OPINION ENTERED: April 5, 2013

CLAIM NO. 201168238

UNIVERSITY OF KENTUCKY PETITIONER

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

CASEY SALSMAN
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING
* * * * * *

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

STIVERS, Member. The University of Kentucky ("UK") seeks review of the October 18, 2012, opinion and order rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"), finding Casey Salsman ("Salsman") sustained a work-related lumbar injury and awarding permanent partial disability ("PPD") benefits and past medical benefits. UK

also appeals from the November 29, 2012, "Opinion and Order on Reconsideration" overruling its petition for reconsideration.

On appeal, UK maintains the evidence establishes Salsman was not injured within the scope of his employment and takes issue with the ALJ's order directing briefs to be filed prior to the hearing.

There is no dispute Salsman sustained a lumbar injury on the work premises as a result of being thrown into the wall by a co-employee, Jeremiah Wiley ("Wiley"), on November 12, 2011. Further, all physicians who examined Salsman believed pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), the injury caused a significant impairment.

Salsman testified at a June 29, 2012, deposition and at the September 7, 2012, hearing. Salsman started working for UK approximately five or six months prior to the incident at work. He "answered the phone, transferred calls, and remedied tickets." His department handled all calls to UK and its hospital. He worked first shift and Wiley worked the second shift. On November 12, 2011, Salsman was seated at his desk talking on the telephone when the second shift personnel, including Wiley, arrived.

Wiley clocked in and was sitting “a couple of desks down from [him].” Salsman began talking with Wiley about his shift change. Salsman had sent an e-mail to his boss, Ben Ratliff (“Ratliff”), requesting a change from second shift to first shift because he “wanted more time for [his] regular life.” He asked Wiley if he had received an e-mail about Salsman’s shift change. Salsman told Wiley he had heard from another co-worker that Wiley and others had seen or received the e-mail. Wiley responded he did not know what he meant. Wiley then asked Salsman if he would talk to him “out in the hallway real quick.” Salsman agreed because his shift was ending. Salsman explained he finished what he was doing and Wiley had “logged in” and was “on his e-mails.” Both men walked out of the office into the hallway of McVey Hall where they worked. Salsman testified Wiley immediately started screaming at him and had a blank stare on his face. Salsman asked Wiley if he was okay and what was wrong. Wiley responded he did not know what was going on with Salsman and became irate and used profanity. Salsman testified he could not understand what Wiley was saying because he was screaming and using profanity. Salsman stated there was no reason for Wiley to be mad. Salsman explained his conversation was not an attack on Wiley and he was not mad about the fact Wiley had

seen the e-mail. He guessed Wiley had gotten the e-mail because Salsman had seen the e-mail on Wiley's computer. Wiley grabbed him and threw him into the wall. Salsman denied touching or screaming at Wiley. Upon hitting the wall, he fell to the floor in immense pain. Wiley told him he had just gotten his life together and Salsman was not going to ruin it. Salsman testified he did not know what Wiley was talking about. Salsman testified he was injured for no reason.

After Salsman got up and went into the office, Wiley was still screaming. Because all the supervisors were gone, Salsman called Ratliff and told him what occurred. Salsman went to the emergency room at UK the next day because he was in pain. He was subsequently treated by Dr. Harry Lockstadt.

Salsman denied having any previous problems with Wiley and testified that in the past he and the whole shift, including Wiley, had gone out to eat or get a drink.

Salsman's hearing testimony did not vary significantly from his deposition testimony. He emphasized again he had no previous problems with Wiley, had not threatened Wiley, and had no idea why he was attacked.

At the hearing, Wiley testified he had worked at UK for approximately a year before this incident. He

explained his department managed all the calls to UK and its hospital. He considered Salsman to be an acquaintance and a friend prior to the physical altercation. Like Salsman, he acknowledged he and Salsman had “hung out” with co-workers a couple of times. Wiley testified Salsman was fun when he was off work, but “edgy” at work. Wiley acknowledged he and Salsman had no previous problems or incidents.

