Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 6, 2015

CLAIM NO. 201401342

TRIPLE D COMMUNICATIONS, LLC PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS**
ADMINISTRATIVE LAW JUDGE

GREGORY STACY
HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

RECHTER, Member. Triple D Communications, LLC ("Triple D") appeals from the May 26, 2015 Opinion, Award and Order and the June 29, 2015 Order on Petition for Reconsideration rendered by Hon. Jane Rice Williams, Administrative Law Judge ("ALJ"). The ALJ determined Gregory Stacy's ("Stacy") lumbar and thoracic spine injuries were caused by a January

9, 2014 work-related accident. On appeal, Triple D argues this conclusion is not supported by substantial evidence, and that the ALJ improperly disregarded the unrebutted testimony of the medical experts. For the reasons set forth herein, we affirm.

Stacy worked as a foreman for Triple D, a company which installs telephone and fiber-optic cables. On January 9, 2014, he was driving a company vehicle up a snowy road when it began sliding backwards. Stacy and his passenger, Russell Combs, jumped from the truck before it rolled back into a switchback. The vehicle was totaled.

Stacy testified he landed on his hip and low back when he jumped from the vehicle. He was not treated immediately after the accident. He continued to work after January 9, 2014, but he testified he experienced back pain on a daily basis thereafter. He further testified he modified his job duties somewhat to accommodate the pain, by performing less lifting and spending more time in his vehicle. He stated he did not complain of back pain to his supervisors because he feared he would lose his job.

On March 26, 2014, Stacy was riding in a work vehicle with Josh Nelson ("Nelson"). He began experiencing dizziness and slurred speech. Nelson testified Stacy began to sweat, twitch, and tense up. He opined Stacy was having

a seizure, and pulled the vehicle to the side of the road. Stacy then appeared to lose consciousness, and Nelson drove to the hospital. When they arrived at the hospital, Stacy regained consciousness but refused treatment. According to Nelson, he tried to convince Stacy to go into the hospital to no avail. Nelson then drove Stacy home and left him in the care of his brother-in-law.

Later, Stacy relented and visited the Hazard ARH Emergency Room. He reported he felt dizzy and faint during the incident, and had experienced back pain since the January 9, 2014 vehicle accident. He was admitted to the hospital and seen by his primary care physician, Dr. Amy Fowler. During his hospital stay, he was fitted with a CASH thoracolumbar orthotic and diagnosed with compression fractures involving T12-L1 and L2. He did not return to work after the March 26, 2014 incident.

Before the ALJ, Triple D advanced the theory Stacy's compression fractures were caused by the March 26, 2014 seizure episode. To this end, it presented testimony from several of Stacy's co-workers. Russell Combs, who was in the vehicle with Stacy on January 9, 2014, stated Stacy was scared after he jumped from the vehicle, but did not complain of back pain at the time. Combs also stated he worked with Stacy between January 9 and March 26, 2014, and

the work was physically demanding. He never heard Stacy complain of back pain, and did not notice him limp or in discomfort during that period.

Nelson also described the work at Triple D as physically demanding. He further stated he never heard Stacy complain of back pain following the January 9, 2014 incident. However, Stacy did complain of back pain when Nelson dropped him off at home following the March 26, 2014 incident.

Scott Hamrick is vice president of operations, risk management and safety at Triple D. He testified Stacy did not notify his employer of an injury following the January 9, 2014 incident. Stacy did not miss any work following this incident, either.

Ronnie Farmer ("Farmer") worked with Stacy between January 9, 2014 and March 26, 2014. Farmer described the work as physical and "hard". During this period, he saw Stacy dig trenches, operate a 75-pound latcher machine, and pull cable. Farmer did not personally witness the January 9, 2014 accident, but was nearby and went to the scene. According to Farmer, Stacy complained his hip hurt. Thereafter, Farmer did not recall Stacy again complaining of back or hip pain, and did not believe Stacy had modified his work duties.

