

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 20, 2022

CLAIM NO. 202099284

ANTHONY SHRUM

PETITIONER

VS. APPEAL FROM HON. AMANDA PERKINS,
ADMINISTRATIVE LAW JUDGE

TRIPLE D COMMUNICATIONS
and HON. AMANDA PERKINS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * *

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

STIVERS, Member. Anthony Shrum (“Shrum”) seeks review of the November 22, 2021, Opinion and Order of Hon. Amanda Perkins, Administrative Law Judge (“ALJ”), dismissing his claim “for failing to prove a work-related injury” while in the employ of Triple D Communications (“Triple D”). Shrum also appeals from the December 19, 2021, Order denying his Petition for Reconsideration.

On appeal, Shrum argues the ALJ erroneously dismissed his claim since the evidence compelled a finding of a work-related accident and injury. Shrum also argues the ALJ's decision concerning causation should have been based upon a medical opinion.

BACKGROUND

Shrum's Form 101 alleges a July 29, 2019, injury occurring in Lebanon, Kentucky, in the following manner: "Claimant was watching for traffic as a coworker was placing a telephone pole. The pole became loose and hit him in the face, knocking him to the ground. Claimant did loose [sic] consciousness. Resulted in injuries to the head, jaw, face, and ribs." In the June 9, 2021, Order, the ALJ granted Triple D's Motion to Bifurcate directing the "claim is bifurcated as to work-relatedness/causation."

Shrum testified at an August 10, 2021, deposition and at the September 28, 2021, hearing. His deposition testimony reveals he graduated from high school in 2012 and has no vocational certifications. He has lived in Russell Springs, Kentucky since 2008.¹ At the time of the accident, he was living with his girlfriend, Jessica French ("French") in her home. Shrum's job as a "linesman" with Triple D consisted of "lines work and excavation work." Basically, he performed any job needed to be done. Shrum was trained by Triple D to perform this job. He worked for Triple D approximately four to five months before the accident. He provided the following description of the type of work he performed for Triple D:

A: I installed fiber-optic cable, aerial, meaning in the air.
Installing telephone poles and guidelines after wrecks.

¹ Russell Springs is in Russell County which we take judicial notice is in the Central Time Zone.

So I done a lot of on-call work, is really what most of the work consisted of.

Q: Like if something went down unexpectedly, you'd be called out to fix it?

A: Yes, sir. My first few months I only had probably about three to four hours of sleep almost every night due to it.

Prior to the July 29, 2019, accident, Shrum had given his two-weeks notice he was leaving Triple D. His anticipated last day of work was the day after the work event. He was to then begin employment at Ledcor where he eventually worked until December 2021. While working for Triple D he rode to the Campbellsville shop with Jesse Johnson ("Johnson") in a company truck.² Consistent with his timesheet for that day, on the day in question Shrum believed he and Johnson arrived at Triple D's workshop in Campbellsville at 7:00 a.m. Shrum estimated the drive from French's home to Campbellsville took forty-five minutes. He described the trip from the Campbellsville shop to the work site and the job to be performed as follows:

Q: Now, when you guys got to the Campbellsville shop, do you know how long you-all hung around before you went out to Loretto?

A: Not very long. I think we loaded up some poles. Probably 40 minutes' worth of inventory work, you know, loading the truck up, getting ready for the day's work.

Q: How many poles did you load up?

A: I'm not even sure, sir. I know the rack holds three, max. So we wouldn't have loaded any more than that.

Q: And this is the rack on the digger truck?

² Presumably, Johnson lived in or around Russell Springs, Kentucky.

A: Yes, sir.

Q: Did you take more than three poles?

A: No, sir.

Q: So you guys didn't take a trailer with more poles on it?

A: No, sir.

Q: And Mr. Johnson, is he the only one that's I guess qualified to drive the digger truck?

A: Yes, sir.

Q: Did you and Mr. Rowe ride out with him on the digger truck or did you-all take a separate vehicle?

A: You said Mr. Rowe?

Q: Yes, George Rowe.

A: George? He had his own truck. He's a splicer. He had his own truck and I rode with Jesse. I was trying to remember his name. I couldn't remember it.

Q: What's a splicer do?

A: Splicer connect wires together, the fiber strands.

Q: Were you also a splicer?

A: No, sir.

Q: What were you that day?

A: I was a linesman.

Q: What does a linesman do?

A: Install telephone poles and fiber-optic cable to the poles.

Q: The time sheet says you guys were out there to stay poles. How do you stay a pole?

A: What is it?

Q: The time sheet, it indicates you guys worked that day and you stayed poles.

A: Well, I'm not sure what stayed is, but I know that we were doing a road move. So what we were doing is we were putting poles behind the existing poles to move that fiber strand off the poles closest to the road and then remove those poles close to the road out of the ground, so therefore, the highway can expand that two-lane road to a four-lane road.

Shrum recounted what he remembered of the events of July 29, 2019, after arriving at the work site:

A: What I remember of it was I was going to put this pole up on this – on the hill. Okay. And you're blind on both sides of the hill. And I remember telling Jesse I didn't feel comfortable doing this part. But we decided to go ahead and do it. So we start bringing the pole out, after we had set up all our traffic – our traffic flags and cones, we started lifting that pole up and he heard – he told me that he heard a car coming up over the hill. So I get up and I got my hard hat on and my high vis. on and I'm waving my hands trying to slow this person down. And this person gets up towards me and I hear, Scooter, and I go to turn and the only thing I see was her car, a fence, a black Angus cow, and then that was it. Whenever I like looked past that black Angus cow, I was hit by that telephone pole and thrown out the road.

Now, that's pretty much all that I can remember. I was told that she drove right on by, never even stopped and wasn't worried about it. Jesse had performed first aid to me whenever I came to, and I had seen him over on top of me, you know, I kind of came alive, big six-foot-two man above me. But – hold. Here, just excuse me one second.

But I came back to and he told me, sit back down, because I jumped to my feet. He told me that my jaw had been split in half and that he just performed first aid on me, because he couldn't feel a pulse on me, couldn't see me breathing. So I couldn't see nothing. I seen a lot of blood on the ground. So I got my phone out and I pulled it – the camera open, because on my lock screen I got a phone and a camera option. So I flipped it

over so I can see it and I seen how it was split, so I went ahead and just took two pictures real quick. And I took a picture of the ground, see how much blood there was. And Jesse told me to get in the truck, which he helped me in there, because I couldn't really pick myself up. And then from there, I kind of just kept blacking out and I really don't remember much after that.

And the hospital, I remember them asking me what happened, and I told them that I guess I was hit riding a horse with a telephone pole, which the only thing I could think of is from seeing that cow and being wrapped on both sides of the road of a farm, that that's what I had I guess imagined, because I'd never been hit before a day in my life that hard. And I've been hit by cows and horses, you know, because as a kid, you walk up to a horse, you'll get kicked by one. But I'd never been caught like that. I didn't know what happened. And it's just – it's something else. To be honest, I'm just thankful to be here.

Shrum testified that after the incident, Johnson drove him straight to Lake Cumberland Regional Hospital (“LCRH”). Although the statements of Johnson and George Rowe (“Rowe”) reflect all three returned to the office in Campbellsville, Shrum did not remember stopping in Campbellsville. He acknowledged they could have stopped, but he did not recall stopping anywhere between the job site and LCRH in Somerset. Although Shrum believed Johnson went into the hospital, he was unsure if Johnson talked to the doctors. French met Shrum at the hospital door. He guessed French spoke with the doctors. After regaining consciousness at the work site, he was in pain and his body was numb. He testified that if he refused treatment at the work site, his co-workers should not have listened to him.

Shrum explained the whole day is a blur and he was unsure what work he performed that day. Although they had put their flag signs out on both sides of the

highway indicating there was road work ahead, a woman in a car drove through without slowing down or stopping. Shrum's immediate supervisor at the site was Johnson and their supervisor was Eric Ross ("Ross"), who was in the Campbellsville shop that day. Shrum testified he used his cell phone to take a photograph of the blacktop showing the blood he lost. The photograph reflects it was taken at approximately 1:44 p.m.³

Shrum testified he consented to be transferred to the University of Kentucky Medical Center ("UKMC") from LCRH. French's brother picked him up at UKMC the next day and transported him to French's house. While he was at French's home, Rex Carson ("Carson") or Ross, called Shrum to come to Campbellsville for treatment at an urgent care clinic. Shrum believed Triple D's personnel had already been informed of what occurred. He testified he developed an understanding of what happened four or five days after the event. By the time he realized what had happened, his mouth was wired shut and "everything was hurting."

Shrum drew workers' compensation benefits for a short time. He has not spoken to Johnson or Rowe since the accident. He was certain that on July 29, 2019, he was driven to LCRH and on July 30, 2019, French drove him to the clinic in Campbellsville. Shrum testified to the nature of his injuries as follows: "[J]aw was broke, my vision as well, to be honest, my memory." He described his recurring physical symptoms as follows:

³ That photograph along with two other photographs taken that day were introduced by Shrum at a later date. One photograph of his face has 1:36 p.m. under it and the other appearing to be a brace applied to the neck at the hospital lists 5:42 p.m. under it. As noted by Shrum, the photographs do not reflect the time zone.

A: Well, I would like to go see Dr. Graebe. I can't remember what town he was. He was towards either Lexington or Louisville. But he was very good. It was for my eyes. And it was dealing with my headaches, because apparently all the headaches had to stem through my eyes.

Yeah, Dr. Graebe had said some – something like from being hit in the head, the damage due to my retina is causing the jelly in my eyeballs to deteriorate, which causes my eyeballs to shake and to have floaters whenever I'm looking at something.

When asked about statements attributed to him, Shrum testified as follows:

Q: Okay. I'm looking at one statement here where you reported that you were a flagger and that you had a construction sign.

A: No, sir.

Q: Okay. This report also says that the lady you mentioned earlier, when she – well, that she did stop and actually told you that you were dead or that she thought you were dead.

A: No, sir.

Q: So you're saying this statement that you made is incorrect?

A: I don't ever remember making a statement like that, sir. And if I did, it was probably right after the incident and they probably should have – well, at least would have helped me.

Shrum did not remember giving a statement to Triple D. Contrary to his signed statement, Shrum testified he did not go home after the incident. He had no idea why he wrote that statement except "probably from being hit in the head." He took three photographs using his cellphone immediately after the accident. On that date, he wore high-visible clothing, boots, jeans, and a hard hat.

