OPINION ENTERED: June 18, 2012

CLAIM NO. 200900868

TRIANGLE ENTERPRISES PETITIONER

VS. **APPEAL FROM HON. RICHARD M. JOINER, ADMINISTRATIVE LAW JUDGE**

JOHN STEPHENS
and RICHARD M. JOINER,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION VACATING AND REMANDING

* * * * * *

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

ALVEY, Chairman. Triangle Enterprises, Inc. ("Triangle") seeks review of the opinion and award on remand rendered December 29, 2011, by Hon. Richard M. Joiner, Administrative Law Judge ("ALJ"), finding John Stephens ("Stephens") is entitled to an enhancement of his award of permanent partial disability ("PPD") benefits pursuant to

KRS 342.730(1)(c)2. Triangle also appeals from the order entered January 27, 2012 denying its petition for reconsideration. We vacate and remand.

This is the second time this claim has been appealed. On the first appeal, we vacated and remanded the ALJ's determination that Stephens was not entitled to an enhancement of his PPD award pursuant to KRS 342.730(1)(c)2 on the basis of Chrysalis House, Inc. v. Tackett, 283 S.W.3d 671 (Ky. 2009). In the previous appeal, Stephens argued the ALJ failed to make a finding of fact as to whether he had ceased earning the same or greater wage due in part to his work-related injury, and had failed to make an appropriate Chrysalis House analysis.

In vacating and remanding the ALJ's decision, we ordered as follows:

> That said, we do not believe the ALJ adequately set forth the reasons why Stephens is not entitled to the 2x multiplier set forth in KRS 342.730(1)(c)2. The ALJ found Stephens was earning less now than he was at the time of the accident, but without explaining why, merely stated an enhancement of benefits was precluded pursuant to Chrysalis House v. Tackett, 283 S.W.3d 671 (Ky., 2009).
>
> In Chrysalis House, the Kentucky Supreme Court has noted KRS 342.730(1)(c)2:

> appears at first blush to provide clearly and unambiguously for a double benefit during a ... cessation of employment at the same or a greater wage 'for any reason with or without cause.'

The Court determined, however, the provision is a subsection of KRS 342.730(1) that must be interpreted in the context in which it was written. Thus, when read in light of the fact KRS 342.730(1) provides income benefits based on "disability" due to impairment from a work-related injury, KRS 342.730(1)(c)2 only permits a double benefit "during any period that employment at the same or a greater wage ceases 'for any reason with or without cause,' provided that the reason relates to the disabling injury." *See also* Hogston v. Bell South Telecommunications, 325 S.W.3d 314 (Ky. 2010). Notwithstanding Stephens' argument to the contrary, we believe the ALJ's determination may be correct. However, he is required to explain why he reached his conclusion.

The law is well settled parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). We are cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is that the decision must adequately set forth the basic facts upon which the ultimate conclusions were drawn so the parties

are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). We also find the holding of the Kentucky Supreme Court in New Directions Housing Authority v. Walker, 149 S.W.3d 354 (Ky. 2004), to be instructive. In that case, the court remanded the claim to the ALJ "for further consideration, for an exercise of discretion, and for an explanation that will permit a meaningful review." *Id*. at 358.

We do not believe the ALJ's one sentence determination, "Since John Stephens is not earning the same or greater wage he would qualify for the '2' multiplier but for the operation of" Chrysalis House, *supra*, is an adequate explanation of why the multiplier is inapplicable. Likewise, the ALJ's order on reconsideration provides no additional explanation for this finding and is equally insufficient. We therefore vacate and remand this claim to the ALJ to provide an explanation or analysis as to why Stephens is not entitled to the additional multiplier. We believe adequate evidence exists to support the ALJ's decision. However, he must clearly provide the basis for his determination.

Accordingly, the decision by Hon. Richard M. Joiner, Administrative Law Judge, rendered May 19, 2011, as well as the order ruling on the petition for reconsideration dated July 17, 2011 is hereby **AFFIRMED IN PART, VACATED IN PART** and **REMANDED** for further proceedings consistent with the views expressed in this opinion.

No appeal was taken from that opinion. In his opinion and order on remand rendered December 29, 2011, the ALJ reversed his previous decision, and found Stephens was entitled to an enhancement of the PPD benefits awarded pursuant to KRS 342.730(1)(c)2. The ALJ further determined Triangle, not Stephens, had the burden of demonstrating the cause of Stephens' reduction in wage. Specifically, the ALJ found as follows:

> In the Opinion and Award rendered on May 19, 2011, I said all I could say about the basis for my decision. It was based upon my determination that the Supreme Court's decision in Chrysalis House v. Tackett, 283 S.W.3d 671 (Ky., 2009) prohibited the application of the "2" multiplier unless it was shown that the reason that the claimant ceased earning the same or greater wage relates to the disabling injury. In making this determination, I placed the burden of persuasion on the issue upon the claimant. Perhaps this is not where the burden lies. It does make sense to place the burden of demonstrating the reduction in wage which would invoke the application of KRS 342.730 (1) (c) 2 upon the claimant. Then once that fact is determined, it does seem reasonable to charge the employer with the burden of demonstrating the cause of the reduction in wage. Since neither the Supreme Court's decision in Chrysalis House, supra, nor the Board's decision in this case addresses this question, and because my previous decision was vacated, I conclude that I applied the wrong rule of law in assigning the burden of demonstrating

the cause of the reduction in wage to the claimant. I will proceed to address this question with the employer having the burden to demonstrate the reason for the decrease in wage.

