

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: November 1, 2019

CLAIM NO. 201784808

CORTLAND DAVIDSON

PETITIONER

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

FORD MOTOR COMPANY  
and HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**STIVERS, Member.** Cortland Davidson (“Davidson”) seeks review of the May 28, 2019, Opinion and Order of Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”), dismissing his claim for income and medical benefits against Ford Motor Company (“Ford”). Davidson also appeals from the June 28, 2019, Order denying his petition for reconsideration.

On appeal, Davidson challenges the ALJ's decision on two grounds. First, he asserts the dismissal of his claim was based on the ALJ's erroneous understanding of the evidence. Next, Davidson contends the ALJ failed to provide adequate findings of fact.

### **BACKGROUND**

The Form 101 alleges Davidson was injured on April 18, 2017, in the following manner: "He looked back to speak with his co-worker when he heard a pop in his right shoulder and injured his right shoulder and neck." The cause of the injury was listed as "strain or injury by, NOC."

Davidson testified at an October 10, 2018, deposition and at the March 27, 2019, hearing. During his deposition, Davidson testified he began working for Ford in August 2014. He described the job to which he was assigned at the time of the alleged injury.

A: On the date I got hurt I was – I worked on the job where we put front door glass in. So every front – you know, every front door that we got I put a glass window in.

Q: This was the kind of windows that roll up and down?

A: Yes, sir, yes, sir. The way it would happen, my forklift driver would bring me racks, I had two racks in my station that was filled with glass. The glass would be upside down when we got [sic] so when you pulled it out of the rack and had to, you know, flip it and kind of just, you know, get it out where it should be before you put it into the actual door.

Q: And this is going to be one of those times we're going to need to be a little more audible instead of visual with our description, okay. So you said the glass was upside down, so if I was looking at, you know, my side door window, the top would be facing the bottom when you got it?

A: Down, right, yes, sir, correct.

Q: And then you would take both your right and left hands on the bottom of the glass?

A: Bottom of the glass. You would grab it, just pull it straight out, lift up, and then you would turn upside down, you know, kind of clockwise just turn the glass until it was straight up.

Q: Okay. So when you got the glass, how high, like compared to your chest, where was the glass?

A: It came to – the rack came to about right at my chest.

Q: Okay. So then that means that you would be reaching straight out, chest level?

A: Chest level and you would lift up, you would go above your shoulders.

Q: You would lift up above your head?

A: Yes, sir.

Q: And then you would essentially rotate the glass 180 degrees?

A: Yes, sir.

Q: Where what was on the bottom is now on the top?

A: Yes, correct. I see, I see, I got you.

Q: So after you rotated the glass, what was the next step?

A: The next step was to walk towards the door, you had to angle the glass, you had to put the – I guess the – I would consider the front of the glass, you would have to tilt the back end of the glass up in the air and have the front end of the glass nose down until you just kind of just slid it into the actual door, and you would just kind of drop it in there and then you would – you would have to shift it back kind of to the right towards the back of the – the end of the glass to make it align right to where it would – you could slide it down into the actual door.

Q: And when you say the front of the glass, you mean where the front of the truck, is?

A: Right, yes, sir, that's what I'm [sic].

Q: So you would angle the front of the glass that was facing toward the truck inward?

A: Down – down – kind of nose dive into the door.

Q: Would you have to apply any pressure, and downward pressure?

A: Yes. When you got it down in there, yes, you would have to apply pressure and you would have to – again, you would have to snap it into a locking position, it had to lock. It had some locks in the actual door that you had to align perfectly and you had to – like I said, you had to give it a little – you had to handle it a little bit to get it in there and lock properly.

Davidson testified the injury occurred on either April 18<sup>th</sup> or 19<sup>th</sup> 2017.

Following the alleged event, Davidson visited the plant medical department and informed its personnel he had been injured. Davidson provided the following account of how he was allegedly injured:

Q: All right, so between the 19<sup>th</sup> and the 20<sup>th</sup>, but the injury happened on the 19<sup>th</sup>?

A: From my memory, I want to say the 18<sup>th</sup>. But like I said, it was a while ago, it could have been the 19<sup>th</sup>, it could have been on that Wednesday. I know, like I said, I went the day of my injury, I went and I told them – I told everybody that was around me, because it just happened. I felt a pop and I told him I said, “Man, I think I just did something,” and that's when I got my team lead.

...