Shrum testified that during his trip to LCRH, he was out of touch with reality. He denied being on a horse that day. Further, he knows no one who has a horse which he could ride. He believed Fast Pace Urgent Care Clinic (“Fast Pace”) in Campbellsville was the clinic to which he went the next day. There, he told personnel he was injured at work. Shrum recounted the recommended treatment for his problems:

Q: Okay. And what treatment has been recommended for you now?

A: Dr. Graebe and it’s vision therapy, is really what I know it as. It’s just a whole bunch of like steps I need to take with my eyes to prevent headaches and stuff like that. And then the one doctor, I can’t pronounce his name, but he gave me a bunch of brain tests to do, to remember.

Q: Is that Leung or something, L-e-u-n-g?

A: Yes, sir. Yes, sir.

Q: And were you treating with a neurologist or anything like that –

A: Yes, sir.

Q: -- or just Dr. Graebe?

A: No, I was treated with I think two different neurologists.

Q: Okay. And where are you with that treatment?

A: I’m nowhere now because they cut off the treatments.

Shrum still experiences headaches, wears glasses everywhere he goes, and keeps the lights dimmed. His last headache was eight days in duration.

Shrum testified that approximately twenty to thirty minutes would be consumed putting up the signs and flagging gear in the road to slow traffic; however,

he was unsure whether all the signs were in place before lunch. He was also unsure when they started staging the telephone poles. Concerning the time stamp on the photographs, Shrum testified:

A: But I always keep my phone on slow time and I don't know if that time zone's different than the time zone that I lived in. So even though that picture says one, it might have been actually two o'clock in fast time.

The photographs reflect his location.⁴ Shrum was unable to provide the distance between the worksite in Loretto and the Campbellsville shop. He did not know the approximate driving time from the shop to the worksite. He believed they went through Lebanon to get to the job site. He identified what he could recall:

A: All I remember is being up on top of a hill and having a farm with black Angus cows on both side [sic] of this road and the distillery right down at the bottom of the hill to the right, if I was looking a certain way, and being around a bunch of three-phase power.

Shrum testified he last rode a horse in Casey County in 2012 when he was 17 years old and in foster care. That is the only time he has ever ridden a horse. He has never trained or broken a horse. Regarding the history contained in Dr. Mark Barrett's report concerning his age, Shrum testified:

Q: I'm looking here at Dr. Barrett's report. It looks like you were also confused as to your age after the incident?

A: I'm not sure.

Q: Okay. Well, this was just back in July of – July 14th of 2021. It says you thought you were eight years old after the incident.

A: Yeah. Well, I didn't tell you that part. When I was under, I had seen my dad wherever – he had passed

⁴ We take judicial notice that Campbellsville is in Taylor County and Loretto is in Marion County, and both are in the Eastern Time Zone.

away in 2002 and while I was liked passed out or whatnot – here, I’m sorry – I had thought that I was eight years old and I was looking at my dad and he was dead on the bed. Instead, he opened up his eyes and told me, not yet, and that’s when I came back to life and Jesse was down on top of me, pumping my chest, and trying to give me mouth to mouth. I forgot all about that.

Q: Is that the only time that you thought you were eight years old?

A: Yes, I think so. Yes, for that – that incident, yes, sir. Whenever I was hit, yeah, I did think I was eight, but I wasn’t even awake yet. It’s just something that I kind of was seeing behind my eyelids.

Shrum also testified at the September 28, 2021, hearing. He testified the work site is located on Highway 49 next to Makers Mark Distillery. He indicated as follows:

A: We were doing a road move, taking a telephone pole that was in the path of the existing road and moving all the telephone poles over so many feet for a road crew to come in and create a road. That was from my knowledge.

Shrum, Johnson, and Rowe were assigned to the project. Shrum again described the attire he wore that day and how they traveled to the job site. He provided the following description of the accident which occurred on the afternoon of July 29, 2019:

A: I mean, it’s kind of hard to really remember, but what I do remember is doing the road move, taking a telephone pole off the truck. During that road move, I was informed that there was a car coming up over the bank. So while me and Jessie Johnson was working and George Rowe, that vehicle doing [sic], I think it was paperwork, I didn’t consistently go out into the road to try to slow this vehicle down that was coming up over a hill. And it happened really quick.

I stepped out, well, I stepped out of the vehicle's way, they hollered for my name and I went to go turn around, I remember looking at the woman, I remember looking at the cow and that was it. There was cow across the road. And whether I got hit by a telephone pole, to be honest, I didn't know what really had happened. Like I said, the last thing I seen was a cow. And from there I was –

Q: How was that, what was going on with the telephone pole, where was that?

A: They were, Jessie Johnson had lifted the telephone pole up with the crane and the telephone pole will slide off the back of the truck, and it's inside of a rack that holds it so you have to pick it up high enough to get that telephone pole out the last bit of the rack. But I do remember us being underneath three phase power on top of the hill. And three phase electrical lines was really close to us so that's what he was mostly watching, Jessie Johnson was watching, was the electrical lines and the telephone pole.

And at some point between watching the telephone pole and the electrical lines above him and trying to watch me, the telephone pole was caught in a snag and had broke loose and had struck me.

Q: Where did it strike you?

A: In the face, sir.

Q: Okay. What side of your face?

A: What they tell me, it was the right side because I didn't have any skin on that eyelid is how I know.

When Johnson came to help him, Shrum was bleeding. They drove straight to LCRH in Somerset without stopping. Because his jaw was broken, hospital personnel wanted to send him to UKMC. Contrary to his deposition testimony, Shrum testified that because his health insurance would not cover the accident, hospital personnel sent him home. The next day he received a call telling

him to rush to Campbellsville so he could see a “doctor underneath Triple D.”
However, he later offered the following testimony:

Q: And did you end up, how did you end up at UK?

A: I was took by an ambulance.

Q: Okay. And when did that occur?

A: I’m not sure. It was sometime during the night or the morning of the next day.

Q: Okay. But they transferred you from Lake Cumberland up to UK?

A: Yes, sir.

Shrum testified he was numb and really disoriented traveling from the job site to LCRH. He did not remember anything that occurred. He denied being injured due to riding a horse and he did not remember telling hospital personnel the injury occurred while riding a horse. He was last on a horse in 2011 or 2012 while he was in foster care. Shrum believed French met him at the hospital. He did not remember with whom he spoke at Triple D on July 30, 2019, but he remembered Johnson and Carson, a supervisor at the Campbellsville office, met him at urgent care.

Ross was not present on the job site or at the hospital on July 29, 2019. Shrum did not see Ross until the next day when Shrum told him about the accident and his injuries. His medical bills were paid by the workers’ compensation carrier for approximately six or eight months. At the time of the hearing, Shrum was not receiving medical treatment. He again provided his current symptoms. Shrum was emphatic that he was not injured while riding a horse but when he was struck by “a

35-foot, 2,000-pound telephone pole.” He remembered Johnson performed CPR that day.

Ross also testified at the hearing. He is employed by Triple D working in the Campbellsville office as a supervisor. On July 29, 2019, and at the time of the hearing, Ross was a supervisor with Triple D and part of his duties entailed supervising Johnson, Rowe, and Shrum in 2019. He was not at work on the day of the incident. Ross estimated the drive from Campbellsville to the worksite in Loretto consumed about thirty to forty-five minutes. Johnson was the foreman at the worksite and was responsible for completing the timesheets and submitting them. After the foreman fills out the timesheet, the employee signs it to certify his time. The timesheets are submitted that evening or the next morning for approval and submission. Ross received the July 29, 2019, timesheet on July 30, 2019, and approved it at that time. Significantly, it was Ross’ assumption that Shrum was paid for a full day of work.

Ross testified that, in this instance, Shrum’s injury should have been reported to him. If he is not present, the report of injury should be made to safety personnel or to one of the area managers, Carson, or Mark Aldridge. If a less severe injury occurs, Triple D recommends the employee go to a clinic. In cases of severe injuries, Triple D will approve whatever is needed. Ross testified there are hospitals and emergency rooms in Campbellsville and Lebanon. Ross acknowledged Johnson and Rowe reported the injury to him on July 30, 2019. His written statement contains a complete report of the alleged work event as described to him on July 30, 2019, and, to his knowledge, nothing was left out of the report. Ross was unaware

that Johnson may have performed CPR or that Johnson drove Shrum to LCRH. He explained the extent of his knowledge about the event in question as follows:

A: ... I have in my report of Lake Cumberland Regional Hospital but past that point, I didn't.

Q: And your statement actually says that Mr. Shrum went to Lake Cumberland Regional Hospital later. Do you remember how much later he would have went?

A: I do not, no.

Q: Do you know if Mr. Shrum went home before he went to the hospital?

A: I do not know.

Q: Okay. Do you recall the conversations that you would have had with Mr. Shrum following the incident?

A: Not verbatim, no.

Q: Do you remember any gist of it at all?

A: I mean, you know, after the incident it was more a health check, hey, are you okay kind of thing.

...

Q: The events of July 29, 2019, do you have any direct knowledge of anything that occurred that day?

A: Not much other than what was written down, you know, verbally told and written back down.

Q: Okay. And on July 30 you did speak with Mr. Shrum and he told you about the accident; is that correct?

A: Yeah, I mean, that gist of it that he got hit and later went to the hospital and, you know, like I said again, basically what I wrote down. I didn't write my statement until the 30th, so.

Q: And did Mr. Shrum have a supervisor on site with him that day?

A: The foreman.

Q: Okay. And who was that?

A: He was the only supervisor. Jessie Johnson was the only foreman.

Q: Okay. And did he drive Mr. Shrum to the hospital? You listened to the testimony today?

Mr. Proffitt: I'll object, it's speculation?

A: Again, I don't know.

Q: Do you have any knowledge of who drove Mr. Shrum to the hospital?

A: I have no idea.

Triple D's Employee Injury Form reflects the following:

Crew was unloading 30-4 pole off of the truck. The pole got bound on truck while removing it. The pole unexpectedly broke loose, striking Anthony in the jaw and knocking him to the ground. Anthony was dazed but thought to be ok. He did not want immediate medical treatment.

