# Commonwealth of Kentucky
# Workers' Compensation Board

**OPINION ENTERED: July 22, 2016**

CLAIM NO. 201358587

WAL-MART STORES, INC. PETITIONER

VS. **APPEAL FROM HON. UDELL B. LEVY, ADMINISTRATIVE LAW JUDGE**

STACY GOBLE
HON. UDELL B. LEVY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**AFFIRMING**

* * * * * *

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

**ALVEY, Chairman.** Wal-Mart Stores, Inc. ("Wal-Mart") appeals from the Opinion, Award and Order rendered November 2, 2015 by Hon. Udell B. Levy, Administrative Law Judge ("ALJ"), awarding Stacy Goble ("Goble") permanent total disability ("PTD") benefits and medical benefits for injuries to his low back, cervical spine, left shoulder and

right knee sustained on December 3, 2013. Wal-Mart also appeals from the December 9, 2015 order on petition for reconsideration.

On appeal, Wal-Mart argues the ALJ erred in finding Goble permanently totally disabled. Wal-Mart also argues the Board should remand the claim for supplemental findings addressing Goble's suitability for vocational rehabilitation and whether his participation in such a program should be required. Because substantial evidence supports the ALJ's award of PTD benefits, and because the ALJ's order for a vocational rehabilitation evaluation comports with KRS 342.710, we affirm.

Goble filed a Form 101 alleging he injured his knees, neck, low back and hip on December 3, 2013, when his right knee gave out causing him to slip as he was unloading a trailer. Goble disclosed he had previously injured his right knee in October 2011 while working for Wal-Mart.

Goble testified at depositions on June 9, 2014 and May 21, 2015. He also testified at the final hearing held September 3, 2015. Goble was born on June 22, 1974, and resides in Prestonsburg, Kentucky. Goble is a high school graduate, and at his deposition, he testified he had attended two semesters of college. At the hearing, Goble indicated he attended community college for two years

without earning a degree. Goble has no specialized or vocational training.

Goble worked for Food City from 1991 through 1997. He began by pushing buggies and loading carts, and later stocked shelves. He was eventually promoted to night shift assistant manager and subsequently to night shift manager. When he was in charge of unloading merchandise from trucks, he was constantly on his feet.

Goble began working for Wal-Mart in 1991 where he worked as a grocery department manager for nine to ten years. His job required him to constantly be on his feet. He reset shelves and lifted items weighing up to fifty pounds. Goble was promoted to inventory control supervisor approximately five years before he was injured. He supervised and ensured the timely unloading of trucks and distribution of merchandise for stocking. This required operating forklifts and jacks for unloading merchandise from trucks, and delivering it to the floor. Some merchandise was unloaded by hand, placed on conveyor belts, and then stacked on pallets. Goble consistently lifted merchandise weighing fifty to seventy pounds, and occasionally maneuvered items weighing up to two hundred pounds. Goble also occasionally helped stock shelves.

On October 11, 2010, Goble injured his right knee while working at Wal-Mart. This injury required surgery. The Form 110 settlement agreement attached as an exhibit indicates Dr. Anbu Nadar assessed a 2% impairment rating for the right knee injury. The parties settled the claim for a lump sum, and Goble stated he made a full recovery from that injury.

At the time of the December 3, 2013 accident, Goble was neither taking medication nor working under any permanent work restrictions. On December 3, 2013, Goble was unloading pallets of merchandise with a power jack. As he walked backward out of the truck, Goble stepped or slipped, twisting his right leg. This caused him to accidently accelerate, and lose control of the power jack, causing him to be slammed into the side of the truck. He was transported to the emergency room by ambulance. Subsequently, Goble treated with Dr. Nadar, but most of the recommended treatment was initially delayed due to the workers' compensation insurer's denial. Following an interlocutory opinion rendered by the ALJ in September 2014, Dr. Nadar ordered MRIs of the right knee, left shoulder, and back, prescribed medication and recommended physical therapy. Goble continues to treat with Dr. Nadar

on a monthly basis and is prescribed Ultram, Zanaflex, and Mobic.

Goble has not returned to work since December 3, 2013. Dr. Nadar had released Goble to a seated position on January 15, 2014. The next day, Goble was offered a temporary alternative duty assignment from Wal-Mart, which consisted of answering a telephone within a fitting room. Goble left after half a day due to right knee and back pain, noting at the time he was still using crutches. Goble was subsequently terminated from his job at Wal-Mart, and has not returned to any work since that time.

