Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 11, 2021

CLAIM NO. 201952039

BERYL RUSSELL — PETITIONER

VS. **APPEAL FROM HON. JONATHAN WEATHERBY, ADMINISTRATIVE LAW JUDGE**

FORD MOTOR CO.
AND HON. JONATHAN WEATHERBY,
ADMINISTRATIVE LAW JUDGE — RESPONDENTS

AND

FORD MOTOR CO. — CROSS-PETITIONER

VS.

BERYL RUSSELL — CROSS-RESPONDENT
AND HON. JONATHAN WEATHERBY,
ADMINISTRATIVE LAW JUDGE — RESPONDENT

OPINION
AFFIRMING ON APPEAL AND CROSS-APPEAL

* * * * * *

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

STIVERS, Member. Beryl Russell ("Russell") appeals and Ford Motor Co. ("Ford") cross-appeals from the December 14, 2020, Opinion and Order of Hon. Jonathan

Weatherby, Administrative Law Judge ("ALJ"), finding Russell sustained a December 1, 2019, low back work injury and awarding permanent total disability ("PTD") benefits and medical benefits. The ALJ ordered the income benefits shall terminate four years from the date of the injury pursuant to KRS 342.730(4).

On appeal, Russell argues the 2018 version of KRS 342.730(4), implemented by the ALJ in this case, is unconstitutional. On cross-appeal, Ford asserts the ALJ erred by finding Russell permanently totally disabled due to the work injury. Ford seeks remand for an award of permanent partial disability ("PPD") benefits.

BACKGROUND

Russell's Form 101 alleges on December 1, 2019, he sustained an injury to the lower back, encompassing the lumbar and lumbosacral area, while in the employ of Ford. Russell asserts his "foot slipped on ladder rung and fell 4-5 feet onto guard pole injuring mid to lower back."

Russell testified at a July 13, 2020, deposition and the October 20, 2020, hearing. At the time of his deposition, Russell was 70 years old and had retired on July 1, 2020, "because [he] couldn't do the work." He provided the following account of what occurred on December 1, 2019, when he was injured:

> Q: All right. And at the time of the incident we're here to talk about, I have a date of December 1, 2019. Does that sound about right?
>
> A: That is right. That's correct.
>
> Q: Okay. Did you have a job anywhere else at the time of this incident?
>
> A: I couldn't work any more jobs, 12 hours was plenty.

> Q: Gotcha. All right. If you would, just in your own words describe how the injury happened.
>
> A: We was working in the tire room, and we was coming out of the tire room off of the platform. As you climb up and come across the top of the tire conveyors, there was an iron ladder, I think, into the conveyor.
>
> And I got tools in one hand, and I'm holding on with the other hand. And I'm coming down the ladder, and my foot apparently slipped off the ladder and I landed on my feet on the floor. And I didn't have my balance, and I was falling backwards. And I backed into a guard post, and in my back I heard it crush when I hit the guard post and then slid down the guard posts. And all of the bones in my back ended up hitting each step and hitting my butt on the iron – or on the face plate of the column.

Russell estimated the ladder he was descending was 8 feet tall. After he landed on the floor, Russell laid on the floor approximately 5 minutes before he got up. He immediately experienced excruciating pain in his waist extending into the right buttocks. His supervisor sent him to the Jewish Hospital emergency room. Ford eventually referred him to Norton Leatherman Spine Center ("Norton") where Catharine Deeds ("Deeds"), a DNP, treated him.[1] Thereafter, he underwent physical therapy two times a week for five weeks. He worked until December 9, 2019, and was off work through March 1, 2020.[2] Deeds returned him to work on March 2, 2020. At the time of the deposition, Russell was not taking medication for the effects

[1] Although Russell indicated her name was Christine Deeds, Norton's medical records reflect her name is Catharine Deeds.

[2] The parties stipulated Russell received TTD benefits beginning December 12, 2019.

of the work injury. He denied having back problems of any type prior to the work injury. Russell testified that on March 2, 2020, he tried to perform the work he had been doing at the time of the injury but could not.