The date and time of the event is July 29, 2019, at 2:47 p.m. The location is Hwy 49, Lebanon, Kentucky. The witnesses listed were Johnson and Rowe.

Shrum's statement dated July 30, 2019, reads as follows:

On July 29th Jessie, George and I went to Lebanon to set a pole for the road move. During the move, the pole got lodged and swung freely and smacked me in the face. After getting hit, and being dazed⁵ go home. After making it home, decided to go to the hospital where I was still dazed and then the pain started.

Johnson's statement as to what occurred on July 29, 2019, reads as follows:

I Jesse Johnson was running the digger truck and Anthony was working the (illegible) we had over head power and was not able to become straight up we was

⁵ The Shrum statement filed by Triple D is incomplete as what Shrum wrote after the word "dazed" and before the word "go" is not included.

working the pole off the back of the truck when 30-4 pole became bend [sic] up with the other pole on the truck. It broke free and swing around hitting Anthony in the head pushing him. He appeared fine and did not want (illegible) medical attention. We ended the day and drove back to lot.

Rowe's statement dated July 30, 2019, reads as follows:

I George Rowe was working with Jessie and Anthony they were trying to unload a pole off the truck. Due to being under power couldn't raise digger boom all the way over. Pole became wedged under the other pole. When it broke free it started swinging and come back and hit Anthony in the side of the head. He appeared dazed but ok for the most part. Asked him if he wanted medical attention he said no he was fine. After this we loaded up and headed back to the shop for the day.

Ross' statement as to what occurred on July 29, 2019, reads as follows:

Anthony Shrum was assisting Jesse Johnson unloading a 30-4 pole from the truck to spot on site at a road move on Hwy 49. The pole became bound on the track, when it suddenly broke loose it struck Anthony in the face. Anthony did not want immediate medical treatment. He later went to Lake Cumberland regional hospital to discover his jaw was broken. I was not at the office yesterday and notified of accident today.

Triple D filed a Notice of Filing Highway 49 Road Move Closing

Packet which reflects the objective of the project was:

Relocate 25pr cable on Hwy 49 into new proposed row and new alignment along Hwy 52. The Kentucky Department of Transportation has authorized and will build this improvement project on Hwy 49. Windstream is required to move its facilities to clear for roadway construction. KDOT is requiring Windstream to start construction as soon as possible.

Triple D's Daily Billing & Payroll Time Sheet dated July 30, 2019, for work performed on July 29, 2019, is attached reflecting Johnson, Shrum, and Rowe

all began work at 7:00 a.m. and stopped working at 4:30 p.m.⁶ The timesheet is signed by Johnson, Shrum, Rowe, and Ross.

Shrum introduced three photographs. One photograph, taken on July 29, 2019, and time-stamped 1:36 p.m., is somewhat blurred but depicts Shrum's face. Another photograph taken on that same date, time-stamped 1:44 p.m., depicts a substance on the highway which Shrum identified as his blood. The third photograph is time-stamped 5:42 p.m. and was taken at the hospital depicting the brace placed on Shrum's neck and under his chin. None of the photographs identify the time zone.

Both parties introduced the medical records of LCRH. Among the medical records introduced by Triple D is an "Emergency Department Assessment Lake Cumberland Regional Hospital" form completed by hand dated July 29, 2019, which does not identify the author noting 1621 (4:21 p.m.) as the time. The chief complaint was listed as "thrown off horse, hit tree. +LOC, lost tooth, abrasion to right eye, rib pain, jaw pain. C-collar placed in triage, bruising/pain to neck." The form reveals "calm and cooperative" were checked and the Glasgow score was 15. However, a multiple page form styled "Emergency Department Note" completed by Dr. Allan Grimball, notes Shrum arrived on July 29, 2019, and was seen by a doctor at 1728 (5:28 p.m.). The document notes as follows:

P.A. Attestation

Evaluated by: Hatmaker PA, Charles F.

Discussed Patient with Dr. Grimball

Time Discussed: 1728

⁶ Shrum also introduced the July 29, 2019, timesheet dated July 30, 2019.

The history is listed as follows:

Patient presents the ED tonight for evaluation after a fall injury from being thrown off of his horse. The incident happened approximately 4 hrs prior to arrival. He was thrown into a telephone pole and then fell down and hit the ground. He did strike his head. He did have LOC that was witnessed by a friend that was helping him. He was out approximately 15 sec. He feels most of his pain is in the right lower jaw line. He also believes he may have broken a tooth and in the right lower jaw. He complains of pain in the right ribs.

The note also reflects Dr. Grimball discussed Shrum's care with Dr. (first name unknown) Boustany, the oral maxillary surgeon at UKMC. Dr. Boustany indicated she would be glad to accept a consultation with Shrum but recommended he be transferred to trauma. The note also reflects the trauma intake coordinator at UKMC had accepted Shrum on behalf of Dr. Julia Martin and would refer him to Dr. Boustany. Shrum agreed to the transfer to UKMC for further evaluation. The date and time seen by the provider is 07/29/19 at 1727 (5:27 p.m.).⁷ A report concerning the CT facial bones without contrast revealed the following:

Complete oblique mandibular fracture from the right mandibular body through the mandibular symphysis through the left middle adnexa incisor with 2.5 mm of distraction between the teeth. Some comminution extending inferiorly into the left mandibular body.

This note was electronically signed by the physician on July 29, 2019, at 1926 (7:26 p.m.). The notation concerning the diagnostic test performed to determine if there were any broken ribs reflects a history of "Fall from horse. Hit a tree." A CT of the cervical spine revealed no injury. The report concerning a CT scan

⁷ This is one minute earlier than the time listed when Dr. Grimball saw Shrum.

of the head without contrast contains a history of “Thrown from a horse right mandible and orbital injury.” The impression is “mandibular fracture evident on facial bone study cannot be visualized.” The last of the documents Triple D introduced indicate Shrum was admitted to the hospital on July 29, 2019, at 1928 (7:28 p.m.). The diagnoses were “fracture of symphysis of mandible. Init for clos fx. Animal rider injured in collision with stationary object. Initial Activity, Horseback riding.”⁸

The report of Somerset Pulaski County EMS reflects its personnel arrived at the hospital on July 29, 2019, to transport Shrum to UKMC. The history of present illness reflects the following: “PT arrived at LCRH due to falling from a horse and striking a tree with his face. PT was examined and diagnosed with a fractured mandible in multiple locations. PT received x-rays, CT, IV, pain management and IV fluids.”

The UKMC Flowsheets introduced by Triple D reflect Shrum arrived at UKMC on July 30, 2019, at 1:11 a.m. The chief complaint was “mandible fracture.” The history of illness was “patient was training a horse when he got bucked off and his face hit a pole. OSH says patient has a mandible fracture.” There is a notation of no problems with cognitive/perceptual assessment. The Glasgow Coma Scale Score was 15 throughout. The clinical findings revealed there was “acute displaced fracture of the mandibular body anteriorly, extending through the alveolar ridge. Large dental caries about the left mandibular first molar.” There was

⁸ The exhibit containing the LCRH records introduced by Shrum contains the same documents introduced by Triple D, but the documents contain additional diagnostic information.

“mild soft tissue swelling about the mandible body anteriorly.” The impression was “acute displaced fracture of the mandibular body anteriorly.”

Triple D introduced a UKMC Documents Review Report containing eight pages and Shrum introduced UKMC’s Document Review Report containing pages 2 and 5 through 13. Those records reveal Shrum was admitted on July 30, 2019, and arrived at 1:11 a.m. The triage time was 1:47 a.m. and he was diagnosed with a mandible fracture. The history of present illness was “Patient was training a horse when he got bucked off and his face hit a pole. OSH says pt has a mandible fracture.” Another July 30, 2019, note generated at 4:00 a.m. reveals Shrum was “bucked off horse hit telephone pole has complete lower mandibular fx, c/o left rib pain xray negative, +LOC head CT negative current GCS 15.” It also states “was attempted to break a horse, pt was thrown off and hit a pole face first. Mandibular fx. Positive LOC. Hx: None.” Another document provides the following history of present illness as follows:

Shrum, Anthony James is a 25 year old male transferred from OSH for an open mandibular fracture. Pt reports approximately 1 pm he was riding a horse at high speed, turned a corner, and struck a telephone pole knocking him off his horse and onto his right side. Pt reports LOC for 15 seconds he denies n/v or confusion after the incident and he was able to ambulate immediately after. Pt reports pain along his right rib cage and along his left mandible. He can feel a gap between his front teeth, had bleeding into his mouth. ...

The impression was acute displaced fracture of the mandibular body anteriorly. The July 30, 2019, note bearing 3:34 and 3:37 a.m. states:

Patient was seen and examined by Dr. Warkentine In summary, this is a 25 year old male transferred from OSH for evaluation of an open mandibular fracture and

R rib fracture. OSH imaged head a c-spine. CT head shows no intracranial pathology and CT c-spine shows no vertebral fracture. CT face revealed an intact orbit and mandibular fracture. CT images of mandible would not load and require repeat scanning. Given this, plan to obtain non-con CT face and reassess. 600 mg clindamycin was given IV due to open fracture and morphine administered for pain control.

CT scan of face completed at UKED shows an open and displaced right-sided comminuted fracture extending up to the left central and left lateral incisor. Facial surgery was consulted to assess the patient. They recommended Augmentin, Peridex, pain control. Soft diet. Patient will follow-up as an outpatient for surgery. He currently has jaw pain, but no headache. Given concussion precautions. Stable for discharge home.

Another page lists the following history of present illness as follows:

Patient states that he was riding his horse yesterday afternoon when the horse took a sharp turn around a telephone pole that led to him being thrown off. He states that he did have LOC. Workup at OSH was negative for a head bleed. He denies any symptoms currently aside from misalignment of his bite.

At 3:56 a.m. on July 30, 2019, the Documents Review Report lists the assessment/plan as:

25 y male with a parasymphysial fracture beginning at the right and extending past midline with comminution and mild displacement.

- Patient consented today for ORIF of mandibular fractures
- to be sent home with peridex, Augmentin 7 days, pain medication
- Plastic Surgery will call patient with a surgery date
- patient needs workup from a trauma standpoint secondary to LOC per ED or trauma surgery.

The August 6, 2019, UK Plastic Surgery note reveals the following chief complaint and history of present illness:

The patient presents to the office today with/for s/p ORIF right parasymphseal mandibular fracture with MMF on 7/31/19.

