

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: July 24, 2020

CLAIM NO. 201786683

BOWLING GREEN METALFORMING

PETITIONER

VS.

APPEAL FROM HON. MONICA RICE SMITH,  
ADMINISTRATIVE LAW JUDGE

MELISSA CARDWELL AND  
HON. MONICA RICE SMITH,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

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

**BORDERS, Member.** Bowling Green Metalforming (“Bowling Green”) appeals from the March 30, 2020 Opinion, Award, and Order and the April 25, 2020 Order rendered by Hon. Monica Rice-Smith, Administrative Law Judge (“ALJ”). The ALJ awarded Melissa Cardwell (“Cardwell”) permanent partial disability (“PPD”) benefits and medical benefits due to a November 16, 2016 work injury. On appeal,

Bowling Green argues Cardwell failed to prove she sustained a work-related cumulative trauma injury to her left upper extremity. We disagree and affirm.

Cardwell testified by deposition and at the final hearing. Cardwell is 40 years old, attended three years of college, and has a CNA. She has worked as a bus driver, teacher's aide, cashier/stocker, hostess, and press operator. She began working for Bowling Green in October 2016 as a press operator. She operated a bushing press which required her to place two bushings and car parts in the machine and then push a button, which rotated the turntable, and she then placed parts on both sides of the press. She was required to enter the machine and forcibly open it when there was a malfunction. She routinely completed a couple thousand bushings a shift. She was terminated and last worked for Bowling Green in June 2017. She noticed problems with her left hand in November 2016. She advised her supervisor and sought medical with Dr. Todd Douglas, her primary care physician. The pain began in her pinky finger, migrating to her entire left hand and radiating to her shoulder and neck. She has been treated with a spinal cord stimulator and continues to experience constant pain in her hand which feels like needles, aching, and stabbing pain. She continues to treat with pain management and has difficulty performing activities of daily living.

Cardwell testified at the final hearing. She reiterated the difficulty she had performing her job duties at Bowling Green, which led to her left hand condition. She continued working through the pain as long as she could, but it only worsened. Following a successful trial, Cardwell underwent placement of a permanent spinal cord stimulator which provides some relief. She continues to suffer

from constant pain and has difficulties performing activities of daily living. She does not feel capable of returning to work for Bowling Green and disagreed with the description of her job duties set forth by Dean Reynolds (“Reynolds”) in his testimony.

Reynolds, the EHS manager for Bowling Green, testified at the final hearing. He is responsible for investigating work accidents and monitors the ergonomics of different cells. He stated the job Cardwell performed requires no heavy lifting and is the easiest job in the plant.

Cardwell treated at the Glasser Clinic on November 28, 2016. She reported hand and wrist pain with her new job and she was diagnosed with bilateral hand pain. She was seen again on May 30, 2017 and reported progressing pain. She was diagnosed with possible complex regional pain syndrome (“CRPS”), rapidly worsening over the six month interval.

Dr. Amir Zia saw Cardwell on June 28, 2017 when she presented with left hand pain and the inability to make a fist. She had no grip strength with numbness, tingling, and coldness. She gave a history of her work injury due to repetitive lifting required by her job. Dr. Zia diagnosed left arm weakness with possible carpal tunnel syndrome, ulnar or brachial plexopathy, cervical radiculopathy, or complex regional pain syndrome. He ordered a cervical MRI and a brachial plexus MRI, which he felt were normal. On July 17, 2017, Dr. Zia diagnosed CRPS and recommended ganglion blocks.

Dr. Daniel Reynolds treated Cardwell from August 30, 2017 to May 29, 2017. Dr. Reynolds received a history of the work-related injury in November

2016. Cardwell provided of a history of pain, numbness, tingling, and the inability to use her left hand. On examination, Dr. Reynolds found evidence of exquisite tenderness, ecchymosis, abnormal skin moisture, and decreased temperature. Dr. Reynolds concluded she suffered from CRPS. Dr. Reynolds recommended a spinal cord stimulator, which was implanted on January 8, 2018. On March 21, 2018, a permanent stimulator was implanted. Dr. Reynolds opined Cardwell's CRPS was causally related to the work injury.

