Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 7, 2014

CLAIM NO. 201298787

TRUSEAL TECHNOLOGIES, INC. PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

RHONDA BARNETT
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

ALVEY, Chairman. TruSeal Technologies, Inc. ("TruSeal") seeks review of the opinion and order rendered April 26, 2013, by Hon. Jonathan Weatherby, Administrative Law Judge ("ALJ"), awarding temporary total disability ("TTD") benefits, permanent total disability ("PTD") benefits, and medical benefits to Rhonda Barnett ("Barnett") due to a

combination of physical and psychological conditions resulting from her May 13, 2011 work injury. TruSeal also appeals from the order issued June 28, 2013, granting in part its petition for reconsideration, and denying the remainder as being a re-argument of the merits of the claim.

On appeal, TruSeal argues the evidence is insufficient to prove Barnett sustained a harmful change to the human organism caused by cumulative trauma in the workplace. TruSeal also argues Barnett does not have a work-related mental illness. Finally, TruSeal argues Barnett is not totally disabled due to the work-related injury. Because the ALJ's determination is in accordance with Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000), and is supported by substantial evidence, we affirm.

Barnett filed a Form 101 on June 22, 2013, alleging cumulative trauma injuries to her low back and right leg due to repetitive lifting. She also alleged she developed depression and anxiety due to the work-related injury. Barnett underwent a hemi-laminectomy and discectomy at L5-S1. Barnett's work history includes working for TruSeal from November 2010 through May 13, 2011 as a production operator. Her previous work includes employment

as a maintenance technician, scanner operator, assistant manager at a fast food restaurant, and as a patient's aide.

In support of the Form 101, she submitted records of Dr. Amr El-Naggar for treatment he rendered from October 3, 2011 through June 14, 2012. Dr. El-Naggar treated her for degenerative lumbar disk disease, low back pain and sacroilitis. He performed a hemi-laminectomy and partial facetectomy at L5-S1 on February 22, 2012. Barnett also submitted the April 2, 2012 record of Dr. Shelley Stanko for follow-up care after the low back surgery. She noted the ten pound lifting restriction imposed by Dr. El-Naggar.

Barnett testified by deposition on September 12, 2012, and at the final hearing held February 26, 2013. Barnett was born on July 23, 1956 and resides in London, Kentucky. She is a high school graduate, and has no specialized vocational training except for completion of some on-line courses for a previous employer.

Barnett testified her job with TruSeal consisted of nearly constant lifting in awkward positions. While generally she lifted thirty to seventy pounds, she also had to lift finished product which weighed in excess of one hundred pounds. Barnett stated she neither had back problems nor treatment for psychological problems before working for TruSeal, and had no restrictions prior to that

time. She had previously undergone unrelated heart surgery and catheterizations. She also had her gallbladder removed in the 1990s.

Barnett first noticed back problems in March 2011 when she felt tired and worn out at the end of the day. In the three weeks prior to May 13, 2011, she worked fifty-six to seventy-six hours per week. She experienced burning and numbness in her right leg and foot, as well as pain in her right big toe. She initially believed she might have gout, a condition suffered by her mother. She sought medical treatment at an urgent care center, and then followed up with her family physician, Dr. Stanko, and her cardiologist, Dr. Michael Jones, to see if her problems were circulatory. Dr. Stanko eventually advised she had a work-related back condition. In December 2011, her right foot and ankle became numb, causing her to fall which increased her pain. Dr. Stanko eventually referred her to Dr. El-Naggar.

Dr. El-Naggar initially ordered a series of epidural steroid injections ("ESI"). The first provided slight relief, but the second worsened her symptoms. He eventually performed surgery, which was paid for by her health insurer. The surgery did not improve her condition. The right leg pain initially resolved but subsequently returned. She also now complains of left leg symptoms, and

has difficulty climbing stairs or walking more than short distances. Barnett has not worked since May 13, 2011, and is unable to perform her job at TruSeal due to low back pain, leg pain and numbness. She takes multiple medications for her injury, including her physical, as well as her psychological complaints. She stated she also receives psychological counseling due to depression from being unable to care for herself.