Mr. Shrum is a 25 yo male presenting to clinic today s/p ORIF right parasymphseal mandibular fracture with MMF on 7/31/19. Patient reports doing well. He states he has pain in his jaws and teeth. Reports he has been drinking ensure, Gatorade, smoothies, etc. Denies fever, chills, or n/v. Patient states his bite feels 'off', feels like it is set off to the left and back a little.

Shrum was seen by UK Plastic Surgery on August 20, 2019, for "s/p ORIF right parasymphseal mandibular fracture with MMF on July 31, 2019."

The June 17, 2020, UK Plastic Surgery note reflects the following: "Active Problems: Anxiety and depression; Fracture, mandible; High risk medication; Mild cognitive impairment; and Post-traumatic headache, and tinnitus." The Past Medical History reveals a "history of work-related injury."

The December 23, 2019, UK Neuroscience Institute - NEU Consult note contains the following history of present illness:

26-year-old right-handed man presented to the clinic for evaluation of traumatic brain injury patient sustained traumatic injury back in July 2019 where he had [sic] a head with a pole over the jaw it resulted in jaw fracture. Patient passed out for around 1 minute. Patient since then he [sic] have complained of the front complaints including memory disturbances, headaches, mood changes, sleep disturbances. Patient have memory issues since the trauma where he forgets his appointments, recent discussions, no visual hallucinations or delusions, patient had depressed mood with occasional suicidal thoughts when he had severe headaches. Patient had been complaining of headaches occurring once a week lasting for almost 1 day they are over the over the top of

the head as well as retro-orbital 8 out of 10 in severity associated with photophobia phonophobia the frequency of the headaches increased after the head trauma from onset 1 month to become once a week.

The Active Problems were “fracture, mandible; tinnitus.” The Assessment was “post-traumatic headache, mild cognitive impairment, and tinnitus.” The Discussion/Summary listed the following: “26-year-old man presented to the clinic for evaluation of brain injury patient had aggressive impairment that is most likely multifactorial related to posttraumatic cognitive impairment, sleep deprivation, depressed mood referred patient to neuropsychological evaluation, will send TSH, B12, methylmalonic acid.”

The April 20, 2020, UK Kentucky Neuroscience Institute – NEU Established Patient note reflects the following history:

26-year-old right-handed man presented to the clinic for phone call clinic visit for evaluation of posttraumatic headaches. Patient since last seen in the clinic back in December 2019 he still complained of headaches these occur on daily basis over the left side of the head as well as retro-orbital area that is severe associated with photophobia and phonophobia. He uses sumatriptan and that helps out occasionally he also he may use CBD flower over-the-counter. He tried during the previous clinic visit to Cymbalta that this used for few weeks but produced worsening anxiety and depression for which he discontinued that. Patient is complaining of sharp pain over the left side of the jaw getting a daily basis with sharp shooting pain also he had been complaining of sensation of loose jaw. He reported depressed mood with lack of interest but not reported suicidal thoughts or attempts. Still complained of memory disturbances. Patient had difficulty with maintaining conversations as well as remembering recent discussions, recent events he is able to perform his phone activities of daily living.

The Assessment was post-traumatic headache and mild cognitive impairment. The Plan was as follows:

26-year-old man with history of traumatic injury over the left side of the jaw with resultant jaw fracture. He complains about chronic daily headaches that are More lock to the left side. I will start the patient on venlafaxine 37.5 is to be increased to 75 mg if patient tolerates that. Also given the locked nature of the headaches I will try indomethacin in case the patient had indomethacin responsive headache that secondary to the trauma. If there is response to that then he needs to be on prophylactic treatment Topamax can be used, occipital nerve block, sphenopalatine ganglion block or can be performed if he deemed to have indomethacin responsive headache.

Will give also the patient proton pump inhibitors for gastric protection

Will refer the patient back to neuropsychology as well as psychiatry.

In regard of the cognitive disturbances most likely related to posttraumatic cognitive impairment, depression, sleep deprivation related to pain as well as chronic headaches.

Also will provide the patient with work leave for the next 6 months due to intractable headaches.

The July 30, 2019, record of Fast Pace generated when Shrum was seen at the request of Triple D provides the following history:

Workman's Comp injury involving telephone pole to the right side of the face around 1300 on 07/29/2019. Patient reports going unconscious for approximately 15 seconds. Seen at UK Hospital. Known broken right jaw, dental injury involving the lower row, right lower eyelid abrasion and contusion, abrasion to the right side of the forehead. Surgery scheduled at UK for tomorrow 07/31/19.

Shrum's chief complaint was of "constant (but worse at times) work injury since approximately Monday, July 29, 2019. The patient describes the severity as 8/10, with 10 being the worst imaginable. The problem is made worse by eating food and movement and unchanged by exercise, rest, sleep, and medication." The diagnosis was: "fracture of unspecified part of body of mandible, unspecified side, initial encounter for open fracture." Shrum was discharged on July 30, 2019, at 4:11 p.m.

An undated report of PriMedical, Inc. Nationwide Case Management ("PriMedical") reflects the injury to be a "broken lower jaw when a telephone pole swung into head, lost consciousness, broke jaw ORIF, right mandibular fracture with MMF on 7/31/19." An Appointment Summary from Tina Hyde ("Hyde") with PriMedical generated on August 7, 2019, relating to an August 6, 2019, post-operative visit with Dr. Kant Lin in UK Plastic Surgery notes as follows:

Mr. Shrum reported DOI 07-29-19 and a pain level of 10/10 in his lower jaw that resonated to his right ear from the middle of his chin. The vertical break/separation and repair of the lower jaw was just to the left of the chin, where it had to be surgically reconnected. Mr. Shrum sustained a small abrasion to the skin around his right eye that was healing well. He also sustained a broken right rib (#unidentified) that remains slightly tender. Mr. Shrum also reported he had open wounds inside of his mouth, from, he assumed, his teeth and bone being pushed into the tissue upon impact of the telephone pole. Mr. Shrum described the day of the injury and stated he was in the road directing traffic with a construction sign, telling people to go slow. He hear [sic] someone call his name and when he turned away from the traffic to look, the telephone pole, that was being moved from [sic] hanging piece of machinery was swinging toward him at such a rate that he could not get out of the way. He said, "Before you knew it, that pole hit me upside the head and threw me way over

into the ditch!” Mr. Shrum stated he lost consciousness for 15 seconds per his fellow employees and the driver on the road that stopped to check on him. One lady told him she was sure he was dead because there was so much blood that had come from his mouth. He was rushed to Cumberland Lake Medical Center in Somerset, KY early afternoon where they evaluated him until late in the evening and then sent him to University of Kentucky Hospital in the early morning hours of 07-30-19.

Triple D filed a Notice of Filing “Plaintiff’s Cognitive Assessment” apparently performed by Dr. Ayman A. Al-Salaimeh on December 23, 2019. The document is styled: “Montreal Cognitive Assessment (MOCA) and stamped Neurology-KYC. The score is 27/30 with normal being greater 26/30.”

The November 5, 2019, report of Lake Cumberland Medical Associates was introduced. The history of present illness was listed as follows:

Patient has had tinnitus and decreased hearing in his right ear since July 29, 2019 after being struck in the face by a telephone pole. (Patient works with road crew). He sustained a broken right jaw resulting in surgery at U (ORIF right parasymphiseal mandibular fracture with MMF on 07/31/2019). Patient has had decreased hearing and tinnitus in the right ear since that time. He had bleeding from the right ear at the time of the injury; no bleeding since that time. Hx of TBI.

The Assessment was 1. Tinnitus, right ear; 2. DNS (deviated nasal septum); 3. chronic rhinitis.

Dr. Patrick Leung’s October 19, 2020, note reveals the following history:

Anthony is a 26-year-old single white male. He had a work-related injury on July 29, 2019. He was hit by a telephone pole over the right jaw. He was unconscious. His coworker had to perform CPR while they’re waiting for the ambulance. He was taken to Somerset Hospital

and then transferred to the University of Kentucky Medical Center. He had surgical repair to his fractured right jaw.

He has been experiencing headache that is occipital and right temporal in location. He has mood swing. He has memory loss. He has anxiety and depression. He has been using CBD oil and he has been smoking CBD flower. His headache has improved. He is averaging 2-3 headaches a week. He looks somewhat headache [sic]. He has photophobia, phonophobia. He is currently not able to work. He has been staying at home.

Under the heading “ROS,” Dr. Leung’s records reveal Shrum’s care to be, among other things, the following:

... He reports dizziness, memory loss, headaches, and lightheadedness but reports no numbness, no imbalance or falling, no jerking, no shaking, no slurred speech, no numbness, no tingling, and no weakness. He reports angry, depression, high irritability, loss of interest in activities, loss of interest in friends and family (social withdrawal), and sad ... (emphasis added).

Dr. Leung’s assessment was Shrum sustained a work-related injury and experiences post-traumatic headache. Shrum also had post-concussion syndrome with anxiety, depression, mood swing, and tinnitus. Dr. Leung saw Shrum again on November 30, 2020. At that time, Dr. Leung again noted the past history:

He had a work-related injury with a fracture right jaw. He has posttraumatic headache. He was seen here in October. His insurance did not approve muscle relaxant or Imitrex. He was not able to get it. He has been using CBD oil with some improvement.

Under ROS, Dr. Leung again noted, in relevant part, the following:

He reports dizziness, memory loss, headaches, and lightheadedness but reports no numbness, no imbalance or falling, no jerking, no shaking, no

slurred speech, no numbness, no tingling, and no weakness. (emphasis added).

Dr. Leung's assessment was post-traumatic headache.

Triple D introduced the August 13, 2020, report of Dr. Heather Auton, a licensed psychologist, who saw Shrum on July 27, 2020, at its request. Dr. Auton listed the reason for the referral as follows:

Anthony James Shrum, a 26-year-old, right-handed male, suffered a work-related injury on July 29, 2019, when he was hit by a telephone pole on the right side of his face. This resulted in brief loss of consciousness with subsequent broken right jaw, dental injury involving the lower row, right lower eyelid abrasion and contusion, and abrasion of the right side of the forehead. Additionally, the examinee has complained of memory loss, feeling 'on edge,' and experiencing intermittent periods of depression. Physically, he reported tinnitus, headaches, and back pain. This evaluation was requested to assess current level of cognitive and emotional functioning in relation to his injury.