Dr. Abigail Debusk saw Cardwell for complaints of pain, numbness, and tingling in her left hand beginning in November 2016. Dr. Debusk examined her and reviewed EMG/NCV's, which were normal, but she noted significant temperature difference in the left hand versus the right. She also noted tenderness, decreased range of motion, and slight paleness in the hand with mottling and slight swelling. Dr. Debusk could not rule out reflex sympathetic dystrophy ("RSD") and recommended treatment with a pain specialist.<sup>1</sup>

Dr. Frank Burke saw Cardwell for evaluation. He received a history of her November 20, 2016 work incident and the medical treatment received to date. Dr. Burke performed a detailed physical examination and reviewed all medical records and diagnostic studies performed to date. He noted on examination Cardwell had developed left hand symptoms from performing repetitive gripping, flexing and twisting both hands at work. He noted inability to make a fist, marked tenderness, mild swelling, and that the hand was cold, clammy, and sweaty with discoloration. Her left hand was atrophic when compared to the right hand. Dr.

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<sup>1</sup> RSD is also known as CRPS.

Burke diagnosed her as suffering from CRPS 1, attributable to her work. He noted CRPS can develop after some kind of trauma, even minor trauma without an injury of any nerve. Dr. Burke assessed a 15% impairment rating, pursuant to the Fifth Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, and opined she did not retain the physical capacity to perform her prior work.

Dr. Ellen Ballard saw Cardwell on June 21, 2017 for evaluation. She received a history of the November 2016 work incident to her left wrist, reviewed all medical records and diagnostic studies performed to date, and performed a detailed physical examination. Based on the foregoing, she diagnosed Cardwell as suffering from non-work-related inflammatory arthritis in both her arms that was not related to any work incident. In two supplemental reports, Dr. Ballard reiterated her findings and conclusions that Cardwell did not suffer from a work-related condition.

Dr. Thomas Gabriel saw Cardwell on February 23, 2019. He received a history of the November 2016 work incident involving the left wrist. He reviewed all medical records and diagnostic studies to date, and performed a detailed physical examination. Based on the foregoing, he did not believe Cardwell suffered from CRPS/RSD as he did not believe she had evidence of the eight clinical findings necessary to make the diagnosis. He opined Cardwell was suffering from a conversion disorder. He did not assess any impairment or restrictions.

Dr. Rodrigo Moreno with Kleinert & Kutz performed an examination and reviewed diagnostic studies. He diagnosed Cardwell as having CRPS, status post spinal cord stimulator. He opined that while it is rare for CRPS to develop from

repetitive activity, he deferred to Cardwell's initial treating physicians regarding causation.

The ALJ rendered her Opinion, Award, and Order on March 30, 2020. The ALJ's findings relevant to this appeal are as follows:

The ALJ finds Cardwell sustained a work related injury to her left hand on or about November 20, 2016. Cardwell was performing repetitive strenuous work activities, which resulted in injury to her left hand and the development of CRPS I. All her treating physicians diagnosed CRPS. Dr. Burke's opinion is consistent with that of Cardwell's treating physicians.

Cardwell's testimony is credible. Her account of the development of her left hand condition has been consistent. Cardwell testified her job required repetitive use of her hands. She was not rotated to any other duties or machines. She operated the same press all the time. She had to grab the parts with both hands, twist them, place them in the press and remove them. Due to the machine functioning improperly, she often had to squeeze manually the air valves hard to get the machine to release the parts. After working for about a month, she noticed a problem with her pinky finger. Every time she tried to close her pinky finger, it felt like it was trying to shift and pop out of place. Since she was still in her probationary period, she continued to work and her condition worsened to the point she could not completely close her left hand. Cardwell reported the same history to all the doctors that her hand problems developed from her work activities. Further, her Employee injury Report states, "Running the press without help, no cycling out and pushing to get numbers over months started resulting in where I can't close my left hand fully."

Bowling Green's job description supports Cardwell's description of her job activities. The description states the machine operator must be able to lift frequently up to 25 pounds. The operator must also be able to frequently grip, pinch and manipulate parts and pieces of equipment with a grip force equal to or

greater than 50 pounds. Frequent is defined in the description as 34-66% of an 8-hour day, material handling 33-200 repetitions a day and non-material handling 101-800 repetitions per day. The job is classified as Medium level which means occasionally lifting equal to or less than 50 pounds, frequently lifting equal to or less than 25 pounds, and constantly lifting equal to or less than 10 pounds. Although Reynolds testified Cardwell's job was the easiest and he used it for people on light duty, Bowling Green's own job description is inconsistent with his classification of the job. Based on the job description, it is not a light duty position. Reynolds also described Cardwell's job duties as not repetitive, but the job description states it could be up to 200 material handling repetitions a day and 800 non-material repetitions a day.

