Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 15, 2015

CLAIM NO. 201166743

TRIM MASTERS, INC. PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

EVA BETH ROBY and
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
REVERSING & REMANDING

* * * * * *

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

ALVEY, Chairman. Trim Masters, Inc. ("Trim Masters") appeals from the Amended Opinion and Order on Remand rendered January 15, 2015 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"), and from prior decisions he rendered on August 11, 2014 and February 14, 2014. The ALJ found Eva Beth Roby ("Roby") permanently totally

disabled due to a cumulative trauma injury to her right upper extremity, and awarded temporary total disability ("TTD") benefits, permanent total disability ("PTD") benefits and medical benefits. He also referred Roby to the Department of Vocational Rehabilitation for a vocational evaluation.

This is the fourth time this claim has been appealed to this Board. Trim Masters argues the award of PTD benefits should be vacated and the claim remanded to the ALJ to enter an award of permanent partial disability ("PPD") benefits. Because the ALJ has failed to comply with the previous direction of this Board, and has failed to support his decision with substantial evidence, we reverse the award of PTD benefits, and remand for entry of an award of PPD benefits.

The facts of this claim have been recited on multiple occasions and we adopt our previous summary found in the January 3, 2014 Opinion Vacating and Remanding, reflected in our opinion entered December 5, 2014, as follows:

> Roby filed a Form 101 on November 26, 2012 alleging a gradual onset of right upper extremity symptoms caused by her work which she reported to Trim Masters on April 22, 2011. Roby testified by deposition on February 15, 2013 and at the hearing held April 24, 2013. Roby

resides in Bloomfield, Kentucky and was born on July 8, 1977. Roby is right hand dominant. She graduated from high school in 1995 and is currently enrolled as a full-time student at Saint Catherine College pursuing a Bachelor of Science degree in Nursing, with the goal of becoming a pediatric nurse.

Roby testified her work history includes working as a cashier, a waitress, and assembly line worker. She worked on several lines before being moved to the Paccar department in 2005 or 2006, which makes door panels for trucks. Roby testified she sprayed glue onto a part, placed the part in the oven, transferred it to a table to edge fold, stapled it and placed it in a rack. The door panels weighed between five and ten pounds and other parts weighed less. Roby stated her job did not involve heavy lifting, but required constant repetitive movement and some overhead work.

Roby stated a few weeks prior to April 22, 2011, she began experiencing pain throughout her right arm and elbow when gripping. Her symptoms gradually worsened to the point she experienced radiating pain from her thumb to her elbow when she squeezed the handle of either the stapler or glue gun. On April 22, 2011, she reported her symptoms to her employer.

Roby then sought treatment with Dr. Charles Parrish at Bardstown Ambulatory Center and Dr. Thomas Gabriel at Specialty Orthopaedics. Dr. Parrish placed her wrist in a splint, recommended home exercises and placed restrictions on her right arm. He also ordered physical therapy and administered a cortisone shot in her right elbow. Although Roby initially

improved, her symptoms worsened when she was released to full duty. As a result, Roby was returned to light duty restriction with her right arm. Dr. Gabriel ordered an MRI and eventually performed right elbow surgery on October 20, 2011. He released Roby from his care on April 3, 2012 and permanently restricted her from repetitive movement and lifting over ten pounds with her right arm. Roby stated she retains full use of her left arm.

Roby stated she continues to experience pain radiating up her arm when she attempts to lift items such as a gallon of milk, and also has lack of grip strength. She records lectures at college because note taking causes pain. She also has difficulty with daily tasks requiring use of her right arm. Roby stated she currently takes over the counter Tylenol or Aleve and uses a TENS unit a couple of times per week.

Roby has not returned to work since October 2011. At the hearing, Trim Masters conceded Roby is physically incapable of returning to her former job. Roby stated she has applied for several other jobs since April 2011, but has been unsuccessful due to her restrictions. Roby stated she could probably perform a cashiering job similar to ones she has held in the past as long as she is not required to lift over her restricted amount. She is currently receiving unemployment benefits which she began drawing in April 2012, but is not required to actively look for work since she is in school. Roby receives tuition assistance through the Kentucky Vocational Rehabilitation program and the “WIA program” from the unemployment department.