Wiley testified he had “clocked in” and was sitting at his work station. As Salsman was walking over to “clock out,” he made a “random kind of snide comment” to Wiley “kind of under his breath.” After Salsman clocked out and was walking toward Wiley, he asked Salsman what he said and Salsman repeated the statement. Wiley stated the remark referred to an e-mail and was “kind of accusatory in tone.” Wiley could tell the e-mail “was something that was bothering Salsman.” He explained there were no supervisors present, and in order to keep the other two co-workers out of the “drama” he asked Salsman if he wanted to go in the hall and talk. Salsman agreed, and both men went out into the hall.

In the hall, Salsman stated Wiley had received an e-mail from their boss about Salsman switching shifts which appeared to upset Salsman. Wiley testified that at first

he was unaware of what Salsman was talking about, but then remembered a couple of weeks earlier he had received an e-mail that Salsman was switching from second to first shift. Wiley told Salsman if that was the e-mail about which he was talking, he had no control over who sent the e-mail to him. Wiley testified he and Salsman kept going back and forth and it appeared Salsman wanted to "get into an altercation" and kept pressing the issue. Wiley testified he tried to talk reasonably to Salsman but it did not seem that anything either of them could say would help. Both individuals raised their voices and got in "each other's faces." Because Salsman was in his face and had "this look in his eyes," Wiley was frightened. Since Wiley believed if he did not do something Salsman was about to physically harm him, he grabbed Salsman with both hands and shoved him back away from his face. Salsman "fell into the wall behind him, and then down to the floor." He asked Salsman if he was okay and Salsman did not respond. Salsman refused his help when Wiley extended his hand to try to help him up. Wiley returned to the office, and Salsman eventually came back in the office. Wiley believed Salsman was attempting to garner support from his two co-workers because he was asking if they had heard or seen what had happened. A co-worker asked Salsman to leave because he

was off the clock, had initiated the situation, and did not need to be there.

Wiley testified Salsman had made him feel a little uncomfortable in the past because it seemed as though he “was snapping if somebody didn’t help him right away.” On another occasion he felt uncomfortable when he was riding in the car with Salsman, and Salsman showed him a gun located in his car.

On cross-examination, Wiley acknowledged the e-mail he received from Ratliff was work-related and pertained to Salsman’s request for a shift change. Wiley also acknowledged he might have told Salsman he had just gotten his life in order, and Wiley was not going to let him ruin it. The following exchange took place:

> Q: Okay. When Mr. Salsman was in the office and asked you about the e-mail, was he raising his voice? Was he yelling?
>
> A: No.
>
> Q: So he came to you and asked you about an e-mail, and you invited him to step out into the hallway?
>
> A: Uh-huh.
>
> Q: And the result of that was that you pushed him against the wall, injuring him?
>
> A: (Moved head up and down).

> THE REPORTER: Is that a “yes”?
>
> MR. DARBY: You need to say “yes” or “no.”
>
> JUDGE RUDLOFF: You have to say “yes” or “no.”
>
> A: I don’t know if I injured him. I mean, I can’t speak to that. I am not a doctor.
>
> Q: You pushed him against the wall, was the result of the –
>
> A: I mean, I wasn’t trying to push him against the wall.
>
> Q: But you did push him?
>
> A: Right.
>
> Q: And he did hit the wall?
>
> A: Right. Yeah.

In the October 18, 2012, opinion and order, the ALJ summarized Salsman and Wiley’s testimony as follows:

> The plaintiff **Casey Salsman** testified that he sustained a work-related back injury on November 12, 2011 as a result of being attacked by a co-employee, Jeremiah Wiley. The evidence was that the plaintiff had sent an e-mail prior to the date of injury to Ben Ratliff, his supervisor, regarding a change of work schedule. On November 12, 2011, as the plaintiff prepared to leave work, he saw a copy of that e-mail in Mr. Wiley’s e-mail box. He asked Wiley about the e-mail and Wiley asked the plaintiff to step outside into the hall. The plaintiff had already clocked out. Wiley became angry and threw the plaintiff against a

> wall, causing pain in Salsman's back. The plaintiff reported the incident to his boss and received medical treatment for his back pain. Both the plaintiff and Wiley were terminated by their employer as a result of the incident. The plaintiff's job was mostly a sitting job as a telephone operator.
>
> **Jeremiah Wiley's** testimony at the hearing was substantially consistent with the plaintiff's testimony regarding the assault incident.

