

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 15, 2019

CLAIM NO. 201800247

ALLIANCE COAL¹

PETITIONER

VS. **APPEAL FROM HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE**

PHILLIP TRAVIS
and HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

STIVERS, Member. Alliance Coal (“Alliance”) seeks review of the September 17, 2018, Opinion, Award, and Order of Hon. John H. McCracken, Administrative Law Judge (“ALJ”) finding Phillip Travis (“Travis”) sustained cumulative trauma injuries

¹ We are compelled to note the Notice of Appeal designated Webster County Coal, LLC as the Petitioner. Presumably, that was because Webster County Coal LLC is a subsidiary of Alliance Coal. This is apparent from the May 15, 2018, deposition as the parties referred to Webster County Coal LLC as the employer multiple times. Moreover, the Respondent has not filed a motion to dismiss the appeal because of the Petitioner’s failure to name the correct employer as the appealing party.

to his neck and shoulders while in the employ of Alliance. The ALJ awarded permanent partial disability (“PPD”) benefits enhanced by the three multiplier set forth in KRS 342.730(1)(c)(1) and medical benefits. Alliance also appeals from the October 21, 2018, Order overruling its petition for reconsideration.

On appeal, Alliance asserts substantial evidence does not support the ALJ’s finding regarding the impairment ratings attributable to each cumulative trauma injury. It argues substantial evidence supports a 3% impairment rating for the neck injury and a 1% impairment rating for the left shoulder condition. It also argues substantial evidence does not support the finding of a work-related cumulative trauma right shoulder injury and enhancement of the benefits by the three multiplier.

Alliance maintains the ALJ should have relied upon Dr. G. Christopher Stephens’ opinions in determining the impairment rating attributable to the work-related neck injury. After assessing a 6% impairment rating for Travis’ neck condition, Dr. Stephens deducted 50% of the impairment rating as it was attributable to accelerated degenerative changes typical for a person of Travis’ age. Thus, Travis had a 3% impairment rating due to the cumulative trauma neck injury. It also argues the ALJ did not support his opinion that a carve out was not applicable in this case, as Dr. Stephen T. Autry’s report does not provide substantial evidence allowing him to find Travis’ neck condition is attributable solely to his work. Alliance insists Dr. Autry’s “explanation of causal relationship is extraordinarily generic and is recycled language from virtually every one of his IME reports.” Alliance also contends Dr. Autry’s finding that Travis has significant cervical pain is not borne out by Travis’ deposition and hearing testimony.

Alliance next argues that only Dr. J. Rick Lyon's 1% impairment rating for the cumulative trauma left shoulder injury is supported by substantial evidence. It argues Dr. Lyon's report is based on a review of voluminous medical records and a thorough examination. Since Travis admitted he lost no time due to his shoulders, Alliance argues Dr. Lyon's 1% impairment rating is more accurate than Dr. Autry's 8% impairment rating for the left shoulder condition. It contends Dr. Lyon's opinion is particularly more persuasive as it is based upon a range of motion measurements, and Dr. Autry did not observe Travis' maximum abilities during his examination.

Alliance also maintains the impairment rating attributable to the right shoulder is, as opined by Dr. Lyon, due to an acute traumatic biceps tendon tear which is commonly associated with rotator cuff tendinosis. It observes Dr. Autry mentioned this prior right-sided torn rotator cuff trauma in the history of his IME report. However, he failed to take that into account when "discussing causation and ratings."

Finally, Alliance argues Travis' PPD benefits should not have been enhanced by the three multiplier since he worked for Alliance every day until his "second back surgery and becoming disabled." In this regard, Alliance contends Travis is unable to perform his prior work due to his back condition which the ALJ determined is not work-related. Alliance maintains Dr. Autry never stated Travis was unable to work due to the conditions in his shoulders and/or neck. Rather, his opinion regarding Travis' inability to work was based upon his lumbar problems. It represents Travis testified his lumbar spine condition is the sole reason he is unable to work. We affirm.

BACKGROUND

A Form 110 settlement agreement approved by Hon. W. Bruce Cowden, Administrative Law Judge, on August 29, 2006, reflects Travis sustained a low back injury on August 18, 2004, while working for Alliance. As a result, Travis underwent a laminectomy and foraminotomy at L5-S1. Travis settled his claim for a lump sum with entitlement to future medical benefits.