> Roby stated she had spoken to various nurses, counselors and teachers who agree she could perform pediatric nursing duties within her restrictions since very little lifting is required. Roby stated she plans to complete her Bachelor's degree in 2015.

We also summarized the reports and medical records of Drs. Thomas Gabriel, Charles Parrish and Warren Bilkey, as well as the vocational reports prepared by William Ellis and Paula R. Shifflett.

In the original May 13, 2013 opinion, the ALJ stated he found Dr. Bilkey's assessment of impairment most persuasive and found Roby sustained a 6% permanent impairment rating due to her work-related cumulative trauma. He then found Roby permanently totally disabled after considering "the severity of the plaintiff's work injury, her age, her work history, her education, the sworn testimony of the plaintiff and the very persuasive medical opinions of Dr. Bilkey regarding her permanent impairment and occupational disability." The ALJ awarded TTD benefits, PTD benefits and medical benefits. He also referred Roby to the Kentucky Department of Vocational Rehabilitation for a vocational evaluation in accordance with KRS 342.710.

In an opinion rendered January 3, 2014, this Board vacated the ALJ's decision and remanded the claim for an analysis supporting his award of PTD benefits. After

setting forth the appropriate analysis required in determining whether an individual is permanently totally disabled pursuant to KRS 342.0011(11)(c) and (34), and Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48, 51 (Ky. 2000), we specifically stated as follows:

> We strongly emphasize, as we have on several occasions, a mere recitation of the factors set out in Ira A. Watson Department Store vs. Hamilton, supra, without linking those factors to the specific facts at hand is not an appropriate analysis of a claimant's entitlement to PTD benefits. The ALJ must set forth exactly how the severity of Roby's injury as well as how her age, work history, and education factored into his decision to award PTD benefits. This is especially true in light of the fact Trim Masters requested additional findings of fact regarding the ALJ's conclusory determination Roby is permanently and totally disabled.
>
> On remand, the ALJ is directed to conduct an analysis in accordance with both the statutory and case law referenced above and provide with more specificity the rationale supporting his determination Roby is permanently totally disabled due to her work injury. We note the ALJ summarily stated he relied upon Dr. Bilkey's opinion and Roby's testimony, but failed to identify specific testimony in support of his finding. Therefore, the Board and the parties are left to guess what portions the ALJ relied upon in reaching his decision. On remand, the ALJ is further directed to specifically address the factor of education and discuss how Roby's current schooling and nursing

> aspirations factor into his decision. Although there may be substantial evidence in the record supporting the ultimate determination Roby is permanently and totally disabled, the ALJ must provide an adequate explanation of the basis for his decision. This Board may not, and does not direct any particular result because we are not permitted to engage in fact-finding. *See* KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

In the February 14, 2014 Amended Opinion and Order on Remand, after citing to the definitions of injury and permanent total disability contained in his previous opinion, the ALJ determined Roby was permanently totally disabled, stating as follows:

> In this case, I saw and heard the plaintiff Ms. Roby testify at the Final Hearing. I carefully observed her facial expressions and voice tones during her testimony. I also carefully observed her body language during her testimony. I make the factual determination that she was a credible and convincing lay witness. I make the factual determination that Ms. Roby has continuing and very painful permanent work-related injuries to her right upper extremity and that she is right hand dominant. It is uncontradicted that Ms. Roby last worked at any job on October 20, 2011, which is more than two years ago. She is now in early middle age. She received her high school diploma many years ago and has no college degree and absolutely no specialized or vocational training or education. Her work history has consisted of employment at factories,