Goble currently experiences neck pain and stiffness. He has low back pain which occasionally radiates into his left leg and foot. He complains of left shoulder stiffness and pain extending into his elbow, as well as right knee pain and swelling. Goble estimates he can only be on his feet approximately thirty to forty minutes before his right knee begins to swell. Goble can only sit for approximately thirty-five minutes before he experiences back symptoms. Overall, his conditions require him to switch positions frequently, limit his ability to lift items over ten or fifteen pounds, and cause him difficulty sleeping. The medications keep his pain at a tolerable level.

Goble testified he could not return to his former job at Wal-Mart as an inventory control supervisor due to his injuries. Goble testified he has not looked for any work, stating as follows:

> Q: You've been hoping you could try to get back to work. What - - What has been the thing that has kept you from attempting to go back to some type of work at the present time?
>
> A: I - - I just don't feel I could do it. I mean, with the - - I can't sleep. I mean, I just don't feel like I'd be qualified to do a job. I can't lift too much, can't pull too much, can't sit too long, stand too long. I don't get much sleep. I don't know when I can sleep. I have to lay down quite often.
>
> . . . .
>
> Q: . . . . Why do you - - Why do you think at this time you couldn't perform any job, if that's the way you feel?
>
> A: I just don't think I could be consistent at work, you know, what I'd be able to do as far as with the sleep issues and pain and never know when my knees will give out on me or having to lay down during - - I mean, I don't know if anybody has anything like that, is the way I feel.

Goble and Wal-Mart filed the records from the emergency department at Pikeville Medical Center dated December 3, 2013. Goble reported he tripped, causing him to accelerate the electric pallet jack he was operating,

and he was pinned against the trailer of a Wal-Mart truck. After a battery of diagnostic testing was performed, Goble was diagnosed with strains to his right knee, and his cervical, lumbar, and thoracic spines. He was prescribed medication, his right knee was placed in an immobilizer, and he was advised to follow up with his physician. Goble was taken off work for three days, then allowed to return to light duty for ten days.

The parties also filed the records of Dr. Nadar indicating Goble treated with him beginning in October 2010 for a work-related right knee injury. After an MRI suggested a tear, Dr. Nadar performed an arthroscopic partial medial meniscectomy and chondroplasty on January 20, 2011. On July 20, 2011, Dr. Nadar assessed a 2% impairment rating for Goble's right knee condition and released him to full duty work with no restrictions. Goble returned to Dr. Nadar in June 2013 complaining of right knee pain not caused by a particular injury. After a June 15, 2013 right knee MRI revealed a medial meniscus tear, Dr. Nadar performed a second arthroscopic partial medial meniscectomy and chondroplasty on August 15, 2013. On December 2, 2013, Dr. Nadar noted Goble was doing well overall, despite some complaints of pain. Dr. Nadar

released Goble to return to work, and he sustained the work injury the following day.

On December 4, 2013, Goble returned to Dr. Nadar complaining of neck, back and right knee pain following his work injury. Goble subsequently complained of left shoulder pain. Dr. Nadar prescribed medication and ordered a left shoulder MRI, which demonstrated supraspinatus and infraspinatus tendinitis or tendinopathy and moderate impingement related to osteophytes. In the last medical note of record dated August 25, 2014, Dr. Nadar recommended physical therapy and MRIs for Goble's left shoulder, right knee, cervical spine and lumbar spine. He also noted Goble may need surgery.

Dr. Nadar completed a Form 107 on August 6, 2014. He diagnosed cervical and lumbar strains, right knee strain, and left shoulder strain with rotator cuff tendinopathy. Dr. Nadar stated Goble's complaints are due to his work injury. He assessed a total 14% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), attributing 5% to the cervical condition, 5% to the lumbar condition, and 4% for the left shoulder. He restricted Goble from heavy lifting, pushing, pulling and climbing.

