**OPINION ENTERED: AUGUST 8, 2012**

CLAIM NO. 201189975

UNIVAR USA, INC. PETITIONER

VS. **APPEAL FROM HON. CHRIS DAVIS, ADMINISTRATIVE LAW JUDGE**

BRYANT GRUBB
and HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**AFFIRMING**

* * * * * *

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

**ALVEY, Chairman.** Univar USA, Inc. ("Univar") seeks review of the opinion, order and award rendered March 29, 2012 by Hon. Chris Davis, Administrative Law Judge ("ALJ") awarding Bryant Grubb ("Grubb") temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits based upon an 8% impairment rating, and medical benefits for

low back and right leg injuries sustained in a work-related accident on October 1, 2009. Univar also appeals from the order rendered May 7, 2012 overruling its petition for reconsideration.

On appeal, Univar argues the ALJ made incorrect findings of fact, resulting in erroneous conclusions, regarding the lack of pre-existing, active disability and compensable disability. It asks this Board to vacate the ALJ's findings. Univar argues the medical evidence does not support an injury occurring on October 2009. Likewise, it asserts no physician, including Dr. Ballard, either had a history of or assigned an impairment rating to the October 2009 injury. Univar argues the ALJ erred in finding Grubb had no pre-existing, active disability in light of medical records from March 2009 and the testimony of Dr. Bilkey. We affirm.

Grubb filed the Form 101 on September 14, 2011 alleging two injury dates. He first alleged on October 1, 2009, he injured his low back while employed by Univar when attempting to move a chemical drum on a skid. He next alleged injuries to his low back and right leg occurring on January 24, 2011, when he slipped and fell.

Grubb testified by deposition on November 16, 2010, and at the hearing held February 21, 2012. Grubb was

born May 3, 1965, and is a resident of Mount Washington, Kentucky. He completed high school and attended Auto Diesel College in Nashville, Tennessee. Grubb's work history includes work as a driver and mechanic. Grubb began working for Univar, a chemical company, in June 2005 or 2006 as a driver and material handler, and remained in such position until he was terminated on June 15, 2011. As a driver and material handler, Grubb testified he was responsible for driving, loading and unloading the truck. He was required to lift up to 100 pounds, break and tilt drums weighing up to 800 pounds, and break down and stack skids. Grubb testified he was fired because he could no longer physically perform his job, and he has not returned to any type of employment. He testified he has received unemployment benefits since August 2011.

At his deposition, Grubb testified prior to October 1, 2009 he had not suffered any type of injury, nor had he received any treatment for his low back. However, he later testified he received treatment for low back pain in March 2009, for what he described was a stretch or strain. At the hearing, Grubb testified on March 23, 2009, he pulled a low back muscle while lifting a 476 pound drum, for which he treated with Occupational Physician Services ("OPS") on only one occasion. His treatment there included a steroid

medication. Grubb testified his low back symptoms resolved and he did not miss any work due to the March 2009 accident.

Grubb testified that on either October 1 or 10, 2009, a drum came off a pallet. He was asked to assist in picking it up, and in the process he experienced back pain. Grubb testified he could not remember the exact date of the incident, but he notified his supervisor. Grubb did not seek immediate medical treatment because it was denied by his employer. After his pain worsened, he sought treatment from his family physician, Dr. Michael Steven Payne, who treated him for a back strain and prescribed a steroid medication. Grubb returned to Dr. Payne in January 2010 due to continued back pain. Dr. Payne recommended an MRI and epidural steroid injections ("ESI").

The epidural injections were performed in March 2010 at Jewish Hospital. Dr. Payne also prescribed Lortab for the pain, which Grubb testified he took on an as needed basis following the ESIs. Grubb testified he missed approximately six weeks of work due to the October 2009 accident, but did not receive workers' compensation benefits. He received short-term disability benefits from March through April 2010. Subsequently, he returned to the same position as a driver and material handler. He continued to work, with the help of medications, until

January 2011. Grubb also testified he mistakenly informed Dr. Ballard his injury date was August 2009, when he intended to say October 2009.