In his finding of fact and conclusions of law, after citing a portion of the decision in Carnes v. Tremco Mfg. Co., 30 S.W.3d 172 (Ky. 2000), the ALJ concluded Salsman sustained a work-related injury finding as follows:

> Based upon the totality of the evidence, including the testimony of both the plaintiff Salsman and Jeremiah Wiley, I make the factual determination that the circumstances and conditions of their employment contributed to the assault and that the assault was work-related and, therefore, compensable.

Relying upon the impairment rating of Dr. Gregory Snider, the ALJ determined Salsman had a 21% permanent impairment pursuant to the AMA Guides, 5% of which was a pre-existing active impairment. Consequently, Salsman had a 16% impairment as a result of the work injury. The ALJ determined Salsman was not entitled to temporary total disability ("TTD") benefits. With respect to Salsman's

entitlement to future medical benefits, the ALJ stated as follows:

> However, based upon Dr. Snider's persuasive medical report, I make the factual determination that he will not require future medical treatment.

The ALJ awarded PPD benefits based on the 16% permanent impairment and ordered Salsman shall recover from UK and/or its insurance company:

> for the past cure and relief of any effects of the work injuries, medical, surgical, hospital treatment, including nursing, medical or surgical supplies and appliances as were reasonably required by the injury.

UK filed a petition for reconsideration asserting as follows:

> Plaintiff was off the clock at the time of the altercation, he initiated the argument and there is no evidence that the email had any thing [sic] to do [sic] work. Therefore the altercation was not within the scope of employment.

Significantly, UK did not request additional findings of fact or a more extensive summarization of the testimony of Salsman and Wiley. Similarly, it did not raise as error the ALJ's summary of the testimony of Salsman and Wiley. Rather, it requested the ALJ to reconsider his award and dismiss the claim. In the November 29, 2012, opinion and order overruling the petition for reconsideration, after

citing various legal authorities, the ALJ stated the opinion and order comprehensively discussed the contested issues raised by the parties and the opinion and order was reaffirmed.

On appeal, UK asserts the ALJ "undertook a minimalist review of law" regarding the workplace assault. It maintains the ALJ's entire review of work-relatedness and causation is comprised of one statement in the findings of fact and conclusions of law. UK argues there was no reference to Salsman being off work and on his own time, to horseplay, to the police report, or "to anything." It also argues that in failing to make any findings relating to the fact Salsman was off the clock and on his own time, the ALJ referenced the wrong law. After conceding the ALJ correctly cited to Carnes v. Tremco Mfg. Co., supra, UK argues as follows:

> However, *Carnes*, *Larson's* and the cases they rely upon as foundation all deal necessarily with an individual being injured or killed while working, or in other words, on the clock. The Respondent was undoubtedly off the clock and on his own personal time when the workplace assault took place. The Administrative Law Judge and his perfunctory decision does not in any material way address this issue.

Citing portions of the holdings in Meuth Concrete v. Kindle, ---S.W.3d---, 2012 WL 6652815 (Ky. App. 2012)

and Arnold v. Toyota Motor Mfg., 375 S.W.3d 56, 61-62 (Ky. 2012), which discussed the requisite contents of an ALJ's opinion, UK argues as follows:

> The one sentence finding made by the Administrative Law Judge as to work-relatedness/causation does not meet either of these aforementioned standards. Simply parroting the workplace assaults standard and *Larson's* does not apprise the parties of the basis for his decision or provide reasonable assurance to the Petitioner that the ALJ's decision was a product of a thorough and accurate understanding of the evidence. Nor does this parroting of these standards summarize the conflicting evidence, state any substantive basis for the ALJ's *pro forma* finding, or provide an evidentiary basis whereby the Board can determine whether the finding is supported by substantial evidence and reasonable.
>
> Therefore, the Respondent respectfully requests the Board vacate the decision of the Administrative Law Judge rendered October 18, 2012 and remand this matter for further findings.