> A: I tried, but I couldn't perform it without it making my back excruciatingly hurt.
>
> Q: Did you –
>
> A: It hurt so bad –
>
> Q: Go ahead.
>
> A: It hurt so bad, I couldn't perform the rest of the day. It was bending over, taking whistles out of the machine so we could replace them.

Russell testified he attempted to work full duty from March 2, 2020, until he retired. However, there were times when he was unable to complete a full shift. Even though no work restrictions were imposed by Deeds, Russell was unable to perform his work because of the physical problems arising from the work injury. As to whether he is claiming he is totally disabled as a result of the work injury, Russell provided the following testimony: "I guess totally disabled means you're in the grave? No, I'm not totally disabled." He had no scheduled doctor's appointments.

Russell's hearing testimony reveals he is a high school graduate with vocational training as an iron worker. He began working for Ford on May 24, 1993, as a millwright. He furnished the following job description:

> Q: And I know the judge has seen a lot of cases from Ford. You don't work on the assembly line. What do you actually do?

A: I move machinery in, out. Repair machinery, build different things for jobs. Weld, cut, fabricate, read blueprints, detail blueprints.

Q: All right. Tell the judge, physically, what were you doing as a millwright?

A: There's a lot of lifting, all that's in carrying parts and stuff. Also –

Q: (Interrupting) What type of weights – what type of weights would you be expected to lift?

A: Sometimes 100 pounds, 120, 30. Two people –

Q: (Interrupting) – Were you required –

A: (Interrupting) -- two people on that – that much weight.

Q: Were you required to lift above your shoulders, your waist, your head?

A: Fifty percent of the time.

Q: Were you required to do things repetitively?

A: Yes.

Q: And did the job duties require the unrestricted use of your mid back in lifting, twisting, turning, bending?

A: Always, yes.

Q: Okay. This is pretty hard work; isn't it?

A: It is. It's physical.

Russell identified the nature of the work he performed from December 2, 2020, until he began receiving temporary total disability ("TTD") benefits as follows:

Q: … December 2nd, the day after the injury, I thought you had testified that the people at the emergency room at Jewish took you off work completely?

A: Yes.

Q: And they sent you back to Ford Medical?

A: Yes.

Q: And Ford Medical put you out and had you come to work, right?

A: They were awoling me and I called – I called the Committeeman. And he said that they were awoling me and they awoled me for three days. After they awoled me, meaning with five awols, they fire you. So I went back to work and they wanted me to go on a job and I said, I can't. So they set me in the work area waiting all day. And then I went back the next day.

Q: Now, during that period time, did you do that each day, go in and really do basically nothing?

A: One day, I did basically nothing. One day, I went on a job and it was bending over a drive shaft and changing a drive shaft. And I was hurting so bad after about 30 minutes that I couldn't do anything else all day.

Q: Okay. Now, I'm not going to try to go over each day, but did they try to give you something to do each day?

A: I just told them that I could not do it, so I stayed off. I stayed –

Q: (Interrupting) And when you –

A: (Interrupting) – home.

Q: You stayed where?

A: Home.

Q: Okay. Well, I want to come to December 12th. That's the day they first started paying you workers' comp benefits. So from December 1st to December 12th, December the 11th is about nine days and that's why I'm trying to ask you, what did they have you do during those nine days?

A: I was only there two days.

Q: Okay. And the rest of the days, you stayed home?

A: Yes.

Q: Are you familiar with the term 'no work available'?

A: I am.

Q: Did they send you home 'no work available'?

A: No, they didn't send me home. I just told them that I wasn't coming back, because I didn't feel like working, I – I couldn't work.

Russell recounted the conversation he had with Deeds regarding his ability to return to work.

Q: All right. Now, did – this was the doctor that Ford Medical had referred you to. Did you talk with her about restrictions?

A: I did.

Q: And –

A: And I said I could not –

Q: (Interrupting) Go ahead.

A: I said I could not work –

…

A: -- (Inaudible) restrictions. I said it's too much. It hurts too bad.