Travis' Form 101, filed February 14, 2018, alleges cumulative trauma injuries to his back, knees, and hands. Based on Dr. Autry's report, Travis successfully amended his Form 101 to include a claim for a cumulative trauma lumbar spine injury.

Travis testified at his May 15, 2018, deposition and at the July 23, 2018, hearing. During his deposition, Travis testified he retired on July 3, 2014. He testified he underwent a second back surgery in February 2014, and the "second back surgery and becoming disabled" caused him to retire. When he retired, he was an assistant safety director. Travis worked for Webster County Coal/Alliance from 1977 until he retired. His back condition prevents him from bending over and picking up items. While working for Alliance he injured both shoulders and his neck. He attributed the neck injury to "numerous jamming on [his] neck." Travis missed a day or two of work as a result of the injury to his neck and shoulders. During his forty years working in coal mining, Travis estimated he spent about 99% of his time working at the face of the coal.² Regarding the symptoms resulting from his neck injury, Travis provided the following:

² Travis had worked in the coal mines prior to his employment with Alliance.

Q: Let's talk about your neck. What kind of symptoms do you have in your neck?

A: Extreme stiffness and pain.

Q: No acute injuries to your neck at the mines?

A: Numerous jamming, I mean, working in the low coal.

Q: Didn't turn them in?

A: Well, yeah, probably, but I never had surgery.

Q: Didn't lose time?

A: I mean, that's not totally but almost an every day happening with coal miners in low coal. Sometimes you shake it off and go on.

Q: Besides your chiropractic treatment, have you treated for your neck?

A: No.

With respect to the symptoms in his shoulders, Travis testified as follows:

Q: Okay. What about your shoulders? Talk about when your shoulders started hurting you.

A: I can't put a date on it. You know, after 40 years of picking up stuff way too heavy or what I should, you know, and you feel a sharp pain, oh crap, and then you go on. So I can't really put a definite date on it.

Q: What symptoms are you having in your shoulders?

A: Well, neither one of them I can't pick up above my head. And this one pops. I can't even reach out and pick that thing up.

Q: Left shoulder pops?

A: Left shoulder pops extremely hard.

Q: Okay. Have you ever treated for your shoulders?

A: I've had numerous injections 35 years ago.

Q: Who did the injections?

A: I can't remember.

Q: In your right shoulder you had injections 35 years ago?

A: Yeah, 35 plus years ago.

Q: Is that pretty much the extent of your treatment on your shoulders?

A: Yeah. Been told I've got a torn rotator cuff, but I refuse the surgery.

Q: Have you ever lost time at work for your shoulders?

A: Not extensive.

Q: Just a day here and there?

A: Probably, yes.

At the hearing, Travis represented his claim was limited to work-related cumulative traumas to his neck, shoulders, and lower back. Travis reiterated he started working for Webster County Coal/Alliance on August 20, 1977, and had worked for forty years underground in the coal industry primarily with Alliance. During that time, he built batteries, shoveled belts, drove shuttle cars, operated scoops, and ran a continuous miner for 15 years. Prior to working in Alliance's safety department as an assistant safety director, he worked for 3 ½ years as a section foreman. Concerning his cumulative trauma shoulder injuries, Travis provided the following:

Q: And I was stating, we will get into your claims here. You have alleged cumulative trauma to your lower back, both your shoulders and your neck. Why don't you explain to the judge a little bit of why you think the work you performed for Alliance Coal wore out your shoulders?

A: Well, excuse me?

Q: Why it wore out your shoulders.

A: My shoulders, okay. Well obviously, you know, with working in coal, we did end our career working in coal this high (witness indicates) and that's worse than working in coal this high. (Witness indicate.)

Q: And you are pointing to this large ceiling here?

A: Yes. Oh, I'm sorry.

Q: Ten feet?

A: You know, eight to 13 foot coal and it was not good. But most of the time the coal we worked in averaged 58 to 62 inches. And, you know, of course then wearing our heavy mining belts with tools and SSRs and all that on them makes, you know, everything a strain. And then when you're building brattices, hanging miner cables, which ends up being the heaviest cable except the high voltage cable, which is 1700 volts, you're on your knees and then trying to, you know, then you have to lift up here. (Witness indicates.) You can't get in a level position.

