Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 8, 2015

CLAIM NO. 201271859

TOYOTA MOTOR MANUFACTURING KENTUCKY, INC. PETITIONER

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

PAULA DAVIS
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") appeals from the May 8, 2015, Opinion and Award and June 11, 2015, Order on Reconsideration of Hon. Jeannie Owen Miller, Administrative Law Judge ("ALJ"). The ALJ awarded Paula Davis ("Davis") permanent partial disability ("PPD") benefits, temporary total disability ("TTD")

benefits, and medical benefits. On appeal, Toyota asserts the ALJ erred in finding causation and the award of TTD benefits from the date of injury is erroneous.

The Form 101 alleges Davis sustained injuries to her neck, shoulder, and left arm while in the employ of Toyota on April 24, 2012, in the following manner: "While pushing trimpad to fit the door of car, I felt a sharp pain in my neck."

Davis's January 24, 2013, deposition was introduced. She testified her last day of work was July 27, 2012, because she injured her foot. She explained as follows:

> A: I was at my cousin's husband's birthday picnic. I had on a pair of shoes that had a heel on it, and I stepped down in the grass which was I guess wet from the date before, and my heel got stuck in the grass- and twisted my foot.
>
> Q: Okay. And did you ever have to- did you have any type of treatment for your foot?
>
> A: I saw Dr. Hunt for it, and as far as- I was put in a boot for about two to three weeks, almost a month.
>
> Q: And then what happened then [sic] after that?
>
> A: After that, of course, you know, I used ice and, you know, soaked it. And then after that, followed up with him, and eventually was released.

Q: To go back to work-

A: Yes.

Q: - or just released from his care? And when would that have been do you think?

A: In September. I can't remember the exact date.

Q: And, so, did you just not go back to work between September then and your surgery to your neck?

A: The reason being I didn't return is because I still had restrictions on my neck.

Q: Okay. The same restrictions that you were working off line on, or were they different?

A: It's the same, pretty much the same.

Davis described the work she was performing before she was injured:

A: Before that date, before April 24th, I was working on door line, Plant 1.

Q: Okay. And are you on some kind of job rotation then?

A: Yes.

Q: And how many jobs are in your rotation?

A: There's a total of eight jobs because we did both sides of the line.

Q: Okay.

A: Left and right.

Q: How long had you done the door line jobs on Plant 1?

A: Since 2006.

Q: And were you doing that on April the 24th, then?

A: Yes.

...

Q: All right. I'm assuming that- you told me you had eight jobs because you do both sides of the car. Are they the same?

A: Yes, pretty much the same, just different sides of the line. But in the group there's a total of- let me just count them. One, two, three, four- there's a total of six jobs in the group, but we have to do both sides of the line, so that's what made me say that amount.

Q: Okay. Can you just describe the different processes for me?

A: Okay. There's one process which is called the finish process, which is where small parts are put on the door, and we also use an air gun; that's pretty much the finishing part of the door line. There's another process which is called left-rear and right-rear trim pad; that's where we install a trim pad, and we also shoot screws in the trim pad. There's another process, left-front and right-front trim pad; that's where the mirrors installed, handles, trim pad and also you have an air gun that you use. There's another job which was called weather stripping; it's where weather strip is ran [sic] around the door. We did that. And also an air gun is used on that process to

> shoot down speakers. There's another process, left-rear- left-rear and right-rear service hole cover; that's where the butyl is applied to the door, and then there's a service hold cover put on the door, and we use our hands to seal the service hole cover. And also, there's an air gun on that process, shoot down a- it's a box, it's a safety box; we shoot that down. And then there is left-front and right-front service hole cover; that's the front door. That's pretty much you apply the butyl, there's an air gun where you shoot down- it's been a while- of course, you use an air gun to shoot certain parts down on that door, and you apply the service hole cover on that process as well.

At the time of the injury, Davis was pushing trim pad to fit a door. Davis immediately called her team leader. She was treated at “IHS” with an ice pack after which she returned to her work station, but was kept off line. Eventually, IHS sent her to Georgetown Medical Center's emergency room. Concerning the activities she performed after the injury and before she left her job, Davis testified:

> A: At that time, I was off line and I was working in- it's called the clean room, because I was off line because of restrictions for my injury.
>
> Q: Okay. How long had you been doing that?
>
> A: Since April 24th - when I came off line - 2012.