Dr. Auton diagnosed: "Attention-Deficit/Hyperactivity Disorder, Predominantly Inattentive Type." Dr. Auton noted Shrum had been previously diagnosed with ADHD during childhood and treated with medication until 2008. He also suffered physical abuse during childhood. Dr. Auton deemed the Performance on Intellectual Measures was "reflective of mild fluctuations in attention." The pattern of mild fluctuation and attention is consistent with his reported history of ADHD. Regarding Shrum's concern about memory loss, she noted most of the memory scores were within normal limits. Dr. Auton concluded the neuropsychological data is not supportive of any brain damage as a result of the work-related injury.

Dr. Auton's recommendations were:

Given the subject's history of attentional weakness, he would benefit from implementing behavioral strategies to increase focus and organization. Though current psychological results are not suggestive of elevated emotional distress, involvement in brief psychological intervention could benefit him with a focus on compensatory strategies for attentional weakness, as well as basic stress management strategies, particularly in dealing with the residual pain and financial distress.

Based on the history obtained, results of the mental status examination, behavioral observations, and tests administered, Dr. Auton concluded "the results of the cognitive testing was judged to be an accurate reflection of his current level of functioning. However, on a measure of symptom validity there was indication of defensiveness, to the point that psychological test results are unlikely to be a valid reflection of Shrum's current experience." Regarding the test results, Dr. Auton concluded as follows:

On the PAI, elevations were revealed on two of the four validity scales. There was suggestion regarding some problems in understanding or attending appropriately to the items, as there appeared to have been some idiosyncratic responses to particular items, and also some inconsistent responses to items with highly similar content. Furthermore, there was indication that the man may not have answered in a completely forthright manner, as his pattern of responses indicated considerable defensiveness; thus, he appeared motivated to portray himself as being exceptionally free of common shortcomings to which most individuals will admit. Accompanying his reluctance may be a tendency to minimize any negative impact that his actions may have on other people and also on himself. Given the high level of defensiveness, the clinical profile is likely to reflect significant distortion and minimization of difficulties, and the results are therefore unlikely to be a valid reflection of the examinee's experience. It is notable that, despite the level of defensiveness noted, he described problems of greater intensity than is typical of defensive respondents within the following areas:

unusual sensorimotor problems, physical signs of depression, frequent routine physical complaints, history of antisocial behavior, stress in the environment, preoccupation with physical functioning, unhappiness, moodiness, compulsiveness or rigidity, suspiciousness, distrust, rumination and worry, tension and apprehension, irrational fears, and disruptions in thought process.

Dr. Barrett's July 14, 2021, report introduced by Shrum reflects he reviewed the records from LCRH, UKMC, Fast Pace, Cumberland Family Medical Center, Family Eyecare Associates, Dr. Leung, Westlake Primary Care of Russell County, UK Dentistry, UK Healthcare, UK Plastic Surgery, and Russell County Hospital. Shrum informed him that he was part of a work crew handling telephone poles that were in the back of a truck. One of the poles was lifted up and swung into him, striking him in the face. Shrum fell down and according to co-workers was unconscious for less than a minute. When he awoke, he was confused and thought he had been riding a horse and fallen into a tree. Shrum was taken by private vehicle to LCRH about four hours after the event. Dr. Barrett noted that upon arrival, Shrum, who was recovering from his concussion, "was reiterating his ideas about falling off a horse." He also noted "no other history is recorded in the LCRH record of talking to coworkers or family members." When seen at UKMC, Shrum was "still repeating the fiction of being on a horse, and again unfortunately, this was repeated into the medical record without interviewing coworkers or family members." When Shrum was seen at Fast Pace the next day, he had regained his memory and reported that this was a work-related injury in which a telephone pole was swung into the right side of his face. Dr. Barrett noted Shrum had a recollection of staring over a fence at some livestock when the pole hit him in the face and caused his loss of

consciousness. Shrum believed this caused him to imagine he had been riding a horse for the next twenty-four hours. He also noted Shrum believed he was eight years old. Dr. Barrett reviewed the photographs and the statements of Johnson and Rowe. Dr. Barrett opined that the falling off of a horse story was the result of “poor memory and retrograde amnesia following a concussive event.”

Based on over forty years of experience in surgery and emergency medicine, Dr. Barrett opined he could attest that it is quite common for patients to have poor memory or no memory of traumatic events early on. However, they can regain their memory with time. He opined Shrum’s concussion was caused by a work-related event, and the emergency treatment was reasonable and necessary even though the history written in the record at the first two emergency departments is inaccurate as it was based on the tangled memory of a recently unconscious patient.

The ALJ provided brief summaries of the records from LCRH, UKMC, Fast Pace, UK Neuroscience Institute, Dr. Leung, Dr. Barrett, and Dr. Auton. The ALJ also discussed the statements of Johnson, Rowe, Ross, and Shrum. She also discussed the history Hyde obtained from Shrum set forth in her August 7, 2019, report. The ALJ did not address or discuss records of UKMC Plastic Surgery, Triple D’s Employee Injury Form completed by Johnson, Triple D’s First Report of Injury, and one of the documents from PriMedical. The ALJ reviewed the timesheets, photographs, and provided a short summary of Shrum’s testimony. The ALJ furnished the following findings of fact and conclusions of law in finding Shrum failed to prove a work-related injury which are set forth *verbatim*:

The parties agree that Shrum suffered an injury on July 29, 2019. The parties disagree as to whether

Shrum's injury occurred at work. After reviewing the conflicting evidence, the ALJ finds that Shrum has not met his burden of proving his injury occurred at work. The ALJ finds the separate histories given at Lake Cumberland and UK are more reliable and persuasive, and relies on those records in conjunction with Shrum's inconsistent testimony to find that he did not meet his burden of proof. (emphasis added).

When Shrum first reported to Lake Cumberland and UK, he gave a consistent history of being thrown off a horse. While Dr. Barrett indicated that Shrum had retrograde amnesia, his opinion is not consistent with the records. Repeatedly, the two hospitals recorded Shrum was oriented to time and place. Shrum specifically indicated that he was not confused, nor did he lose consciousness. Shrum's lucidity was corroborated by his repeated 15/15 scores on the Glasgow Coma Scale.

At his deposition, Shrum testified he thought he told Lake Cumberland he fell off a horse because he remembered seeing a black cow right before the telephone pole hit him. Yet, Shrum denied ever telling Lake Cumberland he fell off a horse during the final hearing. Furthermore, Shrum did not provide an explanation for why he told UK he fell off a horse.

Shrum pointed to the time sheet and witness statements as support that he suffered a work injury. However, the ALJ finds the witness statements and time sheets are unreliable. First, the witnesses described the extent of Shrum's injury very differently from how Shrum described it. Both witnesses stated that Shrum appeared dazed, but denied medical treatment. Yet, Shrum indicated he lost consciousness and woke up to Johnson performing CPR on him because he did not have a pulse. Shrum testified that there was blood all over the road and that Johnson transported him to Lake Cumberland Regional Hospital. However, neither witness reported performing first aid on Shrum or taking him for medical treatment. Furthermore, the time sheet indicated that Johnson, Shrum, and Rowe worked until 4:30 p.m., yet Shrum's intake sheet at Lake Cumberland noted an arrival time of 4:21 p.m. If Johnson drove Shrum to the hospital, as he alleged, they could not have been working until 4:30 p.m.

Shrum also gave inconsistent testimony regarding the circumstances of the injury. Shrum testified that he was directing traffic and while he was attempting to slow down a female driver, the telephone pole hit him. At one point he testified that the woman did not stop to check on him and at another point he testified that she stopped to check on him because she thought he was dead. Shrum stated that Johnson took him straight to the hospital, but also gave a history of waiting for an ambulance on the scene of the injury. In his witness statement, he said he went home after work and then decided to go to the hospital because he was still dazed and in pain. At his deposition and hearing, he testified that he went straight to the hospital and never returned home.

Shrum stated that after he regained consciousness he jumped to his feet and Johnson told him his jaw was split in half and that he (Johnson) had performed CPR on him because he didn't have a pulse. Shrum wanted to see the extent of his injuries, "so I got my phone out and I pulled it—the camera open, because on my lock screen I got a phone and a camera option. So I flipped it over so I can see it and I seen how it was split, so I went ahead and just took two pictures real quick." (Depo. 27:17-21). However, the photos he submitted are in contradiction to his testimony. The first time-stamped photo shows him sitting in the truck at 1:36 p.m. The next photo shows a picture of the alleged blood on the pavement at 1:44 p.m. Shrum testified that he was the person that took the photos, so he would have been in the truck to take a picture of himself and then exited the truck to take a picture of the pavement.

As summarized above, the evidence filed is inconsistent as to whether Shrum was injured at work. The ALJ finds that Shrum's testimony is not reliable. His description of events changed frequently and is in contradiction to the evidence he filed. **The ALJ does not dispute that Shrum suffered an injury to his head and jaw on July 29, 2019.** However, Shrum had the burden of proving his injury was caused by his work, and he failed to meet that burden. (emphasis added).

Shrum filed a Petition for Reconsideration requesting additional findings regarding the statements of Rowe, Johnson, and Ross, the photographs, Shrum's statement, and the accident report. He submitted the weight of the evidence showed a workplace accident occurred and Shrum was struck by a telephone pole. He argued the decision was not consistent with the witness statements and evidence. Shrum also noted Dr. Barrett was the only doctor to offer an explanation for the head injury and its sequelae. The December 19, 2021, Order denied the Petition for Reconsideration and provided the following additional explanation:

The ALJ previously weighed the evidence, including Mr. Johnson and Mr. Rowe's witness statements, the injury photos, Plaintiff's written statement and testimony, Mr. Ross' written statement and testimony, and Dr. Barrett's report. As explained in the Opinion, there were numerous discrepancies between the witness statements, injury photos, timesheets, medical records, and Plaintiff's written statement and testimony. On pages six and seven of the Opinion, the ALJ described in detail why she did not rely on the witness statements and injury photos. On those same pages, the ALJ explained why she did not find Plaintiff as a credible witness. Regarding Dr. Barrett's report, the ALJ found the history given at Lake Cumberland Regional Hospital and the University of Kentucky's Hospital was more credible. Although Dr. Barrett opined that Plaintiff suffered from retrograde amnesia and that was the origin of the horse history, his opinion is contradicted by the Glasgow Coma Scale scores and records from Lake Cumberland and UK. Furthermore, Plaintiff's own testimony regarding the origins of the horse story were inconsistent. At his deposition, Plaintiff testified that he told Lake Cumberland he fell off a horse because he saw a black cow immediately prior to his alleged injury; yet, at his hearing he denied ever giving a history of falling off a horse.