Drs. Christopher Stephens and Jeffrey Uzzle performed independent medical evaluations. Dr. Stephens conducted a physical examination and received a history of the January 9 and March 26, 2014 incidents, as well as Stacy's medical records. He diagnosed compression deformities of L1, L2 and minimally at T12, as well as mild lumbar degenerative disease and facet arthritis. Dr. Stephens opined the March 26, 2014 incident was a seizure and caused Stacy's compression fractures. He explained acute compression fractures are very painful, and Stacy would not have been able to work uninterrupted for over two months thereafter.

Dr. Uzzle also conducted a physical examination, reviewed medical records, and received a history of the January 9 and March 26, 2014 incidents. In his written report, Dr. Uzzle indicated Stacy estimated the vehicle was moving at 30 miles per hour when he jumped from it. Stacy also indicated to Dr. Uzzle that he had suffered an apparent syncope episode rather than a seizure on March 26, 2014. Dr. Uzzle diagnosed compression fractures at T11, L1, and L2. He assigned a 13% whole person impairment pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition.

Dr. Uzzle was later deposed. He explained that he disagreed with Dr. Stephens' characterization of Stacy's compression fractures as "acute." Dr. Uzzle characterized the fractures as involving a "mild" loss of vertebral height. For this reason, he disagreed with Dr. Stephens' conclusion Stacy would have experienced significant pain immediately. In Dr. Uzzle's opinion, mild compression fractures can involve a gradual onset of increasing pain.

Dr. Uzzle was cross-examined extensively about the January 9, 2014 incident, primarily in an attempt to refute the history Stacy had provided Dr. Uzzle and thereby rebut his opinion as to causation. To this end, he was shown a video of the accident obtained from the vehicle's dashboard camera. Dr. Uzzle could not state for certain, based on the video, whether Stacy landed on his back when he jumped from the vehicle. He also was unable to confirm the speed at which the vehicle was moving. Dr. Uzzle explained, however, Stacy could develop compression fractures even if he had landed on his knees as opposed to his back.

Dr. Uzzle was also presented with the depositions of Stacy's co-workers, which indicated he continued to perform hard physical labor between January 9 and March 26, 2014. Finally, Dr. Uzzle was presented with Josh Nelson's description of the March 26, 2014 incident. He agreed the

description sounded like a seizure episode, but could not definitively confirm that conclusion.

Having been presented with these pieces of evidence, Dr. Uzzle was then asked:

> Q. Now, I guess the big question here, Doctor, is based on the video that we reviewed today which appears to show Mr. Stacy jumping out of the vehicle and landing in a standing or kneeling position. And based on the testimony that Mr. Stacy continued performing heavy duty work -- very heavy work for two-and-a-half months after this injury and did not even report that he was hurt, did not seek any treatment during that time. And based on this witness testimony of the March 26th event, which appeared to be a seizure or something similar. In your medical opinion, is it probable that Mr. Stacy sustained his compression fractures to the thoracic and lumbar spine that you diagnosed, do you think it's medically probable that those compression fractures were caused by the 3/26 event instead of the January 9th event?
>
> A. I don't know with certainty what caused the fractures. Certainly they could be due to this violent seizure type activity you have described from the other witness testimony. So I'm not able to say with reasonable certainty which of these events caused his fractures.
>
> Q. And just to be clear, I'm not asking you to testify to anything with certainty. The standard we are looking at here is a reasonable degree of medical probability. So that basically means in your expert medical opinion,

> which event is more probable, what's more likely than not.
>
> Now in your opinion from a medical point of view, is it more probably that Mr. Stacy sustained these compression fractures as a result of the March 26th event or is it more probable that he sustained them during the January 9th event?
>
> A. Based on the description you have described to me, it seems more probable it's the March 26th event.
>
> Q. Thank you, Doctor. And, of course, the seizure that was described by the witness, in your opinion --
>
> A. Presumed seizure.

Dr. Uzzle was questioned further on re-direct, and again expressed his skepticism of defense counsel's assumptions. He also stated his impairment rating remained unchanged.