> Q: So from April 24th to July 27th of 2012, you were working off line; is that right?
>
> A: Yes.
>
> Q: And were you in the clean room the whole time? Do you know?
>
> A: I'm sorry. Can you explain?
>
> Q: You indicated you were- I thought you told me you were in the clean room?
>
> A: Yes. It's called the clean room. When I was taken off line because of my neck injury, I was in the clean room.

She was ultimately referred to Dr. Travis Hunt who performed surgery on her neck on October 9, 2012. At the time of her first deposition, she was experiencing occasional stiffness when her head was in certain positions.

Davis was again deposed on June 23, 2013, after she had returned to work. She testified as follows:

> A: Yes, I have returned back to work.
>
> Q: And when was that?
>
> A: Let's see, I'm so sorry, I believe it was in April and I was there until June, let's see- I've been trying to figure the dates out because I was at home because of job placement failure, the jobs that I was doing kind of broke my neck restrictions, so therefore, IHS at Toyota, the safety team came out and they viewed the jobs and saw that they broke my neck restrictions so I was

sent home for about three weeks. So actually I've been back to work now this would be my I think second or third week.

Q: Let's start with your first return. You said you went back in April, would that have been of this year?

A: Yes, sir.

Q: That's '14; right?

A: Yes, I believe I returned on April 2nd, that was a Wednesday.

Q: And what were you doing when you returned?

A: When I returned I was still on restrictions.

Q: What job were you doing?

A: It's Chasey 4, Plant 2, and I was like one hour on, two hours off for two weeks.

Q: All right, for two weeks and then after that what were you doing?

A: After the two weeks was up I went back to IHS and normally they switch out the re-intro from one on to one off until, I guess, the next visit, however, when safety came out- I had some issues with one of the jobs and it's called isolator where I was doing a lot of extended reaching, so therefore they sent the safety team out and they looked at all the jobs that I was doing and found out that it broke my neck restrictions so therefore I went back to IHS during that time.

...

Q: When did you return?

A: Okay. I returned on- let's see, I'm trying to get these dates. I had an IHS appointment on the 27th of May, and I believe I returned on June 2nd- I'm sorry, yeah, it was a Monday. My IHS appointment was the 27th of May, and that Monday, June 2nd is when I returned.

Q: And what did you return to then?

A: I returned to the same group but a different team with lighter jobs or jobs that-

Q: What's the group called?

A: Chasey 4, it's in Plant 2.

Q: So the same thing as the isolator?

A: No, I'm no longer doing the isolator or-

Q: Same group?

A: Same group, yes.

At the time of her second deposition, she was working forty hours a week and earning $27.10 an hour which is considered full production pay. Her current restrictions include no overhead work, no extended reaching, no lifting over twenty pounds, and no repetitive turning of the head. She occasionally takes Ibuprofen. She testified her surgery relieved her neck pain but not the neck stiffness.

Davis also testified at the March 31, 2015, hearing. Davis began working at Toyota in February 2006 as a temporary worker and was hired permanently after twenty-seven months. At the time of her injury, she was in good health and under no restrictions.

Regarding her status at Toyota at the time of hearing, Davis testified:

> A: My status at Toyota, at this time I'm basically waiting. I've been accepted into the EJP programs, so I'm basically waiting to hear from them for a job opening.
>
> EJP program is for those that have, may have had surgery, that cannot return to their normal job duties. It's less strenuous. It meets your restrictions that you have. That's how they explained it to me. You will not be working on line and doing a lot of the hard work that way.

The April 3, 2014, report of Dr. Hunt addresses maximum medical improvement ("MMI"), causation, and an impairment rating:

> She underwent a second for this, and this concurred with my evaluation. She underwent an anterior cervical diskectomy and fusion from C3-C6 on October 9, 2012. We last evaluated this on 09/09/13 when we felt her fusion to be healed. She had good strength in both upper extremities and no neurologic deficits. Her incision was clean, dry, and intact. We had thought at that point she had reached maximal