…

A: It was – it was too much – too hard on me. I couldn't take the pain.

…

A: I couldn't work without restrictions.

…

A: It was like the accident never happened.

Russell provided the following concerning his ability to return to work:

> Q: No, when you were returned to work, did you return to the exact same job duties that you were doing before?
>
> A: Yes.
>
> Q: All right. And were you able to do those job duties?
>
> A: No.
>
> Q: All right. Did you have help?
>
> A: Yes, and some of the things that I couldn't do, I (Inaudible).
>
> …
>
> Q: You returned to work, you didn't return to the same job duties. You couldn't do physically what you used to?
>
> A: No, I could not.
>
> …
>
> Q: Physically, you weren't able to do the same jobs; is that what you're saying?
>
> A: Yes.
>
> Q: You had to have help?
>
> A: Yes.
>
> Q: When you returned to work, did you continue to work the same hourly rate?
>
> A: Yes.

Russell testified that at the time he retired on June 30, 2020, he had amassed over 28 years of service. He retired because he was unable to perform his work duties. Because the pain prevented him from engaging in certain work duties after he returned to work on March 2, 2020, Russell regularly requested help in performing his duties. As a result, his co-workers performed his duties. Russell

agreed with Dr. Jules Barefoot's description of his physical capabilities, restrictions, and his opinion that he could not return to work as a millwright. Russell testified he cannot return to work at Ford:

> Q: Now, I wanted to ask you a question: Based upon those type of restrictions, could you return to work at Ford?
>
> A: No.
>
> Q: Do you feel you're going to have problems finding work or being able to work at this point in time based upon your limitations, your restrictions and your symptoms on a sustained basis?
>
> A: Yes.
>
> Q: Do you feel like you're totally disabled, unable to perform any work on a sustained basis at this point?
>
> A: Hard physical work, I know I can't.
>
> Q: Okay. Is there any job there at Ford Motor Company you feel like you could perform?
>
> A: Not really. That's why I retired.

Russell worked three days a week after returning to work on March 2, 2020, until he retired on June 1, 2020.

Russell relied primarily upon Dr. Barefoot's reports and Ford relied upon Dr. J. Rick Lyon's reports.

The September 18, 2020, Benefit Review Conference Order and Memorandum reflects the parties stipulated Russell sustained a December 1, 2019, work injury and received TTD benefits from December 12, 2019, through March 1, 2020. The contested issues were benefits per KRS 342.730 and TTD. Under "Other" is listed "constitutionality of duration of benefits."

In finding Russell permanently totally disabled, the ALJ provided the following Findings of Fact and Conclusions of Law, which are set forth, in relevant part, *verbatim*:

> 13. The parties have introduced the opinions of Drs. Barefoot and Lyon in this matter. Each doctor has noted the loss of T12 vertebral body height and assessed a work related whole person impairment with significant restrictions.
>
> 14. Dr. Barefoot restricted the Plaintiff to no repetitive squatting, crouching, or crawling, with no lifting or carrying more than 10-15 pounds and no repetitive flexing at waist. Dr. Barefoot acknowledged the Plaintiff's retirement but concluded that he would not have been able to return to his prior position on a regular basis. Dr. Lyon was critical of the restrictions issued by Dr. Barefoot but admitted that the Plaintiff would have trouble with anything greater than medium duty work. Dr. Lyon based his assessment primarily upon the Plaintiff return to full duty work.
>
> 15. The ALJ finds that the Plaintiff's testimony regarding the difficulty that he had which ultimately caused him to retire was credible and that this testimony lends credibility to the restrictions issued by Dr. Barefoot.
>
> 16. Permanent total disability is defined in KRS 342.0011(11)(c) as the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. *Hill v. Sextet Mining Corporation*, 65 SW3d 503 (KY 2001).
>
> 17. "Work" is defined in KRS 342.0011(34) as providing services to another in return for remuneration on a regular and sustained basis in a competitive economy. The statutory definition does not require that a worker be rendered homebound by his injury, but does mandate consideration of whether he will be able to work reliably and whether his physical restrictions will interfere with his vocational capabilities. *Ira A. Watson Department Store v. Hamilton*, 34 SW3d 48 (KY 2000).