At Wal-Mart's request, Dr. J. Rick Lyon examined Goble on July 24, 2014. He diagnosed Goble with left shoulder rotator cuff tendinitis; AC arthritis left shoulder; myofascial pain of the cervical spine; myofascial pain of the lumbar spine; status post strain of cervical spine; status post strain of the lumbar spine; degenerative joint disease right knee; and status post medial meniscectomy x2, right knee. Dr. Lyon opined the right knee arthritis was an active, pre-existing condition, and unrelated to the December 2013 work event. Goble had a 1% active impairment for his previous meniscectomy. He also found Goble's left shoulder arthritis pre-existed the work event. Dr. Lyon concluded Goble sustained an injury to left shoulder with resultant rotator cuff tendinitis, lumbar and cervical strain, and re-aggravation of his active right knee condition as a result of the December 3, 2013 work accident. He stated Goble had not reached maximum medical improvement ("MMI"). He recommended additional treatment for all four conditions, and restricted Goble's work activities.

The ALJ rendered an interlocutory opinion on September 16, 2014 addressing Wal-Mart's obligation to pay temporary total disability ("TTD") benefits and medical expenses. After summarizing the evidence of record, the

ALJ found Goble was entitled to medical treatment for each complaint, including physical therapy for all four injuries and a lumbar MRI recommended by Dr. Nadar, as well as additional testing. The ALJ found Wal-Mart was obligated to pay TTD benefits beginning on August 13, 2014. The claim was placed in abeyance pending Goble's attainment of MMI.

Subsequently, Goble continued to treat with Dr. Nadar, who eventually placed him at MMI on January 21, 2015. The ALJ removed the claim from abeyance, and additional evidence was submitted by both parties.

Goble filed the May 20, 2015 report of Dr. David Muffly who diagnosed cervical strain; lumbar strain; left shoulder strain with tendonitis and reduced range of motion; and re-injury to the right knee with documented progression of osteoarthritic changes. Dr. Muffly stated his diagnoses are due to the December 3, 2013 work injury, and Goble reached MMI on May 20, 2015. Dr. Muffly assessed a 5% impairment rating for the cervical spine, 5% for the lumbar spine, 5% for the left shoulder and 3% for the right knee, yielding a combined total of 16% pursuant to the AMA Guides. Dr. Muffly attributed 1% to the pre-existing, active right knee medial meniscectomy and 15% to the December 3, 2013 work injury. Dr. Muffly restricted Goble

from lifting over thirty pounds, with no squatting, stair climbing, or overhead reaching. Dr. Muffly opined Goble does not retain the physical capacity to return to the type of work performed at time of injury.

At Wal-Mart's request, Dr. Lyon re-examined Goble on July 16, 2015, and prepared a report dated August 27, 2015. Dr. Lyon noted since his last examination, Dr. Nadar obtained a right knee MRI demonstrating meniscal pathology and that Goble underwent physical therapy. Dr. Lyon performed an examination and reviewed diagnostic studies. Dr. Lyon diagnosed left shoulder rotator cuff tendinitis; AC arthritis left shoulder; resolved cervical strain; myofascial pain of the cervical spine as a result of the shoulder; myofascial pain of the lumbar spine; and degenerative joint disease right knee, status post medial meniscectomy with new right medial meniscus tear.

Regarding the right knee, Dr. Lyon opined the new tear is work-related and warrants a 1% impairment rating pursuant to the AMA Guides. He again stated the right knee arthritis pre-existed, and was not altered by the December 2013 work event.

Dr. Lyon opined Goble had attained MMI. Regarding the left shoulder, Dr. Lyon stated his examination is consistent with rotator cuff tendinitis with

AC joint arthritis. He opined Goble is a candidate for subacromial decompression with consideration of a Mumford procedure. Dr. Lyon stated if Goble elects not to proceed with surgery, he has reached MMI and would qualify for a 4% impairment rating pursuant to the AMA Guides, attributable to the work event.

Regarding the low back, Dr. Lyon opined Goble has attained MMI, and the lumbar sprain with continued myofascial pain warrants a 0% impairment rating. Dr. Lyon stated the myofascial neck pain is the result of Goble's shoulder pathology, and the impairment rating he assessed for the shoulder adequately covers that condition.

Therefore, Dr. Lyon assessed a 5% impairment rating due to the December 2013 work event. Dr. Lyon stated Goble should be limited to light duty work with his left arm when his elbow is away from his body, with no overhead work. He noted Goble should be limited to light duty work regarding the lumbar spine with the ability to change positions as needed. His recommended restriction of sedentary work for Goble's right knee is due to the pre-existing, active arthritis.