restaurants and at Wal-Mart. The defendant admitted that Ms. Roby is not physically capable of returning to her former job at the defendant's plant. Since leaving her employment with the defendant, she has applied for other jobs, but has not been able to obtain employment due to the permanent physical restrictions placed upon her by Dr. Gabriel. I make the factual determination that the medical evidence from Dr. Bilkey was persuasive and compelling. His diagnoses were that Ms. Roby sustained a 4-22-11 work injury to her right elbow, a forearm strain injury in response to repetitive upper extremity work and that she acquired medial and lateral epicondylitis and that she has undergone a surgical release of the lateral epicondylitis with residual chronic elbow pain and impaired grip. Dr. Bilkey stated that those diagnoses were due to the plaintiff's work injury on April 22, 2011. Dr. Bilkey stated that the permanent physical restrictions placed on Ms. Roby by Dr. Gabriel were appropriate and were the result of her April 22, 2011 work injuries and that those permanent restrictions preclude Ms. Roby from being able to resume the usual work duties which she successfully carried out before April 22, 2011. Dr. Bilkey stated that under the AMA Guides, Fifth Edition, Ms. Roby will sustain a permanent 6% whole person impairment due to her April 22, 2011 work injuries. William Ellis, a vocational expert, stated in his report that he reviewed multiple medical records dealing with Ms. Roby over a period of more than one year and that those medical records showed that she had pain levels of at least 7 and 8 on a 1-10 pain scale and that there were notations in those medical records that she had increased pain level on any

> type of exertion, which pain would inhibit her use of her right arm. Mr. Ellis stated that it was his opinion that based upon Ms. Roby's inability to use both hands, it was his opinion that she is now 100% vocationally disabled and that she will need to get her pain level under control and get the use of her right elbow before she can consider vocational rehabilitation.
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> Based upon the above factual determinations, including the plaintiff's very credible and convincing lay testimony, and the persuasive and compelling expert evidence from Dr. Bilkey and Mr. Ellis regarding Ms. Roby's permanent impairment and occupational disability, I make the factual determination that she cannot find work consistently under regular work circumstances and work dependably. I, therefore, make the factual determination that she is permanently and totally disabled.

The ALJ also referred Roby for a vocational rehabilitation evaluation pursuant to KRS 342.710, relying on her testimony, Dr. Bilkey's report and Mr. Ellis' vocational report. The ALJ further stated as follows:

> I also noted that Ms. Roby is now a student at St. Catherine's College and wants to get her Bachelor's Degree in pediatric nursing. If she receives vocational rehabilitation to assist her in obtaining her nursing degree, it is reasonably probable that she will obtain employment for which she is physically capable and that she will obtain regular gainful employment as a nurse, thereby entitling the defendant

> to move to reopen the case based upon a change of condition under KRS 342.125.

No petition for reconsideration was filed, and Trim Masters appealed the February 14, 2014 Amended Opinion and Order on Remand. It argued the award of PTD benefits is not supported by substantial evidence, and the ALJ ignored the Board's directive to specifically address how Roby's current schooling and nursing aspirations factored into his decision.

The Board again vacated and remanded to the ALJ in an opinion rendered July 3, 2014, finding he did not comply with the directive provided by the Board. We stated as follows:

> Because the ALJ's analysis is not in accordance with the directive we provided in the January 3, 2014, opinion, we vacate the determination Roby is totally occupationally disabled and the award of PTD benefits. In our previous opinion, we directed that in performing the analysis concerning Roby's occupational disability the ALJ must address how the nature of Roby's injury, her age, work history, and education factors into the award of PTD benefits. As our opinion was not appealed, it is the law of the case.
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> On remand, with respect to Roby's age and education, the ALJ merely stated she was early middle age, had attained a high school diploma many years ago, and had not attained a college degree or any specialized training or education. The ALJ did not discuss further Roby's age

or education in reaching his decision that Roby was totally occupationally disabled. Rather, the ALJ stated he relied upon Roby's testimony, the opinions of Dr. Bilkey and Mr. Ellis, the vocational expert, in determining Roby was permanently totally occupationally disabled. Consistent with the directive in Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000), the ALJ must consider Roby's age, work history, and education. Roby is relatively young, and although she only has a high school education her testimony reveals she had spoken to various nurses, counselors, and teachers who agreed that in spite of her physical restrictions she could perform the duties of a pediatric nurse. Consequently, it was Roby's plan to obtain a bachelor's degree in 2015. That testimony rebuts Mr. Ellis' answer to question four which reads as follows:

> In order for Ms. Roby to return to the job market, would you agree that Ms. Roby is a good candidate for vocational rehabilitation?
>
> I feel that Ms. Roby would have to get her pain level under control and get the use of her right elbow, before she can consider vocational rehabilitation.

In spite of Mr. Ellis' statement, Roby is already engaging in vocational rehabilitation as she is enrolled in college pursuing a nursing degree.[1]

[1] We note that Roby represents in her brief to the Board that after the ALJ's decision she was not admitted to the program for which she applied and there is no way of knowing whether she will be able to complete the program let alone actually work as a pediatric nurse limited to the use of her non-dominant hand. The facts supporting that representation are not in evidence, and therefore should have no bearing on the ALJ's decision.

> In short, the ALJ has failed to address Roby's age and education level and how both factor into the resolution of the issue of the extent of her occupational disability. Particularly, the ALJ has failed to directly address the education Roby is obtaining at St. Catherine's College and its bearing on the determination of whether she is totally occupationally disabled. Further, characterizing Roby's age as "early middle age" does not provide any insight as to how her age factors into the consideration of her occupational disability.
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> Because the ALJ's did not address the significance of Roby's age, her education, and the fact she is in college striving to obtain a nursing degree, the February 14, 2014, decision determining Roby is totally occupationally disabled and awarding PTD benefits must be vacated and the claim remanded for an analysis consistent with our opinion of January 3, 2014.

The Board declined to remand the claim with directions to find Roby is permanently partially disabled as requested by Trim Masters since the ALJ, as fact-finder, must determine the extent of her occupational disability.

In the second Amended Opinion and Order on Remand rendered August 11, 2014, the ALJ set forth the same procedural history, stipulations, contested issues, and summary of the evidence contained in the first amended opinion on remand. The ALJ repeated Roby sustained a work-

related cumulative trauma injury warranting a 6% impairment rating based upon Roby's testimony and the opinion of Dr. Bilkey, which is not in dispute. The ALJ awarded PTD benefits, and provided the following analysis:

> The parties stipulated that Ms. Roby last worked back on October 20, 2011, which is now almost 3 years ago. At the Final Hearing the defendant's attorney conceded that Ms. Roby does not retain the physical capacity to return to the job she was performing for the defendant. The defendant's attorney further conceded that Ms. Roby is probably a poster child for vocational rehabilitation benefits. Dr. Gabriel placed upon Ms. Roby permanent physical restrictions of no lifting over 10 pounds with her right arm and no repetitive use of her right arm. Dr. Bilkey agreed with those permanent physical restrictions. I make the factual determination that Ms. Roby has stringent permanent physical restrictions which essentially make her a one-armed worker, since she is limited to using her subservient left hand and arm. Ms. Roby is now 37 years of age and I make the factual determination that her age places her in early middle age for purposes of re-employment in the highly competitive job market.
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> I reread the vocational report of William Ellis dated March 5, 2013. He stated that Ms. Roby's current limitations and restrictions in essence limit her to one-handed duty. Mr. Ellis noted that the plaintiff's medical records show high pain levels with increased pain on any type of exertion. Mr. Ellis noted that the plaintiff's pain level continues even

though she has a brace on her right elbow. Mr. Ellis noted that the plaintiff's pain level would inhibit her use of her dominant right arm. Mr. Ellis noted that the plaintiff's permanent restrictions preclude her from returning to any of her past relevant work. Mr. Ellis stated that in his opinion Ms. Roby's inability to use both hands in combination with her higher pain level will make her 100% vocationally disabled. Mr. Ellis stated that in his opinion Ms. Roby's one-handed duty status precludes her from employment until her retraining is completed. I make the factual determination that the vocational evidence from Mr. Ellis is very persuasive and compelling.