> 18. In determining whether a worker is totally disabled, an Administrative Law Judge must consider several factors including the worker's age, education level, vocational skills, medical restrictions, and the likelihood that he can resume some type of "work" under normal employment conditions. Id.
>
> 19. The Plaintiff credibly testified that he had worked as a millwright since 1993, and that his job required lifting, twisting, turning, and bending. It has been stipulated that the Plaintiff was 70 years of age on the date of the injury. The Plaintiff credibly testified that he retired because he could not physically perform the duties of the job any more due to the effects of the work injury.
>
> 20. The ALJ therefore finds based upon the Plaintiff's advanced age, significant restrictions, and demonstrated difficulty in performing the duties of the only job he has had for 27 years, that the Plaintiff is not likely to be able to provide services to another in return for remuneration on a regular and sustained basis in a competitive economy. Accordingly, the ALJ finds that the Plaintiff is permanently and totally disabled.
>
> 21. The Defendant Employer shall be entitled to a credit for unemployment benefits received by the Plaintiff during the period of total disability. The issue of temporary total disability has been rendered MOOT by the foregoing.

Since the ALJ lacked the authority to rule on the constitutionality of KRS 342.730(4), he indicated the issue was preserved for review. As previously noted, the ALJ terminated Russell's benefits four years from the date of the injury pursuant to KRS 342.730(4).

Ford filed a Petition for Reconsideration making the same argument it now makes on appeal. Significantly, Ford did not request additional findings nor did it assert the ALJ failed to conduct the analysis required by City of Ashland v. Stumbo, 461 S.W.3d 392 (Ky. 2015). Finding no allegation of patent error, by Order dated January 5, 2021, the ALJ overruled the Petition for Reconsideration.

Citing Parker v. Webster County Coal, 529 S.W.3d 759 (Ky. 2017), Russell contends KRS 342.730(4) unnecessarily and arbitrarily discriminates between older and younger workers. Therefore, the 2018 amendment of KRS 342.730(4) applied by the ALJ is unconstitutional.

On cross-appeal, Ford contends the ALJ's finding of permanent total disability is not supported by substantial evidence. According to Ford, neither a physician nor a vocational evaluator expressed the opinion Russell is totally occupationally disabled. Ford notes both Drs. Barefoot and Lyon initially opined Russell "only required some work restrictions." It also notes Russell's treating physician released him to return to work on March 2, 2020, with no work restrictions. Ford maintains this is consistent with the fact Russell returned to work on March 2, 2020, as a millwright, the job he was performing at the time of the injury. Ford emphasizes Dr. Lyon allowed Russell to return to full duty, and Dr. Barefoot's initial report reflects his agreement with Dr. Lyon that Russell retained the physical capacity to return to the type of work he was performing at the time of the injury. Ford complains that without explanation Dr. Barefoot later changed his opinion, imposed restrictions, and increased the impairment rating he previously assessed.

Ford also contends Russell's testimony regarding his ability to return to the type of work he was performing at the time of the injury is subjective and self-serving and therefore the ALJ erred by relying upon it in finding him permanently totally disabled. In a related argument, Ford argues the award of PTD benefits should be reversed and the claim remanded for an award of PPD benefits based on

the 15% impairment rating assessed by Dr. Lyon. Ford extolls the virtues of Dr. Lyon's opinions as superior to those of Dr. Barefoot's.

ANALYSIS

With respect to Russell's argument, as an administrative tribunal, this Board has no jurisdiction to determine the constitutionality of a statute enacted by the Kentucky General Assembly. Blue Diamond Coal Co. v. Cornett, 189 S.W.2d 963 (Ky. 1945). *See also* Vision Mining, Inc. v. Gardner, 364 S.W.3d 455 (Ky. 2011); Abel Verdon Const. v. Rivera, 348 S.W.3d 749, 752 (Ky. 2011). Likewise, an Administrative Law Judge lacks the power and jurisdiction to review and determine the constitutionality of the statute. Because this Board has no authority or jurisdiction to reverse rulings of the Kentucky courts, we can render no determination on this issue; therefore, we affirm the ALJ's application of KRS 342.730(4) to the award.