> medical improvement for her cervical spine. Regarding questions about this, I do believe that she did have some preexisting condition that was exacerbated by the twisting, bending, and lifting at work. This was not a problem until she began having symptoms while she was at work. We do not believe that she requires new treatment. However, because this fusion may require further surgery in the future because of adjacent segment disease we believe that based upon the American Medical Association Guides to the Evaluation of Permanent Impairment that she has sustained a DRE category IV impairment because of the fusion and alteration of motion segments equaling 28% of the whole person. We recommend that she get an x-ray and have a physical exam every 6-12 months.[1]

Davis introduced the June 28, 2014, Independent Medical Examination ("IME") of Dr. Anthony J. McEldowney, who diagnosed: "Cumulative trauma cervical spine exacerbating cervical kyphosis and spondylosis and causing left arm myelopathy." Dr. McEldowney determined Davis' injury is the cause of her complaints opining as follows:

> Because of cumulative trauma to the cervical spine performing work activities between 2006 and 2012, there has been a harmful change to the human organism of Ms. Paula Davis, causing exacerbation of her cervical spondylosis with left arm myelopathy requiring cervical fusion, with its inherent risks and complications.

[1] We are unable to locate the September 9, 2013, medical record of Dr. Hunt.

> Because of her work-related injury, this patient now has difficulty performing static activities with her cervical spine, and has been unable to return to her previous work activities. As would be expected, following cervical fusion, this patient has loss of range of motion in her cervical spine and has mild strength deficits still in grip function, and performing significant overhead functions with her left arm. This patient continues to require ibuprofen for discomfort, and this patient will experience accelerated wear and tear of the disc and joint above and below the fused region of her cervical spine.

Concerning Davis' impairment rating, Dr. McEldowney stated:

> Using the most recent fifth edition AMA Guides of Evaluation of Permanent Impairment, the plaintiff's permanent whole person impairment is 26%. Whole person impairment is calculated using both the DRE and range of motion methods, as this patient has multilevel involvement noted on page 398. Using the range of motion method, this patient has suffered 20% whole person impairment, but the *Guides* recommends using the higher of the DRE or range of motion method when appropriate. Therefore relating to successful surgical arthrodesis of the cervical spine, this patient has suffered a 26% whole person impairment that relates to a CRE Cervical Category IV injury.
>
> Plaintiff had an active impairment prior to this injury? No, as this patient arrived to work on April 24, 2012 without restrictions and performing full work activities.

> Date on which maximum medical improvement was reached: October 9, 2013.

Regarding a pre-existing condition, Dr. McEldowney opined as follows:

> 5. Ms. Davis did not have an active disease or condition which preexisted her cervical spine injury [sic] April 24, 2012. Although Dr. Tutt makes reference to cervical spine stenosis, MRI documents that central canal stenosis C3-4, C4-5, and C5-6 relates to spondylosis and disc bulge and not to a congenital cervical condition.
>
> 6. It is my opinion that cervical spondylosis was dormant and asymptomatic, and not active, prior to [sic] work-related injury April 24, 2012.
>
> 7. It is my opinion that this dormant and asymptomatic cervical spine spondylitic condition became a disabling reality causing preoperative myelopathy left arm.

The January 15, 2015, Benefit Review Conference order lists the following contested issues: benefits per KRS 342.730; work-relatedness/causation; unpaid or contested medical expenses; and TTD.

In the May 8, 2015, Opinion and Award, the ALJ set forth the following analysis, findings of fact, and conclusions of law concerning the issues pertinent to this appeal:

1. Work relatedness/causation/pre-existing active impairment.

While medical causation usually requires proof from a medical expert, the ALJ may properly infer causation, or a lack of causation, from the totality of the circumstances as evidenced by the lay and expert testimony of record. See Mengel vs. Hawaiian-Tropic Northwest and Central Distributors, Inc., Ky. App., 618 SW2d 184 (1981); Cf. Union Underwear Co. vs. Scearce, 896 SW2d 7 (Ky. 1995). An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. vs. Eakins, 156 SW3d 283 (Ky. 2003). Causation is a factual issue to be determined within the sound discretion of the ALJ as fact finder. Union Underwear Co. vs. Scearce, *supra;* Hudson vs. Owens, 439 SW2d 565 (Ky. 1969).