The September 3, 2015 Benefit Review Conference ("BRC") order lists the following contested issues:

benefits per KRS 342.730, unpaid or contested medical expenses, and TTD.

In the November 2, 2015 Opinion, Order and Award, the ALJ incorporated his discussion of evidence set out in his September 16, 2014 interlocutory opinion, and summarized the evidence submitted thereafter. The ALJ made the following analysis regarding benefits per KRS 342.730:

> Plaintiff claims he is totally disabled due to the December 3, 2013 work injury. KRS 342.0011(11)(c) defines permanent total disability as the condition of an employee who has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. KRS 342.0011(36) defines permanent disability rating as the permanent impairment rating selected by the Administrative Law Judge times the factor set forth in KRS 342.730(1)(b). KRS 342.0011(34) defines work as providing services to another in return for remuneration on a regular and sustained basis in a competitive economy. In *Ira A. Watson Department Store v. Hamilton*, 34 SW3d 48 (Ky. 2000), the Supreme Court stated that some of the principles set forth in *Osborne v. Johnson*, 432 SW2d 800 (Ky. 1968) must be weighed in determining if a claimant fits within the above definitions. This determination necessarily includes considering interaction of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status. It also includes a consideration of the likelihood that the particular worker would be able to

find work consistently under normal employment conditions.

Based on the above, the Administrative Law Judge must undertake a two-step analysis to determine if Plaintiff is totally disabled. The first step is to determine if he has a permanent disability rating. Three physicians have expressed opinions regarding Mr. Goble's impairment. Dr. Nadar assigned a 14% whole person impairment, Dr. Muffly assigned 15%, and Dr. Lyon assigned a 5% impairment. The biggest difference in Dr. Lyon's rating is that he assigned nothing for Plaintiff's lumbar and cervical injuries while Dr. Muffly and Dr. Nadar assigned 5% for each. In addition, Dr. Nadar and Dr. Lyon each assigned 4% for left shoulder impairment while Dr. Muffly assigned 3%.

Having reviewed the evidence, the Administrative Law Judge believes Mr. Goble has cervical and lumbar impairment due to the December 3, 2013 work injury and finds the cervical and lumbar ratings of 5% each provided by Dr. Nadar and Dr. Muffly to be the most persuasive. Since Plaintiff continues to have impingement resulting in limited motion in his left shoulder that may even benefit from additional surgery, I agree with the 4% rating suggested by Dr. Nadar and Dr. Muffly. As for Plaintiff's knee, the evidence in this case shows he still has a complex tear with mild extrusion that has appeared since he twisted his knee again at work. He also had marrow edema and swelling medially. I don't believe a rating that simply encompasses a meniscectomy fully considers the internal derangement and, therefore, accept the 3% rating suggested by Dr. Muffly. However, I

agree that should be reduced by the prior meniscectomy which was performed and find Plaintiff has a 2% whole person impairment due to his work related knee injury. Notwithstanding Plaintiff's request to assign the 15% suggested by Dr. Muffly, I actually believe Plaintiff has a total impairment of 16% due to the December 3, 2013 work injury.

Having reviewed the evidence, the Administrative Law Judge finds Mr. Goble has shown he meets the definition for permanent total disability as defined by the Act and relevant case law. He is restricted from lifting greater than thirty pounds and due to his knee injury, alone, is essentially limited to sedentary work. Therefore, he can't perform the jobs he previously held at either Wal-Mart or Food City. In addition, he can't perform overhead work and must work with his elbows away from his body as a result of his shoulder injury, which precludes working at any desk jobs.

Based on the foregoing, I do not believe there are jobs available in the current market for which Plaintiff could compete for employment on a sustained basis. Even if such opportunities were reasonably available, I do not believe Plaintiff could consistently work eight hours per day five days per week. It is possible Plaintiff could compete for employment on a more consistent basis with additional treatment and retraining. However, no treating physician has recommended additional treatment and neither party has requested vocational rehabilitation.