Dr. El-Naggar, a neurosurgeon, testified by deposition on July 26, 2012. He first saw Barnett on October 3, 2011, who complained of low back pain which radiated to the right worse than left. She complained of a loss of sensation in her right lower extremity which she attributed to heavy lifting at work. He noted she had an unrelated pre-existing peripheral vascular disease. An MRI revealed disk bulging at L5-S1 for which he recommended physical therapy and ESI's. When the second ESI provided no relief, he scheduled Barnett for a hemi laminectomy and discectomy at L5-S1, which he performed on February 22, 2012. He saw Barnett on March 5, 2012, at which time she was doing well and neurologically intact. Her pain then worsened, more so on the left, and he ordered another MRI. On July 19, 2012, he advised Barnett to walk daily, and avoid lifting over twenty pounds. He also advised against

repetitive bending and twisting. He assessed a 12% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

In a report dated November 8, 2012, Dr. El-Naggar commented on reports from Dr. William Lester, and Dr. Russell Travis who examined Barnett at TruSeal's request. Dr. El-Naggar disagreed with both opinions, and stated Barnett had pre-existing dormant degenerative changes which were aroused into disabling reality due to the cumulative trauma she experienced at work from repetitive activity.

Barnett also filed records of Dr. Stanko for treatment from May 16, 2011 through November 2, 2011. On May 16, 2011, Dr. Stanko noted Barnett complained of right foot numbness and tingling after working twelve hour shifts for three weeks.

Barnett was evaluated by Dr. Dennis Sprague, Ph.D., on August 28, 2012. In the Form 107-P completed by Dr. Sprague, he noted Barnett had treated for depression in the past, which had resolved, and she was experiencing no symptoms at the time of her injury. He diagnosed major depressive disorder, generalized anxiety disorder, and pain disorder with psychological factors, all of which he attributed to her cumulative trauma work injury. He

assessed a 10% impairment rating pursuant to the AMA Guides, 2nd and 5th Editions.

In an undated supplemental report filed by Barnett on January 7, 2013, Dr. Sprague stated he did not ignore the impact of advanced coronary artery disease and peripheral vascular disease when making his determinations. He again stated Barnett had previously treated for depression, but it was under control, and she was feeling good at the time of her injury. He disagreed with the opinions expressed by Dr. David Shraberg who evaluated Barnett at TruSeal's request.

TruSeal filed records of Dr. Jones for treatment from February 18, 2010 through May 24, 2011. Those records reflect ongoing treatment for coronary artery disease and peripheral vascular disease. Dr. Jones noted swelling in the legs and left leg claudication. TruSeal also filed the December 22, 2006 note from St. Joseph Hospital reflecting treatment for hypertension and hyperlipidemia.

Dr. Lester examined Barnett at Truseal's request on September 1, 2011. He noted she first experienced right leg pain into her hip at home after completing her shift at TruSeal. He noted she continues to experience tingling and numbness, and now has pain in the left leg and hip. He noted a bulge at L5-S1, but no discernible injury. He detected no evidence of nerve root impingement or

radiculopathy. In an October 24, 2012 supplemental report, Dr. Lester stated he saw no evidence of injury, and Barnett did not sustain a cumulative trauma injury. In another supplemental report dated February 4, 2013, Dr. Lester again stated Barnett had no cumulative trauma to her back related to her employment.

TruSeal filed the October 6, 2012 records review report from Dr. Travis, who opined Barnett did not develop a cumulative trauma injury to her low back while working there. He assessed a 10% impairment rating pursuant to the AMA Guides, based upon the fact she had undergone surgery. He stated nothing would prevent her from returning to work at her previous job. He felt she needs psychiatric help, but not due to her alleged work-related injury. In a supplemental report dated December 19, 2012, Dr. Travis stated Barnett did not sustain a cumulative trauma injury while working at TruSeal.

Dr. Shraberg, a psychiatrist, examined Barnett on October 30, 2012. In his report, he diagnosed "mood disorder (depression and anxiety) associated with a general medical condition, pre-existent chronic severe coronary artery and peripheral vascular disease, and tobaccoism." He stated she falsely attributed pain to her job as a production operator at TruSeal which he stated was a "medium

physical demand job." He found no evidence of any accident or relationship of a psychiatric impairment associated with her employment at TruSeal. He disagreed with the opinions expressed by Dr. Sprague.