Q: And you're motioning with both of your hands –

A: Yes.

Q: -- above your head?

A: Yes, yes. Oh, I'm sorry.

Q: Did you have to physically attach those cables to the roof to the coal mine?

A: Yes.

Q: How often would you have to do that?

A: Oh, numerous times per shift.

Q: And describe for the judge a little bit about how much that cable would weigh, if you can. Are we talking about like a power cable?

A: I didn't know. Yes, the cables are 990 volt cable with an inch and three-quarter water hose attached to it and

full of water. And I think the cable, I'm probably wrong, but it's over – it's in the – I think it's in the six pound per foot range. I think that's right. And then the water hose of course, I had that. You know, I can't give you an exact weight but it is in that range.

Q: Would you describe it as heavy?

A: It's, yeah, it's very heavy.

Q: Would it ever get stuck in the mud or hung on something requiring you to have to tug and pull at it?

A: Yes, sir. Yeah, and it would also as dragging it, it would tie up in knots and that's, if you can imagine just a string tying up in knots and trying to untie it. And then you're dealing with this big heavy monster cable that you're trying to pull.

Q: In reviewing I think in your deposition testimony, did you say sometimes you would also have to climb a ladder to attach that to the roof of the mine?

A: In the – yes, especially when we were working in low coal, if we had a roof fall and it became what we call the high place, then if it was a pull row, then you would have to hang your cables. And, yeah, you would have to get on a ladder then. And then in the – when we went to the 13 seam, then like I said, the coal was eight to 13 foot high. Yes, so if you hang anything from the roof, you've got to have help to get there obviously, no taller than I am.

Q: Was there anything else besides hanging the cable on the roof that you thought was particularly painful or caused issues with your shoulders?

A: Well, yes. If you can imagine, we're in, you know, 60 inch coal and the side of the miner is 50 inches high and there's a bucket of bits, you know, that's eight inches tall. And those buckets of miner bits weigh in the range of 40 pounds and reaching up and trying to pick them up enough to get them off. And then when they come off, you know, they kind of weight you down real quick too and, yeah.

Travis acknowledged sustaining a biceps tear in his right shoulder; however, he denied this occurred as a result of a specific injury. He provided the following explanation as to how he believed the biceps tear occurred:

Q: Did that happen as a result of any specific injury at one time?

A: No.

Q: How would you describe how that occurred?

A: I think the best that I know of is the – having to get those bits, you know, get the bits off the miner, you know, like that. Or, you know, and then also sometimes, our miner would obviously get covered up in rock and, you know, having to strain to pull that off. And it just kind of over time, it kept getting weaker and hurting and all.

Q: And that is where I was going. In your opinion, was there an actual precipitating event that caused that or in your opinion, do you think that was just maybe the final straw that tore the –

A: Yeah. You know, I'm thinking, yeah, cause it had been hurting for so long and all, you know. But, yeah, that it was probably tearing over time and then it finally got to where there was nothing left to hold it and that's when it give [sic].

Travis testified both shoulders are “bad” as he has difficulty reaching above his head to retrieve a cup from the cabinet. He is unable to play golf and no longer takes part in shooting sports because the gun “kills his shoulder.” His left arm is painful in about any position. Travis is unable to hold a fishing rod very long because his arm goes numb. He is unable to extend his left arm in a straightened position either in front of him or to the side while holding any weight. He has problems performing any tasks above his head. He is, however, capable of extending his right arm straight

in front of him or to the side holding a light weight. Travis provided the following explanation concerning the limitations of his arms:

Q: Have you noticed any issues if you tried to extend your arm out in front of you or to the side, holding a weight?

A: I can't do it with my left arm.

Q: What about the right?

A: I can, as long as it's not heavy. If it's heavy, then I lock up here (witness points) in the biceps.

Q: Have you noticed any issues trying to work on anything above your head, maybe hammer a picture frame on a wall, anything kind of like that?

A: Uh-huh. I usually try to get a stepstool or a ladder, if I have to, where I will be even with it and I don't have to reach.