The Defendant/employer also mixes its argument regarding work relatedness/causation with pre-existing active impairment. The Defendant argues because there is [sic] degenerative changes that pre-date the work injury and she had "ongoing symptoms in her neck due to boney osteophytes for years prior to her alleged injury" --- the Plaintiff has failed to prove work-relatedness/causation. Certainly the medical evidence is contradictory. The medical opinions of Dr. Tutt and Dr. Jenkinson support the Defendant's position. The medical opinions of Dr. McEldowney and Dr. Hunt support the Plaintiff's position that the job activities aggravated the underlying degenerative condition and that she did have a specific episode on April 24, 2012 that brought her underlying condition into an ongoing active condition for which she required

medical treatment and ultimately surgery.

I find Dr. Hunt and Dr. McEldowney's opinions are the most persuasive with regard to the issue of causation. I find that their opinions considered the facts surrounding Plaintiff's injury, medical treatment and her previous and current condition. As the treating surgeon, Dr. Hunt, was in a unique position to consider the causation question. Dr. Hunt has a duty to attempt to heal the Plaintiff – but it cannot go unnoticed that Dr. Hunt was the doctor the Defendant/employer sent Plaintiff to for treatment. I find Dr. Hunt was in a position to understand both her physical condition but also to know the mechanics of her work at Toyota. He stated:

> I do believe that she did have some preexisting condition that was exacerbated by the twisting, bending, and lifting at work. This was not a problem until she began having symptoms while she was at work. We do not believe that she requires new treatment.

Dr. McEldowney also opined that Plaintiff's work activities were causally connected to her cervical condition. Dr. Hunt recognized the pre-existing degenerative condition and opined her work activities exacerbated it. Dr. McEldowney specifically stated that Plaintiff did not have an active disease or condition and the cervical spondylosis was dormant and asymptomatic prior to her work related injury of April 24, 2012.

There is no specific medical opinion Plaintiff suffered from a cervical condition that was: (1) ratable and (2) symptomatic immediately before the injury. It is well-established that the work-related arousal of a pre-existing dormant condition into disabling reality is compensable. McNutt Construction/First General Services vs. Scott, 40 SW3d 854 (Ky. 2001). Plaintiff's cervical spine conditions could only be characterized as active when the underlying pre-existing conditions (here degenerative spondylosis) were symptomatic and impairment ratable pursuant to the AMA Guidelines immediately prior to the occurrence of the work-related injuries.

The burden of proving the existence of a pre-existing condition falls upon the employer. Wolf Creek Collieries vs. Crum, 673 SW2d 735 (Ky. App. 1984). While Dr. Jenkinson and Dr. Tutt opine that the degenerative conditions pre-existed the work incident, there is no evidence that Plaintiff had symptoms immediately prior to the work injury – the only discussion regarding prior symptoms references the remote past. A pre-existing condition that is both asymptomatic and produces no impairment prior to the work-related injury constitutes a pre-existing dormant condition. I find that the degenerative changes pre-existed the work injuries but were not active. For these findings I rely on Dr. Hunt and Dr. McEldowney.

...

4. TTD rate and duration.

Based upon the medical testimony and the facts surrounding Plaintiff's

> temporary total disability, I find that Plaintiff was temporarily totally disabled as a result of the April 24, 2012 work injury from April 24, 2012 until October 9, 2013, the date she reached MMI per the opinion of Dr. McEldowney. I based this finding on the testimony of Dr. Hunt and Dr. McEldowney. It should be noted that Dr. Jenkinson placed Plaintiff at MMI on October 1, 2013. The rate of TTD would be 66 2/3% of the stipulated average weekly wage – subject to the state's maximum rate. For an injury occurring in 2012 the maximum rate is $736.19.

In its Petition for Reconsideration, Toyota contended the ALJ's opinion regarding causation is not supported by the record and requested additional findings relating to the award of TTD benefits.

In the June 11, 2015, Order on Reconsideration overruling the petition for reconsideration, the ALJ stated as follows:

> This matter is before the undersigned Administrative Law Judge (ALJ) upon the Defendant/employer's Petition for Reconsideration and the Plaintiff's response thereto. The Defendant avers the undersigned erred when finding that Plaintiff had sustained her burden of proving her condition was causally related to the work injury of April 24, 2012. After a review of the Opinion, Order and Award and the analysis of the medical evidence concerning work-relatedness/causation, I find no error in the determination that the Plaintiff sustained her burden of proof. The undersigned relied on both the treating