On appeal, Shrum argues the witness statements, accident report, photographs, and Ross' testimony demonstrate he was struck by a telephone pole in

the course and scope of his employment. Further, the medical records of July 31, 2021, note the same method of injury. He maintains these medical records contradict the medical records generated on the date of the injury indicating Shrum was hurt while riding a horse. Shrum notes the time sheets and the statements of Rowe and Johnson indicate a work accident occurred. He complains the ALJ erroneously disregarded the witness statements and time sheets as unreliable. In Shrum's view, the issue of the extent of the injury is not probative or relevant to the finding of whether an accident occurred. He notes even though the ALJ acknowledged the injury occurred she dismissed the claim. Shrum argues the ALJ's finding he did not sustain a work injury is not consistent with the evidence which establishes he was struck in the head by a telephone pole.

Shrum argues the medical records from LCRH and UKMC must be viewed in the context of when the accident occurred and what kind of injuries were sustained. He asserts his memory was not good after the accident; consequently, he provided an inaccurate history. Shrum insists the evidence compelled a finding of a work-related accident. Shrum contends the ALJ should have provided additional findings relating to whether a second accident occurred on July 29, 2019, and how it impacted the work accident. Shrum notes the testimony and medical evidence should have been discussed for purposes of determining whether the alleged horse-riding accident could have occurred in light of the evidence presented. Shrum notes Triple D offered no evidence that there was a horse-riding accident on July 29, 2019, other than the medical records generated on that date.

Shrum also argues the ALJ should have based the decision concerning causation upon a medical opinion. He contends the medical records may have shown he was able to talk and report things, but his memory of the event and recollection should not have been relied upon by the ALJ as heavily. Thus, a medical opinion is needed to explain the effects from the head injury including memory lapses. Shrum points to Dr. Barrett's unrebutted opinions "medically explained" the effects from a head injury and inconsistencies regarding Shrum's report of the occurrences and events before and after he was hit by the telephone pole. Shrum requests the Board vacate the ALJ's decision and remand the claim for a finding of a work-related accident or, in the alternative, for additional findings.

ANALYSIS

As the claimant in a workers' compensation proceeding, Shrum had the burden of proving each of the essential elements of his cause of action including causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Shrum was unsuccessful in that burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ 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).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility, and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The 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). 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).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

Because the statements of all witnesses to the events of July 29, 2019, and Triple D's work records unanimously establish Shrum was hit on the head by a

swinging telephone pole on the date in question, we vacate the November 22, 2021, decision and the subsequent order.⁹

We note the following facts:

- Shrum, Rowe, and Johnson stated Shrum was struck by a swinging telephone pole.
- Triple D's Employee Injury Form states Shrum was hit in the jaw by a swinging telephone pole knocking him down.
- Triple D's wage records firmly demonstrate all three employees were at work on the date in question.
- Ross' statement and his hearing testimony confirms the employees' account of the telephone pole hitting Shrum in the head. This was also confirmed by Triple D's "First Report of Injury" prepared by it on July 30, 2019.

There was no other apparent reason for Triple D to insist Shrum present himself at Fast Pace on July 30, 2019, other than he was hit in the head by a swinging telephone pole and required medical treatment. On July 30, 2019, Shrum, after being released earlier that morning, was required by Triple D to drive from Russell Springs to Campbellsville where he was seen, according to Fast Pace records, for injuries sustained when he was struck in the "right side of the face around 1300 on 7/29/19." Regardless of the inconsistent and incoherent histories Shrum provided to LCRH and UKMC and his testimony regarding what occurred after he was hit in the head by a swinging telephone pole, there is no question, pursuant to multiple records of Triple D, that Shrum was struck in the head by a telephone pole weighing two tons. Moreover, there was no coincidence Shrum was treated for

⁹ This includes the witnesses' and Shrum's statements, Ross' statement and testimony, the time sheets, the Employee Injury Form, and the First Report of Injury.

severe facial injuries at LCRH two to three hours after being hit in the face necessitating his transfer to UKMC for extensive medical treatment. Thus, the evidence compels a finding Shrum was hit in the face by a swinging telephone pole on July 29, 2019.

The following facts are uncontradicted:

- Shrum went to work with Johnson and arrived in Campbellsville at 7:00 a.m.
- Shrum, Johnson, and Rowe travelled to Loretto next to Makers Mark Distillery.
- All witnesses to the event recounted that on the afternoon of July 29, 2019, Shrum was hit with a swinging telephone pole in the head.
- Triple D's Employee Injury Report reveals the incident occurred at 2:47 on July 29, 2019. A telephone pole broke loose striking Shrum's jaw knocking him to the ground.
- The timesheets of Triple D establish Shrum worked from 7:00 a.m. to 4:30 p.m. All times are Eastern Standard Time.
- Shrum gave various histories related to being thrown off a horse on July 29, 2019.
- The doctors at LCRH and UKMC diagnosed a mandibular fracture.
- Shrum was transferred to UKMC early in the morning of July 30, 2019, where he continued to repeat the history of falling off a horse. There the impression was acute displaced fracture of the mandibular body anteriorly. A Plastic Surgery Facial Traumatic consultation was noted.
- On July 30, 2019, at the request of Triple D, Shrum appeared at Fast Pace where personnel noted a worker's compensation injury involving a telephone pole to the face around 1300, on July 29, 2019. Shrum did not indicate he had fallen off a horse.

- The injury was reported to Triple D on July 30, 2019, and it prepared a First Report of Injury on that date and forwarded it to the Department of Workers' Claims.
- The two notes of PriMedical, presumably providing case management services to Triple D's insurance carrier, reflect a swinging telephone pole hit Shrum's head causing lost consciousness - broke jaw - ORIF right mandibular fracture with MMF on July 31, 2019. A report prepared by Tina Hyde reflects Shrum sustained a work-related injury and reported a pole hit him in the head at such a rate he could not get out of the way. There is no history in either of these documents indicating Shrum fell off a horse.
- The records of UK Plastic Surgery dated August 6, 2019, reveal the following: Chief Complaint – The patient presents to the office today with/for s/p ORIF right parasymphyseal mandibular fracture with MMF on 7/31/19. The History of present Illness – Mr. Shrum is a 25 yo male presenting to clinic today s/p ORIF right parasymphyseal mandibular fracture with MMF on 7/31/19. Patient reports doing well. He states he was pain in his jaws and teeth. Reports he has been drinking ensure, Gatorade, smoothies, etc. Denies fever, chills, or n/v. Patient states his bite feels “off”, feels like it is set off to the left and back a little.¹⁰ The records dated June 17, 2020, reveal the following: History of Present Illness – Patient is a 26 yo male who presents for follow-up of ORIF of mandible fracture. Patient states that he intermittently has pain in the right side of his mandible. He also reports having a left mandibular first molar that has recently caused him problems. He reports his occlusion is different than his pre-morbid occlusion. Active Problems – Mild cognitive impairment (G31.84), Post-traumatic headache (G44.309). Past Medical History – History of work related injury.
- The records from UK Neuroscience Institute reflect personnel saw Shrum for evaluation of a traumatic brain injury because he sustained a traumatic injury in July 2019 when his head was hit with a pole resulting in a fractured jaw. There is no mention of Shrum falling off a horse. Mild cognitive impairment was assessed.

¹⁰ We have not summarized the August 20, 2019, two-page follow up record.

- Dr. Leung's report reveals he received a history that Shrum sustained a work-related injury on July 29, 2019, when he was hit by a telephone pole in the right jaw.
- Dr. Barrett's report reflects that while at work a telephone pole swung into Shrum hitting him in the face.
- Dr. Auton's report reveals Shrum suffered a work-related injury on July 29, 2019, when he was hit by a telephone pole on the right side of the face. Notably, Shrum was referred to Dr. Auton by Tina Hyde with PriMedical.
- After Shrum was discharged from UKMC, all medical providers subsequently treating Shrum, including UK Neuroscience Institute, UK Plastic Surgery, Dr. Leung, Dr. Barrett, and Dr. Auton did not recount a history nor offer an opinion that Shrum had sustained a work-related injury as a result of falling off a horse. Dr. Leung initially diagnosed cognitive impairment post-concussion syndrome. Dr. Barrett diagnosed retrograde amnesia following a concussive event and completely discounted Shrum's story of falling off a horse. Similarly, UK Neuroscience Institute and UK Plastic Surgery assessed a cognitive impairment. Dr. Auton did not provide a diagnosis. Rather, she determined the results of the cognitive testing were judged to be an accurate reflection of his **current** level of functioning. (emphasis added).

While at LCRH and UKMC, between either 4:16 or 5:28 p.m. on July 29, 2019, and 4:00 a.m. on July 30, 2019, after being hit in the head with a swinging telephone pole, Shrum provided multiple histories referencing being thrown or knocked off a horse.

At LCRH Shrum offered the following histories:

- Shrum first stated he was thrown off a horse.
- He also stated four hours earlier (July 29, 2019) he was thrown off his horse into a telephone pole and onto the ground. He struck his head, and this was witnessed by a friend helping him.

- Two of LCRH's diagnostic reports reflect he stated he fell or was thrown from a horse, one of which added he hit a tree.

UKMC recorded the following histories:

- He stated he was training a horse and was bucked off and his face hit a pole.
- He was "bucked off horse hit telepole."
- He was breaking a horse and bucked off and hit a pole face first. He was riding a horse at high speed, turned a corner and struck a telephone pole knocking him off the horse.
- He was riding his horse yesterday afternoon (July 29, 2019) when the horse took a sharp turn around a telephone pole that led him to being thrown off.