We are unpersuaded by Ford's argument on cross-appeal, as the ALJ sufficiently articulated the basis of his decision. The ALJ stated his reliance upon Russell's testimony as to his physical capabilities and his ongoing pain upon returning to work on March 2, 2020. The ALJ also concluded Dr. Barefoot's restrictions lend credence to Russell's testimony regarding his ongoing pain and inability to perform his prior work. The ALJ was most persuaded by Russell's own assessment of his ability to work consistently and reliably. Significantly, we note Ford did not, neither in its Petition for Reconsideration nor on appeal, contend the ALJ's analysis was not in accordance with the requirements of City of Ashland v. Stumbo, supra. Rather, the crux of Ford's complaint is how the ALJ weighed the

evidence, arguing the finding of permanent total disability is not supported by substantial evidence. It points to the proof indicating Russell retains the physical capability to return to work as reflected by Dr. Lyon's restrictions and Russell's return to his work duties for approximately four months. Ford also emphasizes the treating medical provider, in this case, Deeds, did not recommend permanent physical restrictions.

Russell, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Russell was successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). An ALJ may reject any testimony and believe or disbelieve various parts of the evidence,

regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48, 51 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Dr. Lyon's restrictions, Dr. Barefoot's initial restrictions, and Deeds' refusal to impose work restrictions are something the ALJ may consider but are not necessarily determinative of whether Russell is totally occupationally disabled. Apparently, Dr. Barefoot later changed his restrictions upon examining Russell after he returned to work. Based on the problems Russell was experiencing after returning to work, Dr. Barefoot opined Russell is unable to repetitively flex at his waist,

repetitively twist and turn with his upper torso, repetitively squat, kneel, crouch, or crawl, and must be allowed to sit or lie and rest intermittently for relief of pain and discomfort in his back. Dr. Barefoot restricted Russell from lifting and carrying more than 10-15 pounds on an occasional basis. When he saw Russell a second time, Dr. Barefoot concluded it was apparent he "would not have been able to return to his prior position, on a regular basis, in a competitive work place environment." Within his discretion, the ALJ may rely upon Dr. Barefoot's opinions based upon a subsequent examination, while attributing no weight to Dr. Lyon's restrictions and Dr. Barefoot's previous restrictions. The ALJ could also disregard Deeds' refusal to impose work restrictions.

Russell's testimony throughout the proceedings buttresses Dr. Barefoot's subsequent restrictions and conclusions that Russell would not be able to return to his prior work. Russell explained that upon returning to work, he was in severe pain which resulted in his co-workers performing many of his job tasks.

Without question, the ALJ can rely upon Russell's testimony in determining he is totally occupationally disabled. Long accepted is the premise that a claimant's testimony as to his physical condition and ability to perform activities is competent evidence upon which the ALJ may rely. Hush v. Abrams, 584 S.W.2d 48 (1979). We also note that, contrary to Ford's assertions on appeal, Russell testified he had to retire because he was in excruciating pain. Thus, at least in Russell's estimation, his decision to cease working was due to his physical problems caused by the subject work injury. Though Ford presented evidence indicating Russell is not permanently totally disabled, this alone is not a basis for reversal of the award.

McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Upon review of the record, we cannot say the ALJ's decision is devoid of evidentiary basis. Special Fund v. Francis, supra. Russell's testimony and Dr. Barefoot's opinions and restrictions set forth in a subsequent report constitute substantial evidence supporting the ALJ's finding Russell is totally occupationally disabled. Therefore, we must affirm.