Wal-Mart filed a petition for reconsideration arguing the ALJ erred in finding Goble totally disabled, and requested additional findings supporting his determination. In the alternative, for the first time by any party, Wal-Mart requested additional findings regarding Goble's entitlement to vocational rehabilitation given his age and education. It requested the ALJ revise his opinion to include a referral for vocational retraining services on the ALJ's own motion. In his reply, Goble stated Wal-Mart's petition is nothing more than a re-argument of the case, and indicated he is not capable of retraining at this time.

In the order on petition for reconsideration, the ALJ denied Wal-Mart's petition with regard to his determination Goble is permanently totally disabled. The ALJ believed the parties have been sufficiently apprised of the factual basis drawn from the evidence for concluding Plaintiff is permanently totally disabled. The ALJ reiterated Goble is confined to performing seated work due to his injuries. He must also work with his elbows away from his body, and is limited in his ability to perform tasks requiring reaching since he is restricted from performing overhead work and his treating physician has restricted him from pushing or pulling. The ALJ also noted

Goble has no work experience performing a sedentary job, and there is no evidence he has training to perform a desk job.

The ALJ then granted Wal-Mart's request for Goble to undergo a vocational rehabilitation evaluation, stating as follows:

> At the same time, this is the first time Defendant has requested that Plaintiff be considered for vocational rehabilitation, a request that is not without merit. KRS 342.710(3) provides in pertinent part as follows:
>
> > . . . When as a result of the injury [an employee covered under this chapter] is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment.
>
> It has been previously noted that Plaintiff is essentially limited to performing work of a sedentary nature. However, he has no work experience involving a sedentary job. In addition, he has restrictions due to his shoulder injury which further limits his ability to even perform sit-down work. Assuming there are available jobs within these restrictions, I believe they would be positions which are, for all intents and purposes, unskilled.

> "Suitable employment" means work which bears a reasonable relationship to Mr. Goble's experience and background, taking into consideration the type of work he was performing at the time of injury, his age and education, his income level and earning capacity, his vocational aptitude, his mental and physical abilities and other relevant factors both at the time of the injury and after reaching his post-injury maximum level of medical improvement. "It would be unreasonable and unconscionable to force an injured worker who had, by working conscientiously over the years, advanced to a responsible, well-paying, albeit unskilled position to start over at an unskilled job paying the minimum wage by denying him the rehabilitation benefits needed to qualify him for a skilled job with earnings comparable to his prior employment." *Wilson v. SKW Alloys, Inc.*, 893 S.W.2d 800 (Ky. App. 1995) It would behoove Mr. Goble to at least receive an evaluation to determine if he has any skills that would be transferrable to another type of work or if he is amenable to retraining in order to be able to return to gainful employment.

On appeal, Wal-Mart argues the ALJ erred in finding Goble permanently and totally disabled, and requests the claim be remanded to the ALJ with directions to specify what evidence he relied upon in support of his determination he cannot work 40 hours a week or perform a desk job. Wal-Mart asserts absent the existence of any medical opinion establishing Goble is unable to perform

sedentary work or a desk job, the ALJ erred in finding him permanently totally disabled.

Wal-Mart also argues the Board should remand the claim for supplemental findings addressing Goble's suitability for vocational rehabilitation. Wal-Mart asserts the ALJ failed to exercise his judicial discretion in awarding rehabilitation benefits himself. Wal-Mart pointed to Goble's age, education, and the fact he only sustained soft-tissue injuries. Wal-Mart requests the ALJ remand the claim for supplemental findings regarding Goble's suitability for vocational rehabilitation benefits and whether he should be obligated to participate in it.

As the claimant, Goble had the burden of proving each of the essential elements of her cause of action, including the extent of his disability. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Goble was successful in that burden, the question on appeal is whether there is substantial evidence of record to support 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).

Wal-Mart has challenged the ALJ's determination of PTD. 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). 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 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 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).

The factors an ALJ must consider in determining whether an individual claimant is permanently totally occupationally disabled are set forth in Ira A. Watson Department Store v. Hamilton, supra. Those factors include the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact; a consideration of the likelihood that the particular worker would be able to find work consistently under normal employment conditions; whether the individual will be able to work dependably; and whether the worker's physical restrictions will interfere with vocational capabilities. Id. "An analysis of the factors set forth in KRS 342.0011(11)(b), (11)(c), and (34) clearly requires an

individualized determination of what the worker is and is not able to do after recovering from the work injury." McNutt Construction/First General Services v. Scott, 40 S.W.3d 854, 860 (Ky. 2001). It is within the ALJ's prerogative to translate the lay and medical evidence into findings of occupational disability. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d at 52. Although the ALJ must consider the worker's medical condition when determining the extent of occupational disability at a particular point in time, he is not required to rely upon vocational opinions of either the medical experts or vocational experts. Id. In addition, a worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after the injury. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979).