Next, UK argues the ALJ failed to comply with 803 KAR 25:010 (18)(2) since he ordered briefs to be submitted prior to the final hearing which was highly prejudicial. It asserts "in a case where the facts are still fluid," ordering briefs to be filed prior to the final hearing is "counterintuitive and highly irregular." It maintains when briefs are ordered, they "may be ordered" after the

hearing. Thus, ordering briefs to be filed prior to the final hearing "is not contemplated by the statute and constitutes reversible error." Therefore, remand is necessary for further proceedings.

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). An 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). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). Although a party may note evidence that would have supported a different outcome than that 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 function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). 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 in UK's argument the ALJ failed to adequately address the evidence regarding the work-relatedness of Salman's injury. The ALJ's summary of the testimony, although brief, is an accurate summary of Salsman's testimony. Certainly the ALJ could have gone into more detail in summarizing Wiley's testimony. However, it appears Wiley and Salsman agree on the sequence of events leading up to the assault and the fact Wiley grabbed Salsman and shoved him. Although Wiley's testimony

indicates Salsman was the aggressor, he does not dispute that he and Salsman had gotten along prior to November 12, 2011. Wiley, like Salsman, testified the dispute solely related to an e-mail between Salsman and their supervisor which was forwarded to Wiley.

Significantly, in its petition for reconsideration, UK did not argue the ALJ's summary of the testimony of Salsman and Wiley was inaccurate or incomplete. Even though UK maintained Salsman was off the clock, started the argument, and the e-mail was not related to work, it did not request additional findings of fact regarding these assertions or any other issue in dispute.

The ALJ summarized Salsman's testimony and indicated Wiley's testimony was not much different. He then found that based on the testimony of Salsman and Wiley, Salsman's employment contributed to the assault; therefore, the assault was work-related. In the findings of fact and conclusions of law, the ALJ was not required to again summarize the testimony of Salsman and Wiley in determining Salman's injury arose out of his employment.

Similarly, we find no merit in UK's assertion the ALJ referenced the wrong law in this case. In Carnes v. Tremco Mfg. Co., supra, the Supreme Court stated:

> KRS 342.0011(1) provides that a compensable injury must arise 'out of' and 'in the course of' the employment.
>
> . . .
>
> Larson, *Larson's Workers' Compensation Law* (2000 Edition), indicates that a workplace assault which results from a private quarrel may be viewed as arising from the employment if but for the conditions and obligations of the employment, the assault would not have occurred. *Id.* at § 8.02(2). A workplace assault which has its origins in a private relationship may be viewed as compensable where the employment environment facilitated or contributed to causing an assault which would otherwise not have occurred. *Id.* at § 8 02(3). For example, although personally motivated, an assault on a night security officer or a taxi driver, an assault which results from friction produced while the assailant and victim are working in close contact, an assault on an individual for whom it is a risk inherent in the employment, or an assault with a weapon from the workplace may be viewed as work-related. *Id.* at § 8.02(3)(a)-(e). However, Larson recognizes that even where two workers meet on the job, if they choose to enter into a purely private relationship, and in the course of that private relationship have a private quarrel, the quarrel may well be viewed in the same manner as a domestic quarrel brought to the employment. *Id.* at § 8.02(2).

Id. at 175.

The record establishes the physical altercation causing Salsman's injuries was not the result of a private

quarrel. Rather, the testimony of Salsman and Wiley establishes the assault occurred as a direct result of Salsman's employment, and but for actions taken during his employment the assault would not have occurred. The entire argument between Salsman and Wiley related to an e-mail Salsman previously sent to his supervisor requesting a shift change and the fact the e-mail was forwarded to Wiley. Wiley acknowledged Salsman made a snide comment as he was walking past him to clock out which led Wiley to ask Salsman to repeat his remark after Salsman had clocked out. Thereafter, a discussion ensued and the parties left the room and went out into the hall. The testimony of both men reveals the conversation in the hall was directly related to the work-related e-mail. Depending on which version the ALJ accepted, one or both of the individuals raised their voice. However, there is no dispute that as a direct result of the discussion concerning the work e-mail, Wiley threw Salsman into the wall, injuring him. Similarly, the medical testimony establishes Salsman sustained fractures in the lumbar region of his back as a result of being thrown into the wall. Thus, the ALJ did not err in relying upon Carnes v. Tremco Mfg. Co., supra, in concluding the evidence established Salsman's injury arose out of and in the course of Salsman's employment.