Grubb testified on January 24, 2011, he slipped on ice in the parking lot at Univar while working on his tractor and trailer, causing him to land flat on his back. He notified his supervisor, who took him to St. Mary's and Elizabeth's Hospital. At that time, his pain centered in his low back and right leg. Grubb testified an x-ray was performed and he was left on the medication he was already taking. He then went to Concentra, who treated Grubb with a steroid pack and physical therapy. After showing no improvement, Concentra referred him for a MRI, continued physical therapy and eventually referred him to Dr. Ballard. Dr. Ballard treated Grubb with physical therapy and performed a physical strength test. Dr. Ballard returned Grubb to work with permanent restrictions of no lifting over 30 pounds, bending, stooping, and squatting.

In support of the Form 101, Grubb attached a neurosurgical report dated April 28, 2011 by Dr. Gregory B. Nazar, who evaluated him for a pain in the superior aspect of his right buttocks. Dr. Nazar noted Grubb informed him he injured his back on January 24, 2011. He noted Grubb had not responded to Medrol, a TENS unit and physical therapy.

He also noted a previous back injury in 2009 where Grubb responded to ESIs, made good recovery and had no significant pain prior to the January 2011 injury.

Dr. Nazar noted an MRI performed on March 8, 2011 demonstrated a mild disc bulge at L5-S1 with slight degenerative changes. He noted no identifiable acute changes or disc herniation. Dr. Nazar diagnosed "soft tissue sprain/strain" and noted no radicular signs or symptoms. Dr. Nazar opined Grubb is not a candidate for ESIs, facet blocks or surgical intervention. He further noted Grubb might benefit from trigger point injections if his pain remained chronic and persistent. He recommended Grubb return to physical therapy for another three months before placing him at maximum medical improvement ("MMI"). He then referred Grubb to rehabilitation medicine.

Grubb submitted the records from Sts. Mary & Elizabeth Hospital dated January 24, 2011. Grubb was admitted to the emergency room after complaining of right low back pain after slipping on ice at work. The notes indicate Grubb had a history of three ESIs administered in March 2010. The notes also indicate Grubb had sustained a lumbosacral strain. Grubb also submitted the report of a lumbar spine MRI performed at Jewish Hospital dated February 10, 2010 which showed "mild L5-S1 degenerative disc disease

and mild diffuse posterior disc protrusion effaces only epidural fat."

Univar submitted records from Suburban Hospital dated June 11, 2004, indicating complaints of right flank pain radiating into the right lower quad. A CT-scan of the abdomen demonstrated a mild hydronephrosis and a pelvic CT-scan revealed a stone in the right ureter vesicular junction. On September 18, 2007, Grubb was admitted to the emergency room for left rib pain resulting from a four-wheeler accident occurring two weeks prior.

Univar also submitted a record from OPS dated March 24, 2009. Although mostly illegible, it noted a March 23, 2009 date of accident with complaints of low back pain. As a result of the accident, Grubb was diagnosed with lumbar strain and given work restrictions.

Grubb submitted Dr. Warren Bilkey's report dated August 11, 2011. Dr. Bilkey noted Grubb injured his low back at work on January 24, 2011, and was diagnosed with lumbosacral strain by the emergency room and Concentra. He noted current symptoms of low back pain radiating into the right leg, down to the knee. Dr. Bilkey also noted Grubb's past medical history which was "significant for a lift injury that occurred at work in approximately 2009" after he injured his low back attempting to lift a 55 gallon drum.

Grubb informed Dr. Bilkey he underwent ESIs, curing his back pain, and returned to full-duty work. Dr. Bilkey noted Grubb was taking pain medication prior to the January 2011 work accident. He also noted medical records indicated Grubb underwent three ESIs administered by Dr. Janson beginning in March 10, 2010. He also noted Grubb had been diagnosed with lumbar degenerative disc disease.