Travis recounted why he believed he sustained a cumulative trauma neck injury:

Q: What about your neck, let's talk about your neck. What do you think working for Alliance has given you [sic] any of these issues that you have now with your neck?

A: Well, working in the low coal, as you can imagine, you know, being bent over and then them pins hanging from the roof, you run into them. And if you're walking very fast and you run into them, they'll lay you back on your back. And we also –

Q: How often would that occur?

A: Well –

Q: Once a month?

A: No. Oh, no. You was lucky if you got that far. I wouldn't, you know, I can't say it happened every shift, but it happened quite a bit. And sometimes, it would happen two or three times a shift, you know, because the top in the coal mines regardless is not level. You know,

it's – it's rolling and some places, you might walk with your head turned this way (witness demonstrates) and then you walk ten feet and you've gotta be like this. (Witness demonstrates.)

Q: And you're bending over?

A: Yes.

Q: To try and avoid the top?

A: Right. And if you're not paying attention when that top goes down, then you're stopped dead still.

Travis testified he has constant pain and is limited in his ability to turn his head to either side and look up and down. He believes the conditions in his neck and shoulders affect his ability to return to his previous job at Alliance:

Q: What if everything else was fine with your body but just the condition of your shoulders, do you think you could return to work?

A: No.

Q: Why is that?

A: Well, because of having to lift, fully extend my arms, and you know, the weights are, you know, and working overhead. No, I couldn't.

Q: Same question for the neck?

A: No, especially in the high coal now, because I would have to be looking up too much.

Q: If it was up to you, would you have continued working for Alliance after July 2014?

A: Yes, I would have. I would still be working today.

In the September 17, 2018, decision, in finding Travis sustained cumulative trauma injuries to his shoulders and neck, the ALJ provided the following findings of fact:

IV. CERVICAL

Mr. Travis alleges that he sustained cumulative trauma injuries to his neck because of the years of work in the mine. Dr. Chris Stephens stated that Mr. Travis sustained cumulative trauma injuries to his neck, as a result of his work in the mines. He opined that the cervical MRI revealed degeneration that was moderately severe, and more advanced than what he would expect solely due to the aging process of a 63-year-old man. He assigned a 6% impairment that he attributed 50% to aging and 50% to cumulative trauma. Dr. Autry diagnosed an aggravation of cervical spondylosis with significant pain and assessed a 2% impairment. Dr. Lyon did not find cumulative trauma to the cervical spine.

The ALJ relies on the testimony of Mr. Travis and his description of his work over the many years as a miner, and the opinions of Dr. Stephens and Dr. Autry to find that Mr. Travis sustained cumulative trauma injuries to his cervical spine that manifest on July 3, 2014, his last day of work. The ALJ finds that his date of injury for the cumulative trauma is July 3, 2014. The ALJ relies on Dr. Autry for determining the cause of the cumulative trauma. Dr. Autry made no carve out for pre-existing or other cause of the cervical neck. The ALJ relies on Dr. Stephens to find that Mr. Travis sustained a 6% impairment as a result of the cervical cumulative trauma. The ALJ finds that a carve-out of 3% is not applicable in this case in that all of his cervical condition was caused by his work.

The ALJ finds that Dr. Lyon is not as persuasive on the issue of whether Mr. Travis sustained cumulative trauma to his cervical spine. It appears as though Dr. Stephens and Dr. Lyon differ on how advanced the degenerative condition was in Mr. Travis [sic] spine. The ALJ believes that Dr. Stephens is more persuasive.

V. RIGHT AND LEFT SHOULDERS

Dr. Lyons stated that Mr. Travis may have sustained cumulative trauma injuries to his left shoulder because of his work and assessed a 1% impairment to the left shoulder. He believed that Mr. Travis [sic] right shoulder was not the result of cumulative trauma because of the bicep tear that he says occurred as a result of a

specific incident. However, Mr. Travis testified at the hearing that his right shoulder did not become injured due to a single episodic event. He stated that he believes that it began hurting while carrying buckets of bits that can weigh up to 40 pounds. His right shoulder began to hurt and worsen.

The ALJ relies on Mr. Travis' testimony to find that he did not sustain a specific, acute, injury to his right shoulder. The ALJ relies on the opinions of Dr. Autry to find that Mr. Travis sustained cumulative trauma injuries to his right shoulder while working for Defendant. The ALJ does not agree with Dr. Lyon that the right shoulder injury occurred as a result of a single event.