All Cardwell's treating physicians diagnosed her with CRPS-I. Dr. Abigail Debusk at Medical Center Orthopaedics did an extensive work up on Cardwell to determine her diagnosis. Dr. Debusk initially noted spasms in the left hand and mild swelling around the MCP and PIP joints of the hand. She took x-rays which revealed mild periarticular osteopenia, which could be secondary to disuse osteopenia, RSD or inflammatory arthritis. Dr. Debusk ordered lab work and an EMG. The lab work was normal and ruled out any inflammatory arthritic conditions. The EMG results were normal and ruled out any nerve etiology, autoimmune or inflammatory arthritis conditions. The results did note a significant temperature difference in Cardwell's left hand versus her right hand. Dr. Debusk then ordered an ultrasound to evaluate for a blood clot or arterial venous causes. The ultrasound and arterial duplex were both negative. On May 16, 2017, Dr. Debusk felt with all the testing having been negative, she was left with the diagnosed CRPS-I (RSD). She continued Cardwell's restriction of no use of the left arm and referred her to pain management. Cardwell started treatment with Dr. Daniel Reynolds for pain management on August 30, 2017. Dr. Reynolds diagnosed CRPS-I and implanted a spinal cord stimulator, which provided some relief of Cardwell's symptoms. Cardwell also saw Dr. Amir Zia, neurologist, who diagnosed CRPS-I. Dr. Morrison at Western KY Orthopaedic and Neurosurgical Associates

evaluated Cardwell and concluded she suffered from CRPS-I. Dr. Morrison referred her to Kleinert & Kutz, where Cardwell saw Dr. Moreno. Dr. Moreno also diagnosed CRPS-I.

Dr. Burke's opinion is most credible as it is consistent with the treating physician's diagnoses. Dr. Burke diagnosed CRPS-I as the result of acute minor soft tissue traumas sustained on November 20, 2016. He explained Cardwell developed acute pain in her hand with burning and displacement to the lateral side of the little finger. Dr. Burke opined Cardwell sustained an acute injury to the soft tissue of her left hand. This opinion is consistent with fact that the onsite nurse diagnosed Cardwell sustained a sprain to her hand on November 20, 2016. Although onsite records were not submitted, Dr. Ballard reviewed the records and noted the records state, "November 20, 2016, she had a sprain."

Dr. Douglas opined he was not involved in her eventual diagnosis and management of her CRPS-I, therefore he could not comment with certainty about causation. However, he did note that in his prior visits and interactions with Cardwell there was no mention or documented problems regarding her left hand. He opined that her continued lifting and repetitive movement could have exacerbated her condition.

Based on the foregoing, the ALJ finds Cardwell sustained a work related injury to her left hand on November 20, 2016. On November 20, 2016, Cardwell developed pain and problems with her pinky. When evaluated by the onsite nurse, she was diagnosed with a sprain on November 20, 2016. Cardwell continued to work and her symptoms worsened developing CRPS-I. Although Dr. Ballard and Dr. Gabriel opined Cardwell does not suffer from CRPS, their opinions are inconsistent with the treating doctors, who all diagnosed CRPS after a thorough workup with extensive testing.

### **3. Benefits pursuant to KRS 342.730 – Ability to return to work**

To qualify for an award of permanent partial benefits under KRS 342.730, the claimant is required to

prove not only the existence of a harmful change as a result of the work-related traumatic event, he is also required to prove the harmful change resulted in a permanent disability as measured by an AMA impairment. KRS 342.0011(11), (35), and (36). Additionally, when work-related trauma arouses or exacerbates a preexisting condition, it has caused a harmful change in the human organism, *i.e.*, an injury as defined by KRS 342.0011(1). Although the impairment that results is compensable, the type and duration of benefits depends on whether the impairment is permanent or temporary. To the extent that the condition is active immediately before the trauma occurs, it cannot have been aroused by the trauma and, thus, to that extent cannot be compensable. “[T]o be characterized as active, an underlying preexisting condition must be symptomatic and impairment ratable pursuant to the AMA Guidelines immediately prior to the occurrence of the work-related injury.” *Finley v. DBM Technologies*, 217 S.W. 3d 261 (Ky. App. 2007). The employer bears the burden of proving the existence of a preexisting, active disability.