Since the above-cited testimony indicates the purported fall off a horse occurred on July 29, 2019, this begs the question – at what point did Shrum ride and fall off a horse on July 29, 2019? The records of Triple D establish Shrum was at work from 7:00 a.m. to 4:30 p.m. Before 7:00 a.m., he was traveling with Johnson to work. His co-workers stated he was hit by a swinging telephone pole and returned to the Campbellsville shop. Shrum testified he was taken to the hospital by Johnson immediately after being hit by the telephone pole. Shrum simply did not have the opportunity before or after getting hit in the head by a swinging two-ton telephone pole to ride a horse. There is no testimony he rode the horse at or any time before lunch. Importantly, Shrum identified more than once being hit by a telephone pole or a pole in the multiple histories provided to LCRH and UKMC.

The ALJ stated the parties agree Shrum suffered an injury on July 29, 2019, but disagreed as to whether the injury occurred at work. However, the statements of Johnson, Rowe, and Ross as well as Triple D's Incident Report and

First Report of Injury establish Shrum was hit in the jaw by a swinging telephone pole. In fact, all of Triple D's records, including all eyewitness statements, firmly demonstrate Shrum was injured at work on July 29, 2019. Notably, Johnson was the individual who lost control of the telephone pole which swung and hit Shrum in the face. Despite the overwhelming evidence in the record supporting the fact Shrum was hit in the face by a telephone pole, the ALJ made a finding that the varying histories Shrum provided to LCRH and UKMC are more reliable and persuasive. The ALJ also relied upon Shrum's inconsistent testimony to find he did not meet his burden of proof. In light of the remainder of the evidence in this claim, the histories elicited from Shrum while at LCRH and UKMC along with Shrum's inconsistent testimony as to what happened after he was hit in the head by a swinging telephone pole do not constitute substantial evidence supporting a finding that Shrum did not sustain an injury at work after being hit in the head by a swinging telephone pole.¹¹ Even though Shrum scored 15/15 in the Glasgow Coma Scale, there is no medical evidence reflecting the significance of that score. Further, the medical opinions offered by Drs. Leung and Barrett establish that after he was hit in the face by a swinging telephone pole, he suffered cognitive impairment. This was corroborated by two UKMC medical departments subsequently treating Shrum after his release from UKMC on July 30, 2019.

Not surprisingly, the inconsistent histories Shrum provided to LCRH and UKMC indicate he did not have a clear understanding of how he was injured on July 29, 2019. The histories Shrum provided to LCRH vary from being thrown off a

¹¹ Shrum testified the pole was 32 feet long. The Incident Report reflects the pole was a 30-4 pole.

horse to being thrown off a horse and hitting a telephone pole or a tree. At UKMC, on various occasions, Shrum stated he was bucked off a horse and either hit a telephone pole or hit a pole face first. On other occasions, Shrum stated he was bucked off a horse and then added he hit a pole or a “telepole.” On another occasion, he recounted that he was riding a horse at high speed, turned a corner, and struck a telephone pole, and on yet another occasion stated he took a sharp turn around a telephone pole which led him to being thrown off. Those incoherent and inconsistent statements given within two to twelve hours after being struck in the face by a swinging two-ton telephone pole cannot constitute substantial evidence in light of the remaining overwhelming proof in the record establishing he was struck on the head by a swinging telephone pole around 2:40 while at work in Loretto, Kentucky. More importantly, Triple D’s evidence concerning what transpired on July 29, 2019, unanimously demonstrates Shrum was hit by a swinging telephone pole of which Johnson had lost control.

The medical evidence generated after Shrum was released from UKMC, and records and statements generated by Triple D as compared to histories Shrum provided to LCRH and UKMC within four to twelve hours after he was hit by a swinging telephone pole, result in those histories not rising to the level of substantial evidence supporting a finding of a non-work-related injury. Further, the fact that Shrum continued to contend Johnson took him to the hospital immediately after being hit in the head does not constitute substantial evidence refuting the overwhelming evidence Shrum was hit in the head by a swinging telephone pole at work. How and when Shrum was transported to the hospital with a broken jaw does

not refute the uncontraverted evidence Shrum was injured when struck by a swinging telephone pole around 2:40 p.m. at or near the Makers Mark Distillery in Loretto. Significantly, we see no reason why Triple D, especially Johnson, would fabricate statements and business records.

Notably, after previously testifying at his deposition that he was immediately transferred to UKMC, Shrum testified at the hearing that he was sent home because his insurance did not provide coverage. Shortly thereafter at the hearing, Shrum again testified that he was transferred to UKMC. Shrum's recollection of the events do not negate the fact that all of the witnesses who were present in the afternoon of July 29, 2019, in Loretto said Shrum was hit in the jaw by a swinging telephone pole. Shrum's testimony and Triple D's records give rise to the question, what happened after Shrum was struck by a swinging telephone pole? Specifically, did Shrum leave work immediately after the injury or did he return to Campbellsville at 4:30 p.m. and then go to the hospital? In any event, the answer to this question does not rebut the medical and lay evidence reflecting Shrum was hit in the head by a swinging thirty-foot long telephone pole.

Given the eyewitness statements, Shrum's injuries, and the unrebutted diagnoses of Dr. Barrett, Dr. Leung, UK Plastic Surgery Department, and UK Neuroscience Department, Shrum's inability to initially provide a cogent and consistent account of how he was injured is not surprising. We find no evidence in the record corroborates Shrum's statements to his initial medical providers that he was injured when he was either on a horse or thrown from a horse on July 29, 2019.

Further, if as the ALJ found, Triple D's timesheet is unreliable, then Shrum could have conceivably appeared at LCRH at 4:16 p.m. The ALJ stated the witnesses described the injury very differently from how Shrum described it, as they noted he was dazed but denied medical treatment. The ALJ found significant Shrum's testimony that he lost consciousness and woke up to Johnson performing CPR on him because he did not have a pulse. The ALJ also found significant that none of the witnesses reported performing first aid on Shrum or taking him for medical treatment. She also referenced the timesheets indicating Shrum, Johnson, and Rowe worked until 4:30 p.m., and Shrum's intake sheet at LCRH noted an arrival of 4:21 p.m. Further, she noted if Johnson drove Shrum to the hospital as Shrum contended, then they could not have worked until 4:30 p.m. This presupposes the handwritten notation at 4:21 p.m. on the intake sheet is accurate, especially in light of the next page of the records which reveals Shrum was seen by a physician over an hour later.

The ALJ also failed to recognize the intake sheet of LCRH establishing an arrival of 4:21 p.m. supports Shrum's statement that Johnson drove Shrum to the hospital immediately after the accident occurring at 2:42 p.m. or 2:47 p.m. In any situation, Shrum had to have ridden with Johnson after leaving work from Loretto or Campbellsville. Thus, either Shrum worked until 4:30 p.m. and then went to the hospital or he was taken by Johnson straight to the hospital.¹² However, none of the above findings and conclusions address or rebut the fact that all eyewitnesses and Triple D's Employee Injury Form state Shrum was hit in the head

¹² What is unclear is how Shrum arrived at UKMC if Johnson did not take him.

by a swinging telephone pole. By all accounts, Shrum did not fall into the telephone pole, the telephone pole swung into him. Notably, the ALJ did not state she rejected the portion of the witnesses' statements indicating Shrum was hit in the head by a swinging telephone pole. Rather, the ALJ addressed the inconsistency of Shrum's testimony and the portions of witnesses' statements as to what occurred after Shrum was hit in the head by the swinging telephone pole that did not coincide with Shrum's accounts of what occurred post-injury. The ALJ did not address the fact that Shrum, Johnson, and Rowe agree Shrum was hit by a swinging telephone pole. Although the ALJ may have found other portions of the witnesses' statements and Triple D's timesheet unreliable and inconsistent with other accounts of what occurred after the telephone pole hit Shrum, the witnesses' statements unanimously establish Shrum was hit in the face with a telephone pole on July 29, 2019.

Further, even though the ALJ made the blanket finding the witnesses' statements and timesheets are unreliable, she relied upon the witnesses' statements in concluding Shrum's version of what happened to him after he was hit by the swinging telephone pole is not accurate. Contrary to her finding the witnesses' statements are unreliable, the ALJ relied upon the witnesses' statements that Shrum appeared dazed and denied medical treatment. She also noted neither witness reported performing first aid on Shrum or taking him for medical treatment. Clearly, the ALJ relied upon those portions of the witnesses' statements in concluding Shrum's account of what occurred after being hit by the telephone pole was not reliable. Again, the ALJ did not address the unanimous testimony of Johnson, Rowe, and Shrum indicating Shrum was hit by a swinging telephone pole at work.

Moreover, the ALJ failed to address important documents generated by Triple D and the medical records of UKMC Plastic Surgery.

On page 2 of her decision, the ALJ noted Shrum underwent surgery on July 31, 2019, and continued to follow-up at UKMC. The ALJ cited to Hyde's account of what Shrum told her set forth in her August 7, 2019, "Appointment Summary" under the heading "Subjective Information."

... At his follow-up visit on August 6, 2019 his nurse case manager recorded the following history:

Mr. Shrum described the day of injury and stated he was in the road directing traffic with a construction sign, telling people to go slow. He heard someone call his name and when he turned away from traffic to look, the telephone pole, that was being moved from a hanging piece of machinery was swinging toward him at such a rate that he could not get out of the way.

She noted that Shrum described a loss of consciousness for 15 seconds per his fellow employees and that a passing driver stopped to check on him. Shrum told her that a passerby thought he was dead because of the amount of blood coming from his mouth. Additionally, he described his co-workers rushing him to Lake Cumberland Regional Hospital.¹³

The ALJ did not discuss or summarize the records of the UK Plastic Surgery Department relating to Shrum's visits of August 6, 2019, August 20, 2019, and July 17, 2020. The ALJ briefly discussed Shrum's treatment at the UK Neuroscience Institute, but did not discuss the records relating to his treatment by the UK Plastic Surgery Department. Significantly, the June 17, 2020, records reflect a

¹³ Hyde's account of the exchange between Dr. Lin, Brooke Wilson, PA, and Shrum are contained on the second page of her summary under the heading "Objective Information."

“history of work related injury” and multiple active problems including a fractured mandible, mild cognitive impairment, and post-traumatic headaches.