In determining whether a particular worker is partially or totally occupationally disabled as defined by KRS 342.0011, the Kentucky Supreme Court, in Ira A. Watson Dept. Store v. Hamilton, supra, explained the analysis "requires a weighing of the evidence concerning whether the worker will be able to earn an income by providing services on a **regular and sustained** basis in a competitive economy." (Emphasis ours). The Supreme Court explained further as follows:

> An analysis of the factors set forth in KRS 342.0011(11)(b), (11)(c), and (34) clearly requires an individualized determination of what the worker is and is not able to do after recovering from the work injury. Consistent with *Osborne v. Johnson, supra,* it necessarily includes a consideration of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work consistently under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be able to work dependably and whether the worker's physical restrictions will interfere with vocational capabilities. The definition of "work" clearly contemplates that a worker is not required to be homebound in order to be found to be totally occupationally disabled. *See, Osborne v. Johnson, supra,* at 803.
>
> …
>
> A worker's testimony is competent evidence of his physical condition and of his ability to perform various

> activities both before and after being injured. *Hush v. Abrams,* Ky., 584 S.W.2d 48 (1979).

Id. at 51-52.

The Kentucky Supreme Court reaffirmed this holding the next year in McNutt Construction/First General Services v. Scott, 40 S.W.3d 854, 860 (Ky. 2001) . There, the Court stated:

> An analysis of the factors set forth in KRS 342.0011(11)(b), (11)(c), and (34) clearly requires an individualized determination of what the worker is and is not able to do after recovering from the work injury. Consistent with *Osborne v. Johnson, supra,* it necessarily includes a consideration of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work **consistently** under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be **dependable** and whether his physiological restrictions prohibit him from using the skills which are **within his individual vocational capabilities**. The definition of "work" clearly contemplates that a worker is not required to be homebound in order to be found to be totally occupationally disabled. *See, Osborne v. Johnson, supra,* at 803. (Emphasis ours).
>
> …
>
> It is among the functions of the ALJ to translate the lay and medical evidence into a finding of occupational disability. Although the ALJ must necessarily consider the worker's medical condition when determining the extent of his occupational disability at a particular point in time, the ALJ is not required to rely upon the vocational opinions of either the medical experts or the vocational experts. *See, Eaton Axle Corp. v. Nally,* Ky., 688 S.W.2d 334 (1985); *Seventh Street Road Tobacco Warehouse v. Stillwell,* Ky., 550 S.W.2d 469 (1976). A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities

> both before and after being injured. *Hush v. Abrams,* Ky., 584 S.W.2d 48 (1979).

Here, the ALJ stated he considered Russell's age, education, and the fact that in the last 27 years he had worked solely for Ford. These factors caused the ALJ to conclude Russell was incapable of employment in another field. Consequently, because of his advanced age, previous work experience, and Russell's testimony concerning his physical problems which was buttressed by Dr. Barefoot's opinions and restrictions, the ALJ concluded Russell was not able to obtain physically suitable employment in a competitive economy.

Further, we note Dr. Lyon did not unequivocally return Russell to full duty. Rather, Dr. Lyon stated he would expect Russell to have "difficulty with anything greater than medium-duty work." Similarly, he noted Russell may experience increased symptoms with repetitive bending, twisting, and turning and should only work to tolerance. These opinions do not support Russell being capable of performing the job he had performed for Ford for at least 27 years before retiring.

As noted by the Supreme Court, the facts of each claim involve an individualized determination of whether an injured worker will be able to earn income on a regular and sustained basis in a competitive economy. Here, the ALJ was presented with a worker who had engaged in strenuous work for one employer for at least 27 years. Dr. Barefoot agreed Russell could not return to work at Ford. Thus, the ALJ's findings are supported by the record and we may not disturb them.

Ford's assertion aside, the ALJ was not required to resolve what it perceived as the discrepancy of how Russell was able to perform work without restrictions until he retired. Rather, the ALJ was free to accept Russell's testimony he

was physically unable to work after returning to work on March 2, 2020. Similarly, the fact Deeds assigned no work restrictions upon Russell's return to work is something the ALJ may or may not deem significant.

Accordingly, the December 14, 2020, Opinion and Order and the January 5, 2021, Order overruling the Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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