I note that Ms. Roby received her high school diploma many years ago and has no college degree and absolutely no specialized or vocational training or education. All of these factors negatively impact her re-employability. Her work history has consisted of jobs at factories, restaurants and at Wal-Mart. I note that since leaving her employment with the defendant, Ms. Roby has applied for other jobs, but has not been able to obtain any employment due to the permanent physical restrictions placed upon her by Dr. Gabriel. Dr. Bilkey agreed that that the stringent permanent physical restrictions placed on Ms. Roby by Dr. Gabriel were appropriate and were the result of the plaintiff's April, 2011 work injuries, and that said permanent physical restrictions preclude Ms. Roby from being able to resume the usual work duties which she successfully carried out before her 2011 work injuries.

"'Permanent total disability' means the condition of an employee who, due to an

injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury . . . ." Kentucky Revised Statutes (KRS) 342.0011. To determine if an injured employee is permanently totally disabled, an ALJ must consider what impact the employee's post-injury physical, emotional, and intellectual state has on the employee's ability "to find work consistently under normal employment conditions . . . . [and] to work dependably[.]" *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48, 51 (Ky. 2000). In making that determination,

> "the ALJ must necessarily consider the worker's medical condition . . . [however,] the ALJ is not required to rely upon the vocational opinions of either the medical experts or the vocational experts. A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured."

Id. at 52. (Internal citations omitted.) See also, *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979).

I again make the factual determination that Ms. Roby has continuing and very painful permanent work-related injuries to her right upper extremity and that she is right hand dominant. I again note that it is uncontradicted that Ms. Roby last worked at any job on October 20, 2011, which is almost 3 years ago. Since leaving her job with Trim Masters, she has applied for multiple jobs, but has not been able to obtain employment in the highly competitive job market due to the stringent

> permanent physical restrictions placed upon her by Dr. Gabriel.
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> Based upon all of the above factual determinations, including Ms. Roby's very credible and convincing lay testimony, as noted above, and the persuasive and compelling medical evidence from Dr. Bilkey, as noted above, and the persuasive and compelling vocational evidence from Mr. Ellis, as noted above, I make the factual determination that the plaintiff cannot find work consistently under regular work circumstances in the highly competitive job market and work dependably. I, therefore, make the factual determination that she is permanently and totally disabled. All of the above-cited factors led me to that determination.

The ALJ repeated his analysis regarding vocational rehabilitation, and referred her to the Department of Vocational Rehabilitation for an evaluation. He again stated as follows:

> I make the above determination based upon the plaintiff's credible and convincing lay testimony and the persuasive and compelling expert evidence from Dr. Bilkey and Mr. Ellis, all of which is summarized immediately hereinabove. I also noted that Ms. Roby is now a student at St. Catherine's College and wants to get her Bachelor's Degree in pediatric nursing. If she receives vocational rehabilitation to assist her in obtaining her nursing degree, it is reasonably probable that she will obtain employment for which she is physically capable and that she will obtain regular gainful employment as a nurse, thereby entitling the

> defendant to move to reopen the case based upon a change of condition under KRS 342.125.

No petition for reconsideration was filed. On appeal, Trim Masters again argued an award of PTD benefits is not warranted in this case. It also argued the ALJ's conclusion "it is 'reasonably probable' that Ms. Roby will find work precludes a finding that she is Permanently Totally Disabled." Trim Masters argued the proper remedy for Roby is provided by the provisions of KRS 342.730(1)(c), and it did not dispute the fact she is entitled to the three multiplier. Trim Masters urged the Board to find, based upon the evidence of record the award of PTD benefits is not in conformity with the provisions of Chapter 342. It argued a remand for additional findings of fact was unnecessary, and requested the claim be remanded with instructions to enter an appropriate award of PPD benefits.