In the last full paragraph on page 6 of her decision, the ALJ acknowledged Shrum testified he was directing traffic while he was attempting to slow down a female driver when the telephone pole hit him. The ALJ stated Shrum testified the woman did not stop to check on him but also testified that she did stop to check on him because she thought he was dead. In addition, she noted Shrum testified Johnson took him straight to the hospital but also gave a history of waiting for an ambulance at the scene of the injury. The only testimony given by Shrum relating to a female driver and waiting on an ambulance is contained in his deposition which is as follows:

Q: I think you said earlier there was a woman that drove by?

A: Yes, sir.

Q: But she didn't stop to say anything?

A: No, sir, she never even slowed down.

Q: Do you know if she stopped to talk to your co-workers?

A: No, sir, she drove right by.

We can find no testimony from Shrum indicating that particular female driver stopped to check on him because she thought he was dead. Rather, the following exchange took place at the deposition:

Q: Okay. I'm looking at one statement here where you reported that you were a flagger and that you had a construction sign.

A: No, sir.

Q: Okay. This report also says that the lady you mentioned earlier, when she – well, that she did stop and actually told you that you were dead or that she thought you were dead.

A: No, sir.

Q: So you're saying this statement that you made is incorrect?

A: I don't ever remember making a statement like that, sir. And if I did, it was probably right after the incident and they probably should have -- well, at least would have helped me.

Q: Did anyone call any ambulance for you I guess to come out to the scene?

A: I'm not sure.

Although Shrum may have given another statement, that statement was not introduced into evidence. Thus, the ALJ erred in finding Shrum testified the woman stopped to check on him because she thought he was dead. We note Hyde's August 7, 2019, report reflects Shrum told her "the drivers on the road that stopped to check on him" and "one lady told him she was sure he was dead because there was so much blood that had come from his mouth."¹⁴ These statements do not coincide with the purported testimony attributed to Shrum by the ALJ. We also note in the October 19, 2020, records, Dr. Leung recorded Shrum told him "His coworker had to perform CPR while they're waiting for the ambulance."

Significantly, the Employee Injury Form completed by Johnson establishes that on July 29, 2019, at 2:47 p.m., Shrum was hit in the face by a telephone pole. Johnson's statement is consistent with this report. Notably, the ALJ

¹⁴ Notably, Shrum did not identify the lady as the woman who stopped to check on him.

did not address the Employee Injury Form in her summary of the evidence. Moreover, in the findings of fact, the ALJ did not address the Employee Injury Form as well as Ross' statement and testimony establishing Triple D acknowledged Johnson and Rowe informed him on July 30, 2019, that Shrum was hit in the head by a telephone pole on July 29, 2019.¹⁵

The ALJ concluded Shrum's explanation of the photographs contradict his testimony. She pointed out the first time-stamped photograph depicts Shrum sitting in the truck at 1:36 p.m., and the next photograph depicts the alleged blood on the pavement eight minutes later. After noting Shrum testified he took the photographs, the ALJ concluded Shrum would have been sitting in the truck to take the photograph of himself and then exited the truck to take the photograph of the pavement. Without further explanation by the ALJ, that does not appear to be contradictory testimony. Further, we note the ALJ failed to address Shrum's testimony that "even though that picture says one, it might have been actually two o'clock in fast time."

In summary, the ALJ's finding "the evidence filed is inconsistent as to whether Shrum was injured at work" is not based on substantial evidence. Without question, the overwhelming evidence, primarily generated by Triple D, establishes Shrum was injured at work, and the inconsistent histories Shrum recounted to the medical providers at LCRH and UKMC do not constitute substantial evidence permitting the ALJ to find Shrum did not establish he sustained a work-related

¹⁵ In the opinion, the ALJ did briefly summarize Ross' statement and hearing testimony. At the hearing, Ross described the pole as thirty feet weighing two tons.

injury. The ALJ stated she did not dispute Shrum suffered an injury to his face and jaw. However, she concluded he failed in his burden to prove the injury is work-related. We conclude the medical and lay evidence overwhelmingly establishes Shrum was struck by a swinging telephone pole on July 29, 2019, at approximately 2:47 p.m. in Loretto, Kentucky. We also conclude Shrum's report to medical personnel and testimony as to how he was transported and what transpired after eyewitnesses agree he was struck by a swinging telephone pole does not constitute substantial evidence supporting the ALJ's findings. Moreover, aside from multiple inconsistent histories provided by Shrum within two to twelve hours after being struck in the head by a swinging thirty-foot two-ton telephone pole, there is no other evidence Shrum was riding a horse on the date in question. Further, Shrum's testimony that he has not been on a horse since he was seventeen years old is not contradicted by the record. In contrast, Triple D's business records, the statements of Triple D's employees, the case manager's reports, and Dr. Auton's report establish Shrum sustained a work-related injury. So too do the records of Fast Pace, UK Plastic Surgery and Neuroscience Departments.

We are keenly aware we lack fact-finding authority. In Ford Motor Company v. Brown, 2021-SC-0051-WC, rendered February 24, 2022, Designated Not To Be Published, the Kentucky Supreme Court reminded us of that premise.

Suffice it to say, the Board may not hypothecate alternate inferences or interpretations of the evidence to reverse an ALJ's finding of fact. *Miller*, 473 S.W.3d at 629. Nor may it make its own findings. KRS 342.285(2). It must be remembered that by its very definition, substantial evidence is evidence fit to induce conviction in the minds of reasonable men. Nonetheless, "it is something less than the weight of the evidence, and the

possibility of drawing two inconsistent conclusions from the evidence does not prevent an [ALJ's] finding from being supported by substantial evidence.” *Ky. State Racing Comm'n v. Fuller*, 481 S.W.2d 298, 307 (Ky. 1972) (internal quotation and citation omitted).

Slip Op. at 5.

However, we are vested with the authority to determine whether substantial evidence supports the ALJ’s decision and when the evidence overwhelmingly supports a parties’ position on an issue. The ALJ failed to indicate in her opinion that she reflected upon and considered the entirety of the evidence in reaching her decision.

We are cognizant of Shrum’s burden as articulated by the Supreme Court in Kroger v. Ligon, 338 S.W.3d 269, 273 (Ky. 2011):

A party who fails to meet its burden before the ALJ must show on appeal that the unfavorable finding was clearly erroneous because overwhelming evidence compelled a favorable finding, *i.e.*, that no reasonable person could have failed to be persuaded by the favorable evidence. [footnote omitted] Evidence that would have supported but not compelled a different decision is an inadequate basis for reversal on appeal. [footnote omitted]

However, we believe the following language in Com. v. Workers’ Compensation Bd. of Kentucky, 697 S.W.2d 540, 541 (Ky. App. 1985) is applicable:

This evidence, which establishes the existence of an injury of appreciable proportions and an occupational disability as defined in *Osborne v. Johnson*, Ky., 432 S.W.2d 800 (1968), went uncontradicted, and, therefore, the Board was without authority to reject it absent a sufficient explanation of its reasons for doing so. *Collins v. Castleton Farms, Inc.*, Ky. App., 560 S.W.2d 830 (1977).

The ALJ did not provide a sufficient reason for rejecting the statements of Triple D's employees, the Employee Injury Report, the First Report of Injury, and the medical evidence generated after Shrum's release from UKMC on July 30, 2019, revealing Shrum was hit by a swinging telephone pole. Thus, the claim must be remanded for the ALJ to provide a sufficient reason for her rejection of the lay and medical evidence identified herein concerning what transpired on July 29, 2019.

The language contained in Franklin Insurance Agency v. Simpson, Claim Nos. 2007-SC-000748-WC, 2007-SC-000914-WC, rendered November 26, 2008, Designated No To Be Published, is applicable to the case *sub judice*.

The [fact-finder] may even refuse to follow the uncontradicted evidence in the record, but when it does so, its reasons for rejecting the only evidence in the record should appear—e.g., that the testimony was inherently improbable, or so inconsistent as to be incredible, that the witness was interested, or that his testimony on the point at issue was impeached by falsity in his statements on other matters. Unless some explanation is furnished for the disregard of all uncontradicted testimony in the record, the [factfinder] may find [the] award reversed as arbitrary and unsupported. [footnote omitted]

Slip Op. at 4.

Because we believe the ALJ must demonstrate a fuller understanding of the evidence, and she failed to summarize and address the First Report of Injury and Employee Injury Form prepared by Triple D and UKMC Plastic Surgery's records, we conclude the ALJ did not have an accurate understanding of the relevant evidence in reaching a decision. All parties to a workers' compensation dispute are entitled to findings of fact based upon a correct understanding of the evidence

submitted during adjudication of the claim. Where it is demonstrated the fact-finder may have held an erroneous understanding of relevant evidence in reaching a decision, the Courts have authorized remand to the ALJ for further findings. *See Cook v. Paducah Recapping Service*, 694 S.W.2d 684 (Ky. 1985); *Whitaker v. Peabody Coal Company*, 788 S.W.2d 269 (Ky. 1990). This was reinforced by the Supreme Court in *Ann Taylor, Inc. v. McDowell*, 2018-SC-000091-WC, rendered December 13, 2018, Designated Not To Be Published, as follows:

Arnold, v. Toyota Motor Mfg., 375 S.W.3d 56, 61-62 (Ky. 2012) (internal citations omitted). The record reflects contradictory evidence in both Dr. Bonnarens's testimony and Dr. Bonnarens's notes in the medical records. We can glean that the ALJ did not find McDowell to be credible, but like the Court of Appeals and the Board, we are left to wonder how the ALJ weighed the medical evidence in determining the issue of causation, because the ALJ's opinion does not "summarize the conflicting evidence accurately." Because McDowell and reviewing courts are entitled to an accurate and complete basis for which the ALJ made his or her decision, we affirm the decision of the Court of Appeals and remand this matter to the ALJ for sufficient findings on the basis of causation.

Slip Op. at 6.

We vacate the ALJ's finding Shrum did not meet his burden of proving his injury was caused by his work and direct her to evaluate and base her decision on the entirety of the evidence, particularly the medical evidence, before rendering additional findings regarding whether Shrum sustained a work-related injury. We direct no particular result, but the ALJ must base her decision upon substantial evidence contained in the record.

Accordingly, the November 22, 2021, Opinion and Order and December 19, 2021, Order denying the Petition for Reconsideration are **VACATED**. This claim is **REMANDED** to the ALJ for entry of additional findings of fact and rendition of an amended decision concerning the bifurcated issue in accordance with the views expressed herein.

ALL CONCUR.

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