The ALJ relies on Dr. Autry to find that Mr. Travis sustained an 8% impairment to the right shoulder. Neither Dr. Lyon nor Dr. Stephens rated Mr. Travis' right shoulder for impairment.

The ALJ relies on Dr. Autry to find that Mr. Travis sustained a 12% impairment to the left shoulder as a result of the work injury. The ALJ finds Mr. Travis' testimony to be very persuasive regarding his current ability to use his left shoulder. The ALJ does not believe that Dr. Lyon's 1% impairment is indicative of Mr. Travis' left shoulder impairment.

The ALJ found Travis did not sustain a cumulative trauma low back injury. He concluded Travis was unable to return to the type of work he performed on the date of the injury reasoning as follows:

Mr. Travis' job required him to lift heavy cables, work overhead, lift parts and carry the emergency kits. Mr. Travis testified that the condition of his shoulders alone would prevent him from returning to his former job. Dr. Lyon found that Mr. Travis did not require work restrictions because of any body part he claimed injured. He placed Mr. Travis at MMI on June 8, 2018. Dr. Autry placed Mr. Travis at MMI for his work injuries on April 26, 2018.

The ALJ relies on Mr. Travis' testimony, his description of the physical work requirements, and the opinions of Dr. Autry to find that Mr. Travis does not

retain the physical capacity to return to the type of work he performed on the date of injury. The ALJ finds that Mr. Travis is entitled to a three multiplier pursuant to KRS 342.730(1)(c)(1).

It appears that Dr. Rushing told Mr. Travis that his injuries were work related and therefore, the ALJ finds that July 18, 2017 is the date of manifestation. The ALJ relies on the testimony of Mr. Travis to find that his date of injury is July 3, 2014.

Alliance filed a petition for reconsideration making many of the same arguments it now makes on appeal. Significantly, Alliance did not seek additional findings. Instead, it requested the ALJ reverse his finding as to the impairment ratings attributable to the shoulders and his determination the three multiplier was applicable based on the injuries to the shoulders and neck. Alliance did not take issue with the ALJ's finding that Travis sustained a cumulative trauma neck injury and the impairment rating attributable thereto. Finding the petition for reconsideration to be a re-argument of the claim, the ALJ overruled the petition for reconsideration.

ANALYSIS

Travis, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including causation and his entitlement to enhanced benefits. *See* KRS 342.0011(1); Snowder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Travis 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).

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). 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).

Alliance does not take issue with the ALJ's finding Travis sustained a cumulative trauma work-related neck injury. Rather, it argues the impairment rating as found by the ALJ is not supported by the evidence.

In Dr. Stephens' April 30, 2018, report, he found as follows:

Cervical x-rays are also of good diagnostic quality. These reveal normal alignment in both projections. Lateral x-rays reveal moderately severe multilevel cervical spondylosis from C3-C7. He has near complete loss of disc height at each of the levels. He has vacuum disc phenomenon at C5-6 as well as C6-7. He has moderate to severe spondylosis, both anteriorly and posteriorly at all four levels. Facet arthritis is noted at only the C6-7 level. This level of cervical degeneration is moderately severe, in my opinion, and advanced from what I would expect solely due to the aging process in a 63-year-old male.

In assessing a 3% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") for the cumulative trauma work-related neck injury, Dr. Stephens provided the following:

With regards to his neck, the studies do demonstrate advanced degenerative change. Given his significant occupational exposure as an underground miner, I believe that he does have objective evidence of susceptibility to cumulative microtraumas. He is ratable under DRE Category 2 of the same edition of the AMA Guidelines. Within this category, I would give him a 6% rating. Half of this rating would be to cumulative traumatic injury and the other half due to the natural aging process. Natural aging is always a significant factor in the degenerative process, irrespective of susceptibility to cumulative trauma injury.