Roby disagreed arguing the award of PTD benefits is supported by the evidence. It argued the Board does not have the authority to grant the remedy requested by Trim Masters. However, she argued a remand would be unproductive and submits "the appropriate outcome would be for the Board to uphold the ALJ's decision and allow the

Petitioner to proceed with an appeal to the Court of Appeals if desired."

In the decision entered by this Board on December 5, 2014, we stated as follows:

> For a second time, the ALJ has ignored the Board's explicit and clear directives outlined in the Board's July 3, 2014 opinion vacating and remanding. In our July 3, 2014 opinion, the Board specifically stated:
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> > Particularly, the ALJ has failed to directly address the education Roby is obtaining at St. Catherine's College and its bearing on the determination of whether she is totally occupationally disabled. Further, characterizing Roby's age as "early middle age" does not provide any insight as to how her age factors into the consideration of her occupational disability.
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> > Because the ALJ's did not address the significance of Roby's age, her education, and the fact she is in college striving to obtain a nursing degree, the February 14, 2014, decision determining Roby is totally occupationally disabled and awarding PTD benefits must be vacated and the claim remanded for an analysis consistent with our opinion of January 3, 2014. (emphasis added).
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> It is clear the ALJ considered Roby's restrictions imposed by Dr. Gabriel and agreed to by Dr. Bilkey, the vocational report of Mr. Ellis and Roby's continuing symptoms. However, once again in the second opinion on remand,

the ALJ failed to comply with the Board's directions, and did not address how Roby's current enrollment at St. Catherine's College to obtain a nursing degree factored into his ultimate conclusion of permanent total disability. Nor did the ALJ address Roby's testimony other nurses, counselors and teachers agreed she could perform pediatric nursing duties within her restrictions since very little lifting is required. In addition, the ALJ repeated Roby is "early middle age" for purposes of re-employment in the highly competitive job market. Again, we note this characterization does not provide any insight into how her age factors into the consideration of her disability.

Although both parties would disagree, the proper remedy for this continuing deficiency is to once again remand the claim to the ALJ for additional findings of fact. The ALJ is directed to specifically address Roby's age and the education Roby is obtaining at St. Catherine's College in pursuit of a pediatric nursing degree, and its bearing on the determination of whether she is totally occupationally disabled. The fact the ALJ mentions Roby's current schooling in his analysis regarding vocational rehabilitation benefits does not cure his deficient analysis regarding entitlement to PTD benefits. While repeated remands of this claim is a disservice to both Roby and Trim Masters, the ALJ simply must comply with the directions of this Board and perform the analysis requested to support his award.

Therefore, the claim is vacated and remanded for a third time. Those portions of the August 11, 2014 Amended Opinion and Order on Remand by Hon.

> William J. Rudloff, Administrative Law Judge, finding Roby permanently totally disabled and awarding PTD benefits are **VACATED**. This claim is **REMANDED** to the ALJ for entry of an amended opinion and award in conformity with the views expressed herein.
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> The dissent stated as follows:
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> The ALJ has had three opportunities to adequately articulate his reasoning in awarding permanent total disability benefits, and has failed to address all relevant factors. I do not believe it is in the interest of judicial economy to remand this case for further fact finding. While the evidence establishes Roby suffered a serious injury, I do not believe the ALJ has identified substantial evidence to support an award of permanent total disability benefits. I would reverse.

We are once again confronted with the ALJ's award of PTD benefits to Roby. Again the ALJ has failed to comply with the direction of this Board. On remand, the ALJ merely reissued his previous decision, underlining certain portions and adding two changes. On Page 11 of his opinion, the ALJ stated as follows:

> The Board noted in its Opinion that the plaintiff admitted that other nurses, counselors and teachers agreed that she could perform pediatric nursing duties within her restrictions since very little lifting is required. However, there is no expert vocational evidence in the record so stating. In addition, there is no expert evidence that the plaintiff completed a college nursing program or qualified as a pediatric

> nurse. That uncontradicted evidence supports a determination of permanent total disability. As noted above, Ms. Roby is now 37 years of age, and I make the determination that she is now in early middle age, which, taking into consideration that she has not worked at any job for 3 years, supports a determination of permanent total disability.