Dr. Bilkey diagnosed, "1/24/11 work injury, recurrent lumbar strain. Mr. Grubb has chronic low back pain and impairment." He explained Grubb had a previous history of lumbar strain occurring at work "in October 2009," for which he received ESIs, after which he was able to return to regular duty work with analgesic medication. Grubb then strained his back on January 24, 2011, aggravating his previous back condition.

Dr. Bilkey opined Grubb had an active impairment prior to the January 2011 work injury since he required ongoing medication. Dr. Bilkey opined his diagnosis was due to the January 24, 2011 work injury and Grubb had reached MMI. However, he recommended ESIs to the lumbar spine, and if those proved unsuccessful, he recommended chiropractic treatment. Dr. Bilkey restricted Grubb to no lifting over 30 pounds, repetitive bending and stooping. The restrictions were not necessarily permanent, but were caused

by the January 2011 work injury and would preclude him from resuming his usual work duties.

Assuming Grubb received no additional treatment, Dr. Bilkey opined he would qualify for the assessment of a permanent partial rating. He noted two options in assessing impairment pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Utilizing the DRE method, he assessed an 8% impairment rating. Utilizing the range of motion method, Dr. Bilkey assessed a pre-existing 5% impairment and an 18% current impairment, yielding a 13% impairment due to the January 2011 work injury. Dr. Bilkey opined the range of motion method is more appropriate in this case.

Dr. Bilkey testified by deposition on February 7, 2012 at Univar's request. He confirmed Grubb sustained a recurring lumbar strain/sprain on January 24, 2011. He stated Grubb had a pre-existing active impairment of 5% prior to the January 2011 injury pursuant to the DRE method. He clarified if the DRE method is utilized; he would give a 3% for the January 24, 2011, injury and a 5% for the first event, which he stated was a pre-existing active condition. When presented with records from OPS dated March 24, 2009, referencing a low back complaint, Dr. Bilkey testified

without any further information, it seems this is the point where Grubb began developing the 5% impairment.

Univar submitted the report of Dr. Ellen M. Ballard, who re-evaluated Grubb on June 1, 2011 for a history of low back pain. Dr. Ballard noted a history of back injury in August 2009, ESIs in March 2010, and hydrocodone since 2010 as prescribed by Dr. Payne. Grubb stated he injured his back at work on January 24, 2011 and treated at the emergency room and Concentra. Dr. Ballard noted current complaints of right leg and back pain, as well as weakness in his right leg. Concerning Grubb's injury and impairment rating, Dr. Ballard stated as follows:

> PLAN: He has been on narcotics from his family doctor since 2010. He continued to obtain that medicine that he was on prior to his January work injury from his family doctor. It is not specifically due to his 01/24/11 condition. I've recommended that he use these as permanent restrictions due to his underlying lumbar spine condition. He is at maximum medical improvement and should [sic] with a 30 lb. weight limit and no repetitive bending/stooping. I have no further recommendations for treatment.
>
> Based on the 5th Edition of the AMA Guides, he has an 8% impairment, DRE Category II, Table 15.3, page 384. He did have a pre-existing condition that was active.

In a letter dated July 18, 2011, Dr. Ballard was asked whether Grubb's permanent restrictions are due to his underlying spine condition. A handwritten "yes" appears next to the question. Dr. Ballard was also asked of the 8% impairment she noted with an active pre-existing condition, how much of the rating would she apportion to the pre-existing condition versus the work-related aggravation. A handwritten "100%" appears next to this question. Assuming the January 24, 2011 injury represents only a temporary aggravation of his pre-existing condition, Dr. Ballard was asked whether reaching MMI would have ended the temporary aggravation. A handwritten "yes" appears next to this question. It appears the letter was signed by Dr. Ballard and hand-dated on July 22, 2011.