In the opinion rendered April 26, 2013, the ALJ relied upon the testimony of both Barnett and Dr. El-Naggar in determining she had sustained a work-related injury. He also determined she has a work-related psychological condition based upon Dr. Sprague's opinions. Based upon a combination of the physical and psychological conditions, the ALJ awarded TTD benefits from May 14, 2011 through March 4, 2012, and awarded PTD benefits thereafter. He also awarded medical benefits for the work-related injuries.

TruSeal filed a petition for reconsideration requesting the ALJ find it not responsible for non-work-related health conditions. It also requested the ALJ correct his findings which stated Dr. Lester was not a specialist. It also requested the ALJ correct his finding that Dr. Travis did not adequately support his conclusions. The remainder of the petition for reconsideration essentially reargued the merits of the claim.

In an order dated June 28, 2013, the ALJ amended paragraph sixteen on page sixteen of his decision as follows:

> The ALJ finds that the opinion of Dr. El-Naggar in this matter is more credible than the opinions of Dr. Lester or Dr. Travis who denies the existence of any cumulative trauma injury to the Plaintiff at all in the six months of employment with the Defendant but failed to adequately support that conclusion in the judgment of the ALJ.

In all other respects, the ALJ determined TruSeal's petition for reconsideration was merely a reargument of the claim, and therefore denied.

On appeal, TruSeal argues the evidence does not support the ALJ's determination Barnett sustained a work-related cumulative trauma injury while in its employ. TruSeal also argues Barnett does not have a work-related mental illness, and is not totally disabled due to a work-related injury.

Barnett, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of her cause of action, including the causation, work-relatedness, and extent of any disability. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since she was successful, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the

fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

The crux of this appeal concerns whether the ALJ's finding of a work-related injury, and award of PTD benefits is supported by substantial evidence. Authority has long acknowledged in making a determination granting or denying an award of PTD benefits, an ALJ has wide ranging discretion. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976); Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 219 (Ky. 2006). In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting a different outcome than reached by an ALJ, such is not an adequate

basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to determining whether the findings made are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, supra. The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

We find no merit to the argument the ALJ's decision is not supported by substantial evidence. The opinions rendered by Drs. El-Naggar and Sprague, as well as Barnett's own testimony clearly establish she had no active ongoing issues with low back pain or depression prior to the date of the accident. She had experienced some leg issues previously due to circulatory problems, but there is no evidence of any back problems subsequent to a lumbar MRI performed in 2004. Likewise, there is no evidence she had

any active problems with depression or anxiety while working for TruSeal.

After reviewing the evidence and the ALJ's decision, we conclude the ALJ's determinations are supported by substantial evidence. The ALJ's determination Barnett is permanently totally disabled was in accordance with the Kentucky Supreme Court's holding in Ira A. Watson Department Store v. Hamilton, supra.

Taking into account Barnett's age, education and past work experience, in conjunction with her post-injury physical status, along with the opinions of Drs. El-Naggar and Sprague, the ALJ was persuaded she is totally disabled due to the effects of the work-related injury. While Drs. Lester, Travis and Sprague express different viewpoints, the ALJ's determination is sufficiently supported by the record. Because the outcome selected by the ALJ is supported by substantial evidence, we are without authority to disturb his decision on appeal. *See* KRS 342.285; Special Fund v. Francis, supra. For that reason, we cannot say the outcome arrived at by the ALJ finding Barnett entitled to an award of PTD benefits is so unreasonable under the evidence the decision must be reversed.

We emphasize Barnett's testimony regarding her post-injury ability to work and her level of pain is

substantial evidence, as an injured worker's credible testimony is probative of his ability to labor post-injury. *See* Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979); *See also* Carte v. Loretto Motherhouse Infirmary, 19 S.W.3d 122 (Ky. App. 2000).

An ALJ's decision must effectively set forth adequate findings of fact from the evidence upon which his or her ultimate conclusions are drawn so the parties are reasonably apprised of the basis of the decision. However, he or she is not required to engage in a detailed explanation of the minutia of his or her reasoning in reaching a particular result. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973); Shields v. Pittsburg and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). Here, the ALJ's analysis was adequate to support his determinations. While TruSeal is able to identify evidence which could have supported a finding in its favor, such evidence is insufficient to require reversal on appeal.

Accordingly, the decision rendered April 26, 2013 by Hon. Jonathan Weatherby, Administrative Law Judge, and the order for reconsideration issued June 28, 2013, are hereby **AFFIRMED.**

ALL CONCUR.

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