Cardwell has sustained a 15% whole person impairment because of her November 16, 2016 injury. As previously mentioned, the ALJ finds the opinion of Dr. Burke most credible. Dr. Burke assessed a 15% whole person impairment as a result the November 16, 2016 work injury.

Bowling Green filed a Petition for Reconsideration, essentially making the same arguments it raises on appeal. The ALJ overruled the Petition for Reconsideration as a re-argument of the merits of the case. The ALJ noted she found Cardwell very credible and she found the opinion of Dr. Burke was most consistent with the treatment records. The ALJ noted she had explained her reasons for reliance on Dr. Burke, who found Cardwell’s condition is due to acute minor soft tissue traumas.

On appeal, Bowling Green argues the record is devoid of medical expert opinions supporting a finding of causation. Bowling Green asserts the medical evidence does not establish Cardwell's one month of employment caused her alleged complaints/condition. Bowling Green notes Kleinert and Kutz could not causally relate Cardwell's complaints to her employment. Further, Cardwell testified she did not suffer a specific injury. Rather, she alleges cumulative trauma. Bowling Green contends Dr. Burke's opinion is clearly an outlier and incorrect as he diagnosed "CRPS I reflex sympathetic dystrophy as a result of the acute minor soft tissue traumas sustained on 11/20/16." He then stated Cardwell's injury is not due to a repetitive injury but rather an acute injury. Thus, his opinion does not constitute substantial evidence. Bowling Green asserts Cardwell's condition clearly fits into the conversion disorder diagnosed by Dr. Gabriel. Although Cardwell denied any prior psychiatric condition/treatment, she treated in 2013 for panic attacks/anxiety and had a history of migraines and neck pain just months before beginning her employment with Bowling Green.

As the claimant in a workers' compensation proceeding, Cardwell had the burden of proving each of the essential elements of her cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because she was successful in that burden, the question on appeal is whether substantial evidence supports 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). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). The 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 reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). If the ALJ's rulings are reasonable under the evidence, they may not be disturbed on appeal.

We begin by noting cumulative trauma is not a diagnosis or condition. Rather, it is the cause or mechanism of injury. Whether Cardwell's injury is the result of cumulative trauma over the course of a month or multiple traumas on a specific day is irrelevant because there is no issue regarding notice or the statute of limitations. Bowling Green's objection to Dr. Burke's opinion is a matter of semantics. Dr. Burke considered the injury was acute because he believed the

multiple traumas that caused the condition occurred in a single day. In formulating his opinion, Dr. Burke reviewed the pertinent evidence, including the report and three supplements of Dr. Ballard; reports and records of Drs. Gabriel, Zia, Debusk and Reynolds; and studies including an EMG, radiographs and a bone scan. Dr. Burke also conducted a detailed physical examination and clearly opined that work-related trauma is the cause of Cardwell's condition. His opinion constitutes substantial evidence relating to causation. Dr. Gabriel's opinion is simply contradictory evidence. The ALJ was free to weigh the conflicting evidence and decide the appropriate weight afforded to that evidence. That is exactly what the ALJ did. Bowling Green's argument is essentially an attempt to have the Board reweigh the evidence to reach a different conclusion. The ALJ was well within her role as fact-finder in finding the opinion of Dr. Burke more persuasive.

While Bowling Green has identified evidence supporting a different conclusion, there was substantial evidence presented to the contrary. As such, the ALJ acted within her discretion to determine which evidence to rely upon, and we cannot say the ALJ's determination is so unreasonable as to compel a different result. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Accordingly, the March 30, 2020 Opinion, Award, and Order and the April 25, 2020 Order rendered by Hon. Monica Rice-Smith, Administrative Law Judge, are hereby **AFFIRMED**.

ALVEY, MEMBER, CONCURS

STIVERS, MEMBER, CONCURS IN RESULT ONLY

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER:**

**LMS**

HON. LEE JONES  
P.O. BOX 1167  
PIKEVILLE, KY 41502

**COUNSEL FOR RESPONDENT:**

**LMS**

HON. TIM WILSON  
309 NORTH BROADWAY  
LEXINGTON, KY 40508

**ADMINISTRATIVE LAW JUDGE:**

**LMS**

HON. MONICA RICE SMITH  
MAYO-UNDERWOOD BLDG  
500 MERO ST, 3<sup>rd</sup> FLOOR  
FRANKFORT, KY 40601