Consistent with the Supreme Court's holding in Carnes v. Tremco Mfg. Co., supra, the case *sub judice* involved an assault which resulted from friction produced while the assailant and victim were working in close contact. Id. at 175. In that regard, there is absolutely no evidence this altercation and assault was caused by something which occurred outside the workplace. Rather, the entire altercation centered around an e-mail which was sent during work by Salsman and a later discussion at work between Wiley and Salsman concerning the e-mail. Consequently, we find UK's assertion in its petition for reconsideration that the e-mail in question had nothing to do with work to be totally unfounded.

Similarly, UK's assertion Salsman was off the clock and on his personal time when the workplace assault took place is unconvincing as it does not attempt to explain the significance of this fact. Here, both individuals acknowledged their conversation began when they were at work and on the clock. After Salsman clocked out, the parties continued their discussion and later stepped outside the room and into the hallway of the building in which they worked. The fact Salsman had clocked out at some point during the sequence of events is irrelevant. The problem started while both parties were at work, the

dispute never left the office building, and it terminated at the workplace.

In Bill Church Painting Co. Inc. v. Blankenship, WCB Claim No. 2008-74367, rendered August 20, 2012, Blankenship fell while climbing a fence in an attempt to leave his work area after his shift ended. The ALJ determined the injury was work-related, and the Board affirmed stating as follows:

> Even if we did not find the ALJ was constrained to find a work-related injury, the record contains evidence to support a finding the accident was within the operating premises exception to the going and coming rule. We believe our jurisprudence interpreting the "going and coming" rule and its various exceptions, including operating premises and the "positional risk" doctrine, sufficiently addresses the legal issue raised on appeal. Clearly, Blankenship would not have been in a position of risk but for his employment with Church. *See* Corken v. Corken Steel Products, Inc., Ky., 385 S.W.2d 949 (1965) (setting out the "positional risk doctrine"). His injury was not the result of exposure to a risk common to the streets. *See* Kaycee Coal Co. v. Short, Ky., 450 S.W.2d 262 (1970) (relying on Corken, supra, and setting out the "street risk" doctrine). The ALJ's conclusion is sound. Church attempts to define the operating premises as the interior of the school. We believe the "operating premises" includes the entirety of the school property.

In King v. Lexington Herald-Leader, 313 S.W.2d 423 (Ky. 1958), the Court noted as follows:

> Where a workman suffers an accidental injury at a place within the building or structure or plant where he is expected or is expressly or impliedly permitted in going to or from his immediate spot of active labor, he is within the protection of the Workmen's Compensation Act. If he is injured by a hazard existing or occurring there, the resulting disability is compensable. This, of course, takes into consideration not only the actual doing of the man's work but also allows a reasonable margin of time and space necessary to be used in passing to and from the point where the work is to be done. The hazards encountered on the working premises are in the zone of his employment.

In the case *sub judice,* there is no indication Blankenship was on a personal mission at the time of his injury. He was simply attempting to exit the locked area of the worksite at the end of his workday. There was no evidence of a delay in his leaving the worksite, nor was there evidence he was engaged in any activity of a personal nature. He utilized the closest means of egress apparently available to him at the time. Blankenship's testimony indicates he did not perceive a risk in climbing over the gate since he routinely jumped off scaffolding in his work as a painter.

We believe Blankenship to be applicable in the case *sub judice*. Here, Salsman's shift was ending, he was not on a personal mission, and he had been requested by Wiley to step outside the room and into the hall of the building in which they worked. There was no evidence of a delay in leaving the work site, and but for Wiley's invitation, in all likelihood Salsman would have left the building immediately after clocking out.