On page 13 of his opinion the ALJ stated as follows:

> In making the determination that Ms. Roby is permanently totally disabled, I weighed all of the numerous above-specified factors in reaching the ultimate conclusion. I weighed all of the pertinent lay and medical evidence and made findings of fact and then determined the legal significance of those findings.

As noted by the ALJ, as fact-finder, he has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's

total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

That said, KRS 342.285 (2)(d) & (e) state as follows:

> (2) No new or additional evidence may be introduced before the board except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling, or award, but the board shall otherwise hear the appeal upon the record as certified by the administrative law judge and shall

> dispose of the appeal in summary manner. The board shall not substitute its judgment for that of the administrative law judge as to the weight of evidence on questions of fact, its review being limited to determining whether or not:
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> > (d) The order, decision, or award is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record;
> >
> > Or
> >
> > (e) The order, decision, or award is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

After having been afforded the opportunity to do so on multiple occasions, the ALJ has failed to provide more than mere conclusory statements in determining Roby is permanently totally disabled. Regarding the impact of Roby's college enrollment, the ALJ merely stated there was no "expert testimony". Regarding Roby's age, the ALJ repeated the fact Roby is thirty-seven years of age, which he found to be "early middle age", again without explaining the impact, or how this supports his finding of PTD. The ALJ's statement Roby has not worked in over three years is based on an assumption since there is no such testimony in the record. The ALJ merely assumes Roby has not worked since the claim was initially taken under submission.

Authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, although he is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Min. Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Cmty. Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

We agree the ALJ was not required to discuss every shred of evidence which factored into his decision. However, after being directed to do so, and having been afforded the opportunity to provide some explanation for his reasoning, the ALJ has failed to explain how the fact Roby is now thirty-seven years of age translates into her being permanently totally disabled. Likewise, although directed to do so, the ALJ has failed to address how the fact Roby is attending college has factored into his reasoning.

The ALJ has failed to respond to the directive of this Board, and has only provided conclusory statements. Merely making conclusory statements without citation to supporting substantial evidence amounts to an abuse of

discretion. Abuse of discretion has been defined, in relation to the exercise of judicial power, as that which "implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." Kentucky Nat. Park Commission, ex rel. Comm., v. Russell, 301 Ky. 187, 191 S.W.2d 214 (Ky. 1945). Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 893 (Ky. 2007).

Because the ALJ has inexplicably failed to point to substantial evidence supporting his decision, the award of PTD benefits is hereby reversed. On remand, the ALJ is directed to make a determination regarding the extent of Roby's entitlement to PPD benefits. In arriving at this decision, we are not engaging in fact-finding. The ALJ has had multiple opportunities to cite to the evidence which supports his determination, and has been unable to do so.

As noted in the dissent from the December 5, 2014 opinion, it is not in the interest of judicial economy to remand this case for additional fact-finding regarding entitlement to PTD benefits. We note the evidence has established Roby sustained a serious injury, but the ALJ has failed to provide substantial evidence supporting an award of PTD benefits. However, clearly Roby is entitled to an award of PPD benefits. Therefore, we remand for the

ALJ to make an award of PPD benefits supported by the evidence.

Therefore, the finding Roby is permanently totally disabled and the award of PTD benefits by Hon. William J. Rudloff, Administrative Law Judge, in his decisions rendered May 13, 2013; February 14, 2014; August 11, 2014; and January 15, 2014 is hereby **REVERSED**. This claim is **REMANDED** to the ALJ for entry of an amended opinion and award in conformity with the views expressed herein.

ALL CONCUR.

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