The ALJ ultimately concluded Stacy had suffered a work-related injury to his back as a result of the January 9, 2014 incident. She explained:

> First it should be noted, while Defendant Employer has taken great effort to make a point that the truck was moving slowly when Plaintiff jumped out, the ALJ finds it impossible to determine from this information how much the speed of the vehicle would have contributed to the incident and is persuaded that a vehicle moving even slightly could lead to very serious injury. The evidence is that Stacy either hit the ground or the person

testifying could not make the determination because, as with Russell Combs, he did not see if Stacy hit the ground. Stacy's testimony is believable that he did hit the ground. Again, the impact could have been slight and still resulted in injury.

Next, there is testimony from Dr. Uzzle that if the events occurred on January 9, 2014 as were verbally described to him while counsel for Defendant Employer showed him the DriveCam video, it would appear he did not injure his back in a fall. However, Dr. Uzzle repeatedly qualified that this answer was based on Defendant Employer's account of what happened and assumptions of what occurred when Stacy could not be seen in the frame. Dr. Uzzle also said the testimony of the passenger would be important. After carefully reading his deposition, Dr. Uzzle could not conclude exactly which event, the fall or the seizure, caused the compression fractures.

Just like the statement "one can prove anything by the Bible," one can come to any conclusion from reading certain excerpts of Dr. Uzzle's deposition. But after reading the deposition in its entirety, Dr. Uzzle stated over and over that he simply could not determine with certainty which event resulted in the compression fractures. As the ALJ could not draw conclusions from the DriveCam video, neither would Dr. Uzzle.

Dr. Stephens' opinion is also a factor in determination. He stressed that the fall from the truck would not result in acute compression fractures and that Stacy would not have been able to work with acute compression fractures

> but he did not diagnose acute compression fractures, only mild.
>
> Finally, considering each event, admittedly, it is impossible to determine which event caused the back injury. Even if Stacy did not actually hit on the ground, it makes no sense to say the two minutes of twitching from a seizure created more impact than jumping from a moving vehicle onto a snowy embankment.
>
> The final determination is made based on the credible testimony of Stacy and the statement by the one coworker that yes, in fact, Stacy did complain of back or hip pain after the January 9, 2014 event and that Dr. Uzzle's final determination is that the January 9, 2014 event caused the compression fractures.

Triple D petitioned for reconsideration, which was summarily denied. On appeal, it challenges the ALJ's findings regarding causation. It first argues the ALJ's conclusions are not supported by substantial evidence. It also claims the ALJ exceeded her authority by determining that a seizure cannot cause compression fractures.

Triple D accurately states the ALJ ultimately relied upon Stacy's testimony, Farmer's testimony, and Dr. Uzzle's opinion to conclude the January 9, 2014 incident caused his back injury. However, it challenges each person's testimony. It first claims Stacy's subjective complaints are insufficient to establish medical causation.

We agree the causal relationship in this case is not apparent to a layperson and, therefore, the question of causation is properly within the province of medical experts. Mengel v. Hawaiian-Tropic Northwest & Cent. Distributors, Inc., 618 S.W.2d 184, 187 (Ky. App. 1981). However, we do not agree the ALJ relied exclusively on Stacy's testimony to establish causation. Rather, when read in context, it is clear the ALJ relied on Stacy's testimony for two points. First, she believed Stacy's testimony that he landed on his back when he jumped from the vehicle. Second, she found credible Stacy's assertion he experienced back pain between January 9 and March 26, 2014. An ALJ is permitted to rely upon a claimant's description of their own pain level. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979).

Furthermore, in her role as fact-finder, the ALJ is permitted to rely upon Ronnie Farmer's testimony. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993)(the ALJ has the sole authority to determine the weight, credibility, and substance of the evidence). Farmer stated Stacy complained of pain in his hip immediately following the January 9, 2014 accident. The ALJ stated, in her opinion, she relied upon "the statement by one co-worker that yes, in fact, Stacy did complain of back **or** hip pain after the January 9, 2014 event." (emphasis added). We acknowledge the discrepancy

which Triple D emphasizes: Farmer indicated Stacy complained only of hip pain, not back pain. In this regard, the ALJ's description of Farmer's testimony is somewhat inaccurate. However, we also note the ALJ used the word "or", not "and", as alleged by Triple D. Furthermore, we do not find this minor inaccuracy so material as to render any reliance upon Farmer's testimony wholly unacceptable. It is clear the ALJ is merely recognizing Stacy complained of some kind of pain following the incident.