In the case *sub judice*, the ALJ's analysis in the opinion and order on reconsideration comports with the requirements of Ira A. Watson Dept. Store v. Hamilton, supra, and McNutt Construction/First General Services v. Scott, supra. The ALJ relied upon the restrictions imposed by Drs. Muffly, Lyon and Nadar. Dr. Muffly restricted Goble from lifting over thirty pounds, and no squatting, stair climbing, or overhead reaching. Dr. Muffly opined Goble does not retain the physical capacity to return to

the type of work performed at time of injury. Dr. Lyon stated Goble should be limited to light duty work with his left arm when his elbow is away from his body, and no overhead work with his left arm. He noted Goble should be limited to light duty work regarding his lumbar spine with the ability to change positions as needed. He recommended a restriction of sedentary work for Goble's right knee. Dr. Nadar restricted Goble from heavy lifting, pushing, pulling and climbing.

The ALJ also considered Goble's limited work experience. Goble's testimony establishes he has worked for Food City and Wal-Mart. While at Food City, Goble pushed buggies, loaded carts, stocked shelves, and eventually was in charge of unloading merchandise from trucks. During his employment with Wal-Mart, Goble testified he worked as a grocery department manager, which required him to be constantly on his feet resetting shelves and lifting items weighing up to fifty pounds. In his position as inventory control supervisor, Goble operated forklifts, lifts and jacks to unload pallets of merchandise off the truck, and delivered them to the floor. Some merchandise was unloaded by hand, placed on conveyor belts, and then stacked on pallets to be stocked on the floor. Goble consistently lifted merchandise weighing fifty to

seventy pounds, and occasionally had to maneuver merchandise weighing up to two hundred pounds. Goble's description of his job duties was uncontroverted. Therefore, the ALJ's finding Goble has no work experience performing a sedentary or desk job is supported by his testimony.

Finally, Goble testified at the final hearing he believes he is unable to return to work since he would not be qualified to do a job, noting, "I can't lift too much, can't pull too much, can't sit too long, stand too long. I don't get much sleep. I don't know when I can sleep. I have to lay down quite often." He also stated he would not be consistent at work due to his pain and sleep difficulty.

The restrictions imposed by Drs. Muffly, Nadar and Lyon, and lay testimony provided by Goble, constitute substantial evidence supporting the ALJ's determination he is totally disabled. In accordance with the Supreme Court's directive in Ira A. Watson Dept. Store v. Hamilton, supra, the ALJ considered Goble's physical, emotional, intellectual, and vocational status and how those factors interacted post-injury.

KRS 342.710, in relevant part, states as follows:

> (3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical

> rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, he or she shall be entitled to such vocation rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to suitable employment. In all such instances, the administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The administrative law judge on his or her own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him or her fit for a remunerative occupation. Upon receipt of such report, the administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or its insurance carrier.

The ALJ’s order on petition for reconsideration comports with KRS 342.710, and his order to undergo a vocational rehabilitation evaluation will not be disturbed. Use of the word "may" in KRS 342.710(3) indicates the issue of vocational rehabilitation benefits is entirely within

the discretion of the ALJ. Alexander v. S & M Motors, Inc., 28 S.W.3d 303 (Ky. 2000). In the order on reconsideration, the ALJ clearly believed Goble is unable to perform work for which he has previous training or experience in light of his restrictions. Wal-Mart's argument regarding vocational rehabilitation rings hollow since it is the party who requested the relief. In accordance with KRS 342.710(3), the ALJ ordered Goble to undergo a vocational rehabilitation evaluation. It is only when the ALJ receives a report of the evaluation then he or she "may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment. . ."

Accordingly, the November 2, 2015 Opinion, Award and Order and the December 9, 2015 order on petition for reconsideration rendered by Hon. Udell B. Levy, Administrative Law Judge, are hereby **AFFIRMED.**

ALL CONCUR.

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