SUPPLEMENTAL FINDINGS OF FACT

1. The findings of fact previously made remain correct.

2. Mr. Stephens did return to work at the same wage for some time but is not earning the same or greater weekly wage as he was at the time of the injury.

3. Since the injury, the average number of hours worked per employee of Triangle Enterprises has in fact increased. The average number of hours worked by Mr. Stephens has decreased.

4. Neither Mr. Stephens nor Mr. Heath, testifying on behalf of the employer, can point to any reason other than his injury as to why his hours have decreased.

5. There is no reason, other than the injury, why Mr. Stephens earns less money now.

6. Mr. Stephens limits his activities now, but the limitations do not prohibit him from doing the type of work he did at the time of the injury.

7. I infer from findings 4, 5, and 6 that the employer has not demonstrated that the decrease in earnings is a result of any fault of the plaintiff or because of any neutral reason.

CONCLUSIONS

1. John Stephens sustained a work-related injury on August 9, 2007. He gave due and timely notice of this injury.

2. As a result of the injury, John Stephens was not temporarily totally disabled.

3. John Stephens has a permanent disability rating of 13% which is 13% impairment under the AMA Guides multiplied by 1.0, the factor contained in KRS 342.730.

4. John Stephens has a 12th grade education which allows for no enhancement of benefits under KRS 342.730(1)(c)3.

5. On the date of injury John Stephens was 42 years of age which allows for no enhancement of benefits under KRS 342.730(1)(c)3.

6. Because John Stephens does retain the physical capacity to perform the type of work performed at the time of the injury, the benefit for permanent partial disability shall not be multiplied by three pursuant to KRS 342.730(1)(c)1.

7. Because John Stephens has returned to work at an average weekly wage equal to or greater than the average weekly wage at the time of the injury and has ceased that employment, the benefit for permanent partial disability shall be multiplied by two pursuant to KRS 342.730(1)(c)2 because the employer has not demonstrated of any fault of the plaintiff or

because of any neutral reason for the decrease in earnings.

8. It is the plaintiff's burden to establish that he has returned to work at a wage equal to or exceeding his average weekly wage and that his wages have been reduced to a wage less than his average weekly wage. He has carried that burden.

9. It is the employer's burden to establish that the cause of the reduction is the fault of the plaintiff or is the result of some neutral cause. In this case, it is the employer's burden to show the reason that the plaintiff's wages are reduced. The employer's proof fails in this burden.

Triangle filed a petition for reconsideration arguing the ALJ erred in imposing upon it the burden of demonstrating the cause of the reduction in wage. Triangle argued in its petition, as it does on appeal, it has the burden of proof only with respect to affirmative defenses, and asked that the claim be "reanalyzed based upon a correct rule of law." The ALJ denied the petition for reconsideration by order entered on January 27, 2012. This appeal followed.

In our original decision, we determined the ALJ failed to provide an explanation or analysis regarding why Stephens was not entitled to the additional enhancing

multiplier, and the claim was remanded to him to provide an explanation for his determination. As we noted, the ALJ, while not required to perform a detailed fact finding, was required to make findings sufficient to inform Stephens of the basis for his decision which would allow for meaningful review on appeal. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). We further stated the ALJ's decision may in fact be correct, but we were not permitted to engage in fact-finding. *See* KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

Rather than providing the basis for his determination as directed, the ALJ reversed course, awarded the 2 multiplier, and improperly shifted the burden of proof to Triangle. Except for affirmative defenses, none of which are present in this claim, Stephens bore the burden of proving each of the essential elements of his claim, Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979), including entitlement to the 2 multiplier.

Again, whether the ALJ awards the 2 multiplier pursuant to KRS 342.730(1)(c)2, is his prerogative, but he must perform the appropriate analysis and provide his basis

for doing so. He is not permitted to shift the burden of proof.

Since the ALJ failed to comply with our previous instructions, we must again vacate and remand his decision. On remand, the ALJ, must make a determination regarding whether KRS 342.730(1)(c)2 is applicable, and the reason for that determination. Triangle does not bear the burden of proving the "cause of the reduction in wage". This burden rests with Stephens. On remand, the ALJ must provide his determination, based upon the appropriate analysis, and likewise provide an adequate explanation regarding his decision as to whether Stephens is entitled to the additional multiplier.

Accordingly, the ALJ's decision rendered December 29, 2011, as well as the order ruling on the petition for reconsideration dated January 27, 2012 are hereby **VACATED** and **REMANDED** for further proceedings consistent with the views expressed in this opinion.

ALL CONCUR.

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