Dr. Autry's April 26, 2018, Form 107 contains, in part, a diagnosis of aggravation of cervical spondylosis. Under the heading "Explanation of the Causal Relationship," Dr. Autry wrote Travis experienced "work-related pain in multiple

areas of his body including his neck, back, and shoulders” which he concluded were the consequence of many years in mining. Further, Travis’ “pain and functional limitations may be the combined result of incident and cumulative trauma.” Dr. Autry explained the “cervical spine is subject to axial (compressive), bending, and torsional (twisting) loads during work activities.” Dr. Autry opined the harmful change to Travis “occurred due to recurrent stress loading to the disc, ligament, and facet anatomy sustained during the course of performing the activities required in his job description.” Pursuant to the AMA Guides, Dr. Autry assessed a 2% impairment rating due to aggravation of cervical spondylosis with significant pain.

In finding Travis sustained a work-related cumulative trauma cervical injury, the ALJ relied upon Travis’ testimony concerning the type of work he performed over many years as a coal miner as well as the opinions of Drs. Stephens and Autry. The ALJ accepted Dr. Autry’s opinion as to the cause of the cumulative trauma injury in determining there should be no carve out for an unrelated pre-existing condition. However, he rejected Dr. Autry’s impairment rating and relied upon Dr. Stephens’ 6% impairment rating.

Fundamental to the ALJ’s fact-finding authority is his ability to accept and reject various testimony including the right to accept portions of a physician’s testimony while rejecting other opinions of that physician. Here, the ALJ chose to rely upon Travis’ description of his work, the impairment rating of Dr. Stephens, and Dr. Autry’s opinion that the entire impairment rating was caused by the work-related cumulative trauma. There is no dispute the opinions of Drs. Stephens and Autry constitute substantial evidence supporting the finding of a cumulative trauma work-

related cervical injury. Further, Travis' testimony and Dr. Autry's opinion comprise substantial evidence supporting the ALJ's finding Travis' work-related neck condition merits a 6% impairment rating. Since Travis' testimony, Dr. Stephens' impairment rating, and Dr. Autry's opinions concerning the cause of the cumulative trauma constitute substantial evidence supporting the ALJ's decision Travis sustained a work-related cervical cumulative trauma injury meriting a 6% impairment rating, the ALJ's decision cannot be disturbed.

The same holds true for the ALJ's finding regarding the left shoulder injury. The dispute before the ALJ centered around the impairment rating attributable to Travis' left shoulder cumulative trauma injury. Pursuant to the AMA Guides, Dr. Lyon assessed a 1% impairment rating and Dr. Autry assessed a 12% impairment for the left shoulder injury. Notably, Alliance does not contend Dr. Autry's impairment rating is not in conformity with the AMA Guides. Even though the range of motion measurements for each shoulder are not specifically delineated as such, under the heading "Physical Examination," Dr. Autry clearly appears to have provided the range of motion for each shoulder. Thus, the 12% impairment rating Dr. Autry assessed for the cumulative trauma left shoulder injury qualifies as substantial evidence supporting the finding Travis' undisputed work-related cumulative trauma left shoulder injury merits a 12% impairment rating. While the contrary opinion of Dr. Lyon may have been articulated in greater detail, such testimony represented nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003). Because substantial evidence supports the ALJ's finding Travis sustained a work-related cumulative trauma left shoulder injury which

generated a 12% impairment rating, we find no error in the ALJ's decision regarding the extent of the impairment rating attributable to Travis' cumulative trauma left shoulder work injury. The impairment rating attributable to the injury is a matter to be decided exclusively within the ALJ's province as fact-finder. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

In determining Travis sustained a work-related cumulative trauma right shoulder injury, the ALJ relied upon Travis' testimony indicating he did not sustain a right shoulder injury arising from a single traumatic event. Rather, the ALJ noted Travis testified his cumulative trauma right shoulder injury occurred over a period of time. Travis' testimony comprises substantial evidence supporting the finding he did not sustain an acute injury to his right shoulder. The ALJ relied upon Dr. Autry's opinions to find Travis sustained a cumulative trauma right shoulder injury while working for Alliance. We note Travis' testimony does not corroborate the statement in Dr. Lyon's report that Travis sustained a specific right shoulder injury. Within his discretion, the ALJ also accepted Dr. Autry's 8% impairment rating, assessed pursuant to the AMA Guides, in finding Travis sustained an impairment rating due to the right shoulder injury. Significantly, Alliance does not assert Dr. Autry's impairment rating is not in conformity with the AMA Guides. In his Form 107, Dr. Autry opined Travis sustained work-related cumulative trauma injuries to both shoulders explaining:

The rotator cuff is [sic] group of connected muscle insertion (tendons) that, like the clutch of a car, stabilize and engage the humerus (arm) and glenoid (shoulder blade). There is substantial leverage placed on this structure during lifting, pulling, and jerking particularly when the arm is in awkward positions. Recurrent injuries can tear the insertion (attachment) of these tendons.