The issue of Dr. Uzzle's testimony is more concerning. At the outset, we disagree with Triple D that Dr. Uzzle's testimony is unreliable because he did not receive an accurate history from Stacy. Stacy described the events of January 9 and March 26, 2014 to Dr. Uzzle as he perceived them. Triple D contested this characterization of the events via the dashboard camera video and Nelson's testimony, as was its prerogative. However, it never conclusively refuted Stacy's characterization of the events. It was unable to definitely establish what speed the vehicle was moving on January 9, 2014, whether Stacy landed on his back or his feet, or whether Stacy suffered a syncope episode versus a seizure. Furthermore, Dr. Uzzle was provided all of Stacy's medical records during the relevant period, and there was no allegation Stacy concealed relevant

records or other medical conditions. For these reasons, any analogy to the circumstances in Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004) is unfounded.

Moreover, we disagree with Triple D's assertion Dr. Uzzle completely retracted the opinion contained in his written report at his deposition. Dr. Uzzle was presented with new information: the dashboard camera video, the deposition of Josh Nelson, and the testimony regarding Stacy's work habits following the accident. Assuming all of defense counsel's assumptions are true, Dr. Uzzle concluded the March 26, 2014 event likely caused Stacy's compression fractures. However, Dr. Uzzle was clear throughout his deposition testimony that he did not necessarily agree with all of defense counsel's assumptions. He was not convinced Stacy suffered a seizure on March 26, 2014, he stated his belief Stacy's pain had a gradual onset, and he was unable to conclude how Stacy landed after jumping from the vehicle. For these reasons, we agree with the ALJ's statement that "one can come to any conclusion from reading certain excerpts of Dr. Uzzle's deposition."

For these reasons, we disagree Dr. Uzzle's report and testimony are unreliable and should be rejected, as Triple D asserts. The ALJ acknowledged Dr. Uzzle's testimony was somewhat contradictory, but concluded Dr.

Uzzle's "final determination is that the January 9, 2014 event caused the compression fractures." It is reasonable to conclude Dr. Uzzle did not agree with defense counsel's assumptions regarding the circumstances of the accident and Stacy's behavior thereafter, and therefore adhered to his ultimate conclusion that the compression fracture were casually related to the January 9, 2014 incident. It is not our function to superimpose our own appraisal of Dr. Uzzle's testimony. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999).

Triple D did not request further findings of fact in its petition for reconsideration or in its brief to this Board. Therefore, our review is limited to a determination as to whether the ALJ's opinion is based on substantial evidence. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). For the reasons set forth above, we believe the ALJ's opinion is supported by the requisite substantial evidence. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). The issue of causation was contested, and conflicting proof was presented. In her role as fact-finder, the ALJ is entitled to believe or disbelieve any portion of the proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000).

Finally, we disagree the ALJ assumed the role of medical expert by stating her doubt that "two minutes of twitching from a seizure created more impact than jumping from a moving vehicle onto a snowy embankment." This statement is simply the ALJ's articulation of her doubts regarding Dr. Stephens' opinion. As fact-finder, she is entitled to do so. Furthermore, as we have found her ultimate determination supported by substantial evidence, any alleged error is harmless.

For the foregoing reasons, the May 26, 2015 Opinion, Award and Order and the June 29, 2015 Order on Petition for Reconsideration rendered by Hon. Jane Rice Williams, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON. PIERRE COOLEN
300 E MAIN ST #400
LEXINGTON, KY 40507

COUNSEL FOR RESPONDENT:

HON. MCKINNLEY MORGAN
921 S MAIN ST
LONDON, KY 40741

ADMINISTRATIVE LAW JUDGE:

HON. JANE RICE WILLIAMS
PREVENTION PARK
657 CHAMBERLIN AVE
FRANKFORT, KY 40601