Therefore, since the testimony of Wiley and Salsman constitute substantial evidence in support of the ALJ's decision, and UK did not raise any objection to the ALJ's summary of the testimony of the individuals in question and the sufficiency of his findings of fact in the petition for reconsideration, the decision of the ALJ with respect to causation must remain unaltered. Further, although brief, the ALJ's summary of the testimony of Salsman and Wiley and his findings of fact sufficiently apprised the parties of the basis for his decision. Consequently, this Board has no authority to disturb the decision of the ALJ on this issue. Special Fund v. Francis, supra.

We find no merit in UK's argument reversal is necessary due to the ALJ's failure to comply with 803 KAR

25:010(18)(2). 803 KAR 25:010(18)(2) and (4) reads as follows:

> Section 18. Hearings
>
> > (2) At the conclusion of the hearing, the claim shall be taken under submission immediately or briefs may be ordered.
> >
> > (4) The administrative law judge may announce his decision at the conclusion of the hearing or shall defer decision until rendering a written opinion.

803 KAR 25:010(18)(2) states the ALJ <u>may</u> order briefs to be filed. In addition, 803 KAR 25:010(18)(4) permits the ALJ to announce his decision at the conclusion of the hearing without permitting the parties to file briefs. We acknowledge there is no provision in the regulations regarding the filing of a position statement. However, we believe the ALJ has the discretion to order the parties to file a position statement at the time of the hearing as an aid in his decision-making. The ALJ's April 23, 2012, order directed the parties to file and serve a position statement at the final hearing and did not address the filing of briefs after the hearing. More importantly, UK did not object to the ALJ's order. Further, a review of the transcript reveals the ALJ requested a brief argument

from each party and UK failed to request permission to file a brief post-hearing.

Finally, this Board is permitted to *sua sponte* reach issues even if unpreserved. KRS 342.285(2)(c); KRS 342.285(3); George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004). Because the ALJ found Salsman had a permanent impairment as a result of the injury but refused to award future medical benefits, we *sua sponte* vacate the ALJ's award of medical benefits. Although neither party raised this issue on appeal, KRS 342.285 clearly grants the Board the authority to decide questions of law regardless of whether they are raised on appeal. Within the Board's province on appeal is to assure orders and awards of an ALJ are in conformity with Chapter 342. In this case, the ALJ's award is not in conformity with the law.

KRS 342.020(1) provides that "[i]n addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury . . . the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability." In FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the Supreme Court instructed that KRS 342.020(1)

does not require proof of an impairment rating to obtain future medical benefits, and the absence of a functional impairment rating does not necessarily preclude such an award.

Unquestionably, Salsman has a functional impairment rating as a result of his injury. This Board has consistently held that a worker who has established a work-related impairment rating has also established a disability for purposes of KRS 342.020 and need prove nothing else to receive an award of future medical benefits. We interpret the Supreme Court's holding in FEI Installation, Inc. v. Williams, supra, to mean that where there is evidence of a permanent impairment rating in accordance with the AMA Guides, as a matter of law it is error for an ALJ to rule broad-spectrum and prospectively that future medical care is unreasonable and unnecessary, notwithstanding nonspecific expert medical testimony to the contrary. In such circumstances, pursuant to KRS 342.020(1), a general award of future medical benefits is mandated, and as noted by the Court: "[u]nder 803 KAR 25:012; Mitee Enterprises v. Yates, 864 S.W.2d 654 (Ky. 1993), an employer is free to move to reopen an award to contest that reasonableness or necessity of any medical treatment and also whether the need for treatment is due to

the effects of the injury." FEI Installation, Inc. v. Williams, at 319.

Since the ALJ's determination Salsman will not require future medical treatment and his award of medical benefits only for the past cure and relief of any effects of the injury is error, the matter must be remanded to the ALJ for an award of future medical benefits in conformity with the statute.

Accordingly, those portions of the October 18, 2012, opinion and order and the November 29, 2012, opinion and order on reconsideration finding Salsman sustained a work-related injury and awarding PPD benefits are **AFFIRMED**. Those portions of the October 18, 2012, opinion and order and the November 29, 2012, opinion and order on reconsideration awarding past medical benefits only are **VACATED**. This matter is **REMANDED** to the ALJ for entry of an amended opinion and order containing an award of future medical benefits.

ALVEY, CHAIRMAN, CONCURS.

SMITH, MEMBER, NOT SITTING.

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