Microscopic tears can, with recurrent stress loading, progress to a complete tear.

The shoulder joint lies beneath a bony ledge comprised of the acromion (a part of the shoulder blade) and the clavicle (collar bone). The rotator cuff is in the interval between the shoulder joint and this bony ledge. There is a bursa (lubricating sac) on top of the rotator cuff. Partial tears of the rotator cuff (fraying), complete tears, as well as friction from repetitive lifting or overhead use, can lead to inflammation and pain particularly when the arm is lifted above shoulder level.

This, taken in conjunction with the other problems detailed above, represent conditions in which the symptoms have been asymptomatic, dormant, and non-disabling but have been aroused into a disabling condition by the plaintiff's latest employment.

Dr. Autry was aware of Travis' previous torn biceps injury, as his report states he received a report that "both shoulders have been injured; the right, progressively over a twenty-year period and the left approximately over an eight to ten year period," and Travis "did have torn biceps on the right fifteen years ago." Unlike Dr. Lyon, he did not attribute the torn biceps to a specific injurious event. The opinions of Dr. Autry that Travis sustained a work-related cumulative trauma right shoulder injury sufficiently provide a causal connection between Travis' work and his shoulder injuries and comprise substantial evidence supporting the ALJ's finding Travis sustained a cumulative trauma right shoulder injury meriting an 8% impairment rating. As previously noted, the contrary opinion of Dr. Lyon that Travis' problems are related to a specific event constitutes nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, supra. Within the ALJ's province as fact-finder is the authority to determine the physicians upon which he will rely, and this Board has no ability to usurp this authority. Consequently, the ALJ's

finding Travis sustained a work-related cumulative trauma right shoulder injury meriting an 8% impairment rating will remain undisturbed.

Finally, we find no merit in Alliance's assertion the ALJ erred in enhancing the award via the three multiplier. We reject Alliance's assertion Dr. Autry did not state Travis was unable to perform his previous work due to the condition of his shoulders or neck. Dr. Autry addressed Travis' restrictions stating that, due to his diagnoses, Travis lacked the ability to return to the type of work he was performing at the time of the injury. Based on this statement, the ALJ drew the conclusion Travis' inability to perform his previous work was due, in part, to the physical restrictions arising from the injuries to the shoulders and neck. This is consistent with Dr. Autry's restrictions of the need to avoid tasks involving repetitive "above level use of arms" and "no overhead lifting."

We also reject Alliance's assertion Travis' testimony confirmed his lumbar spine condition is the sole reason for his inability to work. At the hearing, Travis testified that based solely upon the condition of his shoulders, he believed he was unable to return to work. He expressed the same sentiment when asked whether the condition of his neck prevented him from returning to work. That testimony has been outlined herein.

When the issue is the claimant's ability to labor and the application of the three multiplier, it is within the province of the ALJ to rely on the claimant's self-assessment of his inability to perform his prior work. *See Ira A. Watson Department Store v. Hamilton, supra; Carte v. Loretto Motherhouse Infirmery, 19 S.W.3d 122 (Ky. App. 2000)*. We have consistently held that it remains the ALJ's province to rely

on a claimant's self-assessment of her ability to labor based on her physical condition. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979). The ALJ's decision to apply the three multiplier pursuant to KRS 342.730(1)(c)1, based on a determination that Travis did not have the capacity to return to the type of work performed at the time of injury is supported by substantial evidence in the record. Therefore, it may not be set aside on appeal. Special Fund v. Francis, supra. Dr. Autry's opinions and Travis' testimony standing alone, or in concert, constitute substantial evidence supporting the ALJ's determination the three multiplier is applicable.

Accordingly, the September 17, 2018, Opinion, Award, and Order and the October 21, 2018, Order overruling the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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