> physician, Dr. Hunt, and the evaluating physician, Dr. McEldowney, for her findings. The 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 adversarial parties' total proof. Magic Coal Company vs. Fox, 19 SW3d 88 (Ky. 2000); Jackson vs. General Refractories, 581 SW2d 10 (Ky. 1979); Caudill vs. Maloney's Discount Stores, 560 SW2d 15 (Ky. 1977). This is true even with the medical testimony. When conflicting evidence is presented, the ALJ may choose whom or what to believe. Pruitt vs. Bugg Bros., 547 SW2d 123, 125 (Ky. 1977). The ALJ may also choose to accept portions and disregard other portions of an expert witness' testimony. Copar, Inc. vs. Rogers, 127 SW3d 554 (Ky. 2003).

Toyota's first argument is that substantial evidence does not support the finding of causation. It contends that even though the ALJ relied upon Dr. Hunt and Dr. McEldowney, their opinions do not actually support a finding in favor of Davis on the issue of causation. We disagree and affirm on this issue.

The statements pertaining to causation of both Dr. Hunt and Dr. McEldowney support the ALJ's finding concerning the causation issue. In the April 3, 2014, report, Dr. Hunt stated: "I do believe that she did have some preexisting condition that was exacerbated by the

twisting, bending, and lifting at work. This was not a problem until she began having symptoms while she was at work." The ALJ can logically infer from Dr. Hunt's statement that while Davis had "some preexisting condition," it was dormant (i.e. "not a problem") until it was aroused into disabling reality by her work activities at Toyota (i.e. "exacerbated by the twisting, bending, and lifting at work").

As Davis was the party with the burden of proof regarding causation and was successful before the ALJ, the sole issue in this appeal is whether substantial evidence supports the ALJ's conclusion. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people. Smyzer v. B.F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). Although a party may note evidence that would have supported a conclusion that is contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Standing alone, Dr. Hunt's statement regarding causation comprises substantial evidence in support of the ALJ's finding of causation.

A review of Dr. McEldowney's opinions lends additional support to the finding of causation. We acknowledge Toyota's sub-argument that Dr. McEldowney opined Davis sustained cumulative trauma and Davis failed to allege cumulative trauma. However, in his June 28, 2014, IME report, Dr. McEldowney explicitly stated Davis had a dormant and asymptomatic cervical condition at the time of the April 24, 2012, injury. Dr. McEldowney opined that because of "cumulative trauma to the cervical spine performing work activities between 2006 and 2012," the exact years Davis was employed at Toyota, her dormant and symptomatic condition "became a disabling reality." Dr. McEldowney's opinion regarding cumulative trauma relates exclusively to the period Davis was employed at Toyota, and he found Davis' work at Toyota caused the arousal of her dormant cervical condition into disability reality. The fact Dr. McEldowney characterized this as cumulative trauma sustained during her years working at Toyota versus an acute incident is irrelevant. The opinions of Drs. Hunt and McEldowney support the ALJ’s finding as to causation, and the ALJ's determination will not be disturbed.

That said, we vacate the award of TTD benefits and remand for additional findings. In its appeal brief, Toyota asserts the ALJ awarded TTD benefits from the date

of injury "without any explanation as to why" despite Davis' return to work following the April 24, 2012, injury. The parties are entitled to additional findings, particularly in light of the fact Toyota requested additional findings in its petition for reconsideration. This request was not addressed in the June 11, 2015, Order. Davis' testimony indicates she returned to some form of work following the April 24, 2012, injury and quit working only after she injured her foot at her cousin's home in July 2012. While the ALJ's award of TTD benefits initiated from the date of injury may be supported by the record, the ALJ must provide an analysis consistent with the two-prong test articulated in KRS 342.0011(11)(a) and pertinent case law. *See* Central Kentucky Steel v. Wise, 19 S.W.3d 657 (Ky. 2000).

Accordingly, the ALJ's finding Davis sustained a work-related injury as set forth in the May 8, 2015, Opinion and Award and June 11, 2015, Order on Reconsideration is **AFFIRMED**. The award of TTD benefits set forth in the May 8, 2015, Opinion and Award and affirmed in the June 11, 2015, Order on Reconsideration is **VACATED**. This claim is **REMANDED** to the ALJ for additional findings and entry of an amended opinion and award regarding Davis'

entitlement to TTD benefits consistent with the views expressed herein.

ALL CONCUR.

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