Univar also submitted the medical report by Dr. M.G. Schiller dated December 1, 2011. Dr. Schiller noted a history of low back injury occurring on March 23, 2009 when he was seen by OPS, but was able to return to work. Grubb reported he strained his back in August 2009 at work, eventually requiring epidural blocks in March 2010, but was able to return to work. Dr. Schiller noted on January 24, 2011, Grubb slipped on ice landing on his right buttock for which he received medical treatment and physical therapy. He diagnosed lumbosacral strain as a result of January 24,

2011 fall. He opined Grubb had a pre-existing condition of back discomfort probably due to degenerative changes prior the January 2011 accident. Dr. Schiller also opined Grubb's prognosis should be good. However, he noted the amount of narcotic medication taken by Grubb would justify his continued pain complaints since it would allow him to continue to receive the medications.

Dr. Schiller opined the January 2011 accident caused an acute onset of lumbosacral strain. However, the injury was self-limiting, and should have resolved approximately three months after his visit with Dr. Nazar in April 2011. Dr. Schiller opined Grubb had reached MMI, and restricted him to lifting no more than thirty to forty pounds. He also opined Grubb should be able to return to work within those restrictions. Dr. Schiller recommended an EMG and a nerve conduction velocity study to rule out nerve root involvement. Assuming an EMG is done and is normal, pursuant to the AMA Guides, he would assess a 0% impairment rating.

In an opinion, award and order rendered March 29, 2012, the ALJ awarded Grubb TTD benefits, PPD benefits based upon a 8% impairment rating, and medical benefits for low back and right leg injuries sustained as a result of the work-related accident occurring on October 1, 2009. In

finding the October 1, 2009 incident resulted in a permanent, work-related injury, with no pre-existing, activity impairment, the ALJ stated as follows:

> The Defendant has presented no evidence that the Plaintiff did not give notice of the October 1, 2009 incident. The Plaintiff has testified that he gave notice the moment it happened. His testimony is unrebutted. Pursuant to the Board's holding in *Curtis Joslin v. Riverside Cemetery*, 2011-00107, as a matter of law I am precluded from finding notice was inadequate.
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> On the issue of pre-existing active disability I am in agreement with the arguments that the Plaintiff had a ratable low back injury prior to January 24, 2011. This is confirmed by the opinions of Dr. Ballard, Dr. Schiller and Dr. Bilkey, that part of the analysis is undeniable. However, I find no evidence in the record that the Plaintiff had any pre-existing, active disability or impairment prior to October 1, 2009. The record is devoid of any proof of seeking medical treatment prior to that date, proof of an accident or condition or proof of an impairment rating or any occupational disability. I find that the Plaintiff had no pre-existing active disability or impairment prior to October 1, 2009.
>
> Further, I find, based on the evidence as a whole that the October 1, 2009 incident resulted in a permanent, work-related injury. That injury resulted in an 8% impairment rating with a diagnosis of a low back strain. This finding is made in reliance on the opinion and report of Dr. Ballard.

I realize that Dr. Ballard did not specifically assign the 8% impairment rating to the October 1, 2009 date of injury. However, the evidence as a whole allows this conclusion. As noted the Plaintiff had no pre-existing, active disability or impairment rating. No other cause has been demonstrated. By the Plaintiff's own credible testimony and the medical records the incident on October 1, 2009 clearly occurred.

Given the above I can and do find that the October 1, 2009 incident resulted in a permanent work-related low back injury and an 8% impairment rating.

However, I also find that given the fact that the Plaintiff returned to work for well over one year following that incident, without limitations or modifications to his job duties that there is no basis to conclude that due to the effects of the October 1, 2009 date of injury that he retains any restrictions. Further, that he is not now working is not due to the October 1, 2009 date of injury but is apparently due to some other, vaguely defined, reason.