Q: So you were talking to the forklift driver when you hurt --

A: As I was putting in the glass. I was looking over my shoulder and I was putting in the glass and that's when I

heard a pop in my neck. And I was wondering, like, why am I – you know, I heard the pop in my neck, but it's my shoulder, so that was kind of.

Davidson testified that, in addition to telling his team lead, he also informed other co-workers something had occurred. He explained:

Q: But you said you told the guys on the line that you think you just hurt your shoulder?

A: I told a lady – well, I told a lady, I said, “I think I just did something.” I said, “I just felt a pop in my neck.” And as I was working my shoulder was – you know, I could feel a pain in my shoulder and that's when I told my team lead.

His team lead sent him to Ford's Medical Department (“Ford Medical”). Its records are entitled Occupational Health and Safety Information and Management (“OHSIM”). After receiving an ice pack, Davidson sat in the medical department for approximately thirty minutes. He returned to work with instructions to return to Ford Medical if it still bothered him. When he returned to Ford Medical on Friday, he was sent for an x-ray. Later, he learned the x-ray revealed he had a herniated disc in his neck. Following the injury, Davidson experienced pain from his neck to his right shoulder. Davidson described the location of the pop in his shoulder:

A: Yes, sir. Kind of in between that – in the back of my neck in between the back of my neck and where my shoulder blades kind of meet.

Q: And you mentioned C-4, C-5, so that's your cervical spine?

A: Yes.

Davidson experienced pain on the right side of his neck and sharp pain in the back of his shoulder near his rotator cuff. He felt a “sharp electric in between from my – the back right side of my neck all the way to my should [sic] – to that point

that I just told you.” Davidson denied telling Ford Medical that he did not suffer a specific injury.

Q: So if there’s a note in there that says that you don’t remember a specific incident, that would not be?

Mr. Spies: Hear [sic] what he’s referring to.

A: Oh okay. Yeah, there was nothing like, you know, that drastically happened, like nothing fell on me, you know what I mean? Like it wasn’t like – yeah it wasn’t anything like that or nothing – you know, it wasn’t like a forklift hit me or nothing that they would’ve had to stop the line or whatever and made a big issue. It was just something over repetitious or, you know. Just a job that we was doing, I don’t really know. But you asked me did I tell them there was no acute injury, there wasn’t anything like to stand out, it was just me doing my normal job, and that’s what I told them. I told them I was doing my job and this is what happened.

Q: So you wouldn’t say that turning around and then feeling a pop in your shoulder is an injury?

A: Yeah, I mean, it is, yeah. But I told them nothing – like I said, nothing drastically happened. I told them that this is what happened, I was working, I was putting this glass in, looking over my shoulder and I felt pop, that’s what I told them.

When Davidson sought treatment from a specialist, immediate surgery was recommended. Dr. Thomas Becherer performed fusion surgery on his neck on May 30, 2017. He estimated that prior to surgery his neck was 30% to 40% functional. He was unable to turn his head to either side. Consequently, he turned his whole body to look to the side. Lowering his chin to his chest or tilting his head back was also painful. Davidson believed the fusion surgery relieved the shoulder pain and increased function in his neck to 50%. The most pain occurs when he looks to his right. At the time of his deposition, Davidson was being treated by Dr. Rodney Chou due to a

referral by Dr. Becherer.<sup>1</sup> Dr. Chou allowed Davidson to return to work in April 2018 without restrictions. Even though he was returned to work without restrictions, Davidson still had work limitations which his supervisor and co-workers accommodated. Upon returning to work in April 2018, Davidson worked a pit job requiring no overhead work. Since returning to work his wage rate has increased and he continues to work the same hours. Davidson moved to “A-wall” where he and another worker perform one job. He indicated he still experiences pain at work and in order to relieve some of the pain he has to move around a lot. Davidson has a motorcycle with big handlebars which following the surgery he occasionally rides. Davidson denied having any prior neck problems.

At the hearing, Davidson denied being involved in a motorcycle wreck, experiencing neck or shoulder problems, or receiving neck treatment prior to April 18, 2017. Davidson reiterated much of his deposition testimony. He again testified that, after he felt the pop and sharp pain in his shoulder on April 18, 2017, he visited Ford Medical that day. When informed Ford Medical’s records reflect his first visit to the medical department following the injury was on April 20, 2017, Davidson testified:

A: I went then too, yes, sir.

Q: Okay. You went on the 20<sup>th</sup>. And it notes