refusing to provide additional findings of fact regarding what Toyota asserts is a discrepancy between Farley's deposition testimony and hearing testimony. During his discovery deposition, Farley testified that after his injury he performed his normal job duties. After going to Toyota's medical department, he was placed on restrictions and taken off the line.

A comparison of Farley's relevant hearing testimony, as previously summarized, with his deposition

testimony, does not reveal Farley provided significantly inconsistent testimony at the hearing. Farley's deposition testimony that he continued working performing his normal job for two months after the injury can be reconciled with his hearing testimony as he testified he merely sought to avoid the one "process" or task in his rotation which resulted in the shoulder injury. He explained that one process was the most physical as far as using his shoulder. Consequently, Toyota agreed to change his rotation so he was no longer performing that job which involved a lot of lifting. Thus, except for avoiding one task in his rotation, it appears Farley performed his normal job duties. We find no great discrepancy between Farley's deposition and hearing testimony which would merit additional findings by the ALJ.

Notably, in the petition for reconsideration the ALJ was not asked to provide additional findings regarding what Toyota perceived as a discrepancy between the deposition testimony and the hearing testimony. Pertaining to this issue, in its petition for reconsideration, Toyota asserted as follows:

> The ALJ noted that Plaintiff's allegation that his job was modified immediately after his injury was unrefuted by the Defendant. Simply put, it was refuted by the Plaintiff. This

> differing testimony at the Final Hearing, while obviously helpful to Plaintiff's case, was not accurate and was refuted by the Plaintiff himself. The ALJ's determination that 'nothing in the record' refutes this testimony is error. This fact needs to be considered along with the [sic] all of the other inconsistencies in the Plaintiff's story.

Although Toyota stated the fact needed to be considered along with the other inconsistencies in the story, it made no request for specific findings on this issue. In the next paragraph, Toyota requested additional findings of fact on a separate issue regarding Farley's testimony and the history form in question as follows:

> Defendant asks the ALJ to make a simple finding of fact from the evidence and that is whether the ALJ believes the testimony of the Plaintiff that he filled out the 'history form' in question on the date he first saw Dr. Mills, as was his testimony, or whether he believes the doctor's testimony that his office has never used that form.

Even assuming Toyota requested additional findings of fact on this issue, the ALJ declined stating he had already explained why he believed Farley's testimony. The ALJ's statement the group leader responded by accommodating Farley's symptoms and modifying his job duties to enable him to continue working is supported by the record. Farley's testimony establishes he was

accommodated by being able to avoid one task, and his deposition testimony does not directly contradict his hearing testimony as it is clear from the record that until he was seen by Toyota's medical department in August, he continued to perform his regular duties except for the one process or task which caused his injury. The ALJ correctly noted Toyota did not provide any testimony refuting Farley's testimony that he was allowed to avoid the process which involved a lot of lifting.

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).

Here, as is his prerogative, the ALJ was entitled to rely in part upon Dr. Mills' deposition testimony, his November 6, 2012, letter, and the problems his office was experiencing at or about the time he saw Farley on June 6,

2012, in attributing no significance to the form in question. Similarly, the ALJ was permitted to rely upon Farley's testimony regarding the change in his job duties after he reported the injury and the opinions of Dr. Primm.

The ALJ was not required to further explain why he chose to believe Farley's hearing testimony over what Toyota contended was inconsistent deposition testimony regarding Farley's work activities after the June 1, 2012, injury. Because the outcome selected by the ALJ is supported by substantial evidence, we are without authority to disturb his decision on appeal. Special Fund v. Francis, supra.

Accordingly, the March 31, 2014, Opinion, Order, and Award and the June 10, 2014, Order denying the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

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

COUNSEL FOR RESPONDENT:

HON CHRISTOPHER P EVENSEN
6011 BROWNSBORO PK BLVD #A
LOUISVILLE KY 40207

ADMINISTRATIVE LAW JUDGE:

HON GRANT ROARK
410 W CHESTNUT ST
SEVENTH FLOOR
LOUISVILLE KY 40202