It is my conclusion that with regards to the October 1, 2009 date of injury he retains the capacity to return to the type of work done on the date of injury and that said date of injury and its effects is[sic] not why he is not now earning equal or greater wages than on the date of injury. As such he will receive no multipliers to his award.

As for the January 24, 2011 date of injury I find that, once again pursuant to the report of Dr. Ballard, that it resulted in only a temporary exacerbation of the Plaintiff's

> condition as it existed prior to January 24, 2011 and that it returned to its baseline state no later than July 2, 2011. I specifically find, in reliance on Dr. Ballard and Dr. Schiller, and supported by a fair reading of Dr. Nazar's opinion, that the January 24, 2011 incident resulted in no impairment rating and no permanent injury of any kind.
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> There being no impairment rating for January 24, 2011 and no permanent injury for January 24, 2011 a discussion of multipliers and medical benefits is moot. Regardless, again, I remain unconvinced that the Plaintiff's cessation of work is due to either date of injury and, since medical benefits are being awarded the issue of which date of injury is responsible is immaterial.

In its petition for reconsideration, Univar requested the ALJ make additional findings of fact regarding the issue of pre-existing active impairment, and his award of PPD benefits for the October 1, 2009 injury. Univar argued no physician found impairment due to that injury date. It also argued a pre-existing, active condition existed prior to October 2009 and pointed to the March 24, 2009 OPS record, Dr. Schiller's reference for prior back treatment in August 2009, and Dr. Bilkey's testimony Grubb's pre-existing impairment began developing in March 2009. It also asked for additional language to reflect Univar is to receive a credit for those periods of TTD benefits were paid where

Grubb was also receiving unemployment benefits. The ALJ overruled Univar's petition "in accordance with the Plaintiff's response and the fact the ALJ does not find a pre-existing condition within the Act."[1]

On appeal, Univar argues the "ALJ simply made incorrect findings of fact which led him to an incorrect conclusion regarding the extent of Mr. Grubb's pre-existing active disability; and consequent compensable disability" and requests his finding with regard to the October 2009 injury be vacated. In support of its argument, Univar states: 1) the ALJ had no medical evidence regarding the October 2009 injury; 2) no physician, including Dr. Ballard, had a history of or assigned an impairment to the October 2009 injury; and 3) Dr. Bilkey gave unrebutted testimony Grubb's pre-existing active disability was from March 2009 and found no impairment from October 2009. Citing to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004), Univar argues the ALJ based his findings upon an incorrect medical history.

Grubb, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential

[1] Regarding the credit issue, Grubb's response stated "the parties stipulated that the Plaintiff received [TTD] benefits from April 15, 2011 through July 2, 2011, but the unemployment benefits did not commence until August 2011" and therefore, Univar is not entitled to a credit.

elements of his cause of action, including causation/work-relatedness and extent and duration. KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Grubb was successful in his burden, the question on appeal is whether the ALJ's finding is supported by substantial evidence. 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).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of the 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). In that regard, causation is a factual determination for which an ALJ is vested with broad authority to decide. Dravo

Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2005). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof 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 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).

Univar merely points to conflicting evidence in support of its position and requests this Board re-weigh the evidence. This we cannot do. In the case *sub judice*, substantial evidence in the record exists to support the ALJ’s finding the October 1, 2009 incident resulted in a permanent, work-related low back injury and Grubb had no pre-existing active disability or impairment prior to the October 2009 incident.

The ALJ relied primarily upon the opinion of Dr. Ballard, as well as medical records and testimony of Grubb in finding the October 1, 2009 incident resulted in a

permanent, work-related low back strain injury. On June 1, 2011, Dr. Ballard noted a history of back injury in August 2009, with subsequent ESIs in March 2010, and hydrocodone usage since 2010. She also noted the January 2011 slip and fall and subsequent treatment. Dr. Ballard noted an underlying spine condition and recommended restrictions. She then assessed an 8% impairment rating pursuant to the AMA Guides, but did not relate it to a specific injury date. The ALJ acknowledged this, and pointed to other evidence in the record to support a finding of permanent injury as a result of the October 2009 incident.

The ALJ found Grubb's testimony to be credible. Grubb testified in October 2009, he injured his low back while picking up a heavy drum. He testified he eventually sought medical treatment from his family doctor and subsequently received ESI's in March 2010. Grubb testified he missed approximately six weeks of work and received short term disability benefits. He then returned to the same position at Univar as a driver and material handler, with the help of medication, until January 2011. Grubb also testified he was unsure of the exact injury date, and he mistakenly informed Dr. Ballard it to be August 2009, when he intended to say October 2009.

Dr. Nazar, in a report dated April 28, 2011, noted a previous back injury in 2009 where Grubb responded to ESIs, made a good recovery and had no significant pain prior to the January 2011 injury. On August 11, 2011, Dr. Bilkey also noted a past medical history which was "significant for a lift injury occurring at work in approximately 2009" after attempting to lift a 55 gallon drum. Grubb stated he underwent ESIs, which Dr. Bilkey confirmed with medical records from Dr. Janson dated in March 2010. Dr. Bilkey noted Grubb returned to work, but was taking medications for pain control prior to January 2011. Dr. Ballard and Dr. Schiller noted a history of back injury in August 2009, and ESIs in March 2010. In his deposition, Grubb explained he had gotten his dates confused and had intended to say October 2009.

We therefore believe substantial evidence supports the ALJ's finding of permanent injury due to the October 2009 accident.

Substantial evidence also supports the ALJ's finding Grubb had no pre-existing, active disability or impairment rating immediately prior to October 2009 and does not compel a contrary result. An employer is not responsible for a pre-existing active condition present at the time of the alleged work-related event. McNutt

Construction/First General Services v. Scott, 40 S.W.3d 854 (Ky. 2001). The correct standard regarding a carve-out for a pre-existing active condition is set forth by the Court of Appeals in Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007). In Finley, supra, the Court instructed in order for a pre-existing condition to be characterized as active, it must be both symptomatic and impairment ratable pursuant to the AMA Guides immediately prior to the occurrence of the work-related injury. The burden of proving the existence of a pre-existing active condition is on the employer. Finley, supra. Since Univar was unsuccessful in its burden, the question on appeal is whether the evidence compels a finding in its favor. Wolf Creek Collieries v. Crum, supra. "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). So long as any evidence of substance supports the ALJ's opinion, it cannot be said the evidence compels a different result. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Univar points to medical evidence showing Grubb visited OPS on March 24, 2009 for low back pain stemming from a March 23, 2009 accident and Dr. Bilkey's deposition testimony opining, in light of the OPS record and without

other information, Grubb's pre-existing condition began developing on this date. However, this again is merely conflicting evidence of a pre-existing, active disability prior to the October 2009 incident. Again, we find there is substantial evidence in the record to support a finding of no pre-existing, active condition and therefore cannot find the evidence compels a different result.

Grubb testified at his deposition he received treatment for low back pain in March 2009, describing it as a stretch or strain. At the hearing, he stated he pulled a low back muscle on March 23, 2009 while lifting a heavy drum. Grubb testified he went to OPS on one occasion, and was prescribed a steroid injection. Grubb testified his low back symptoms resolved, and he did not miss any work due to the March 2009 incident. The medical records submitted by Univar demonstrate Grubb treated with OPS only once for the March 2009 incident. We also note, Univar's own medical expert, Dr. Schiller noted a history of a low back injury occurring March 23, 2009, from which he missed no work.

Based upon the foregoing, we believe substantial evidence supports the ALJ's decision. Accordingly, the ALJ's March 29, 2012, Opinion, Award, and Order, and the May 7, 2012, Order overruling Univar's petition for reconsideration are hereby **AFFIRMED**.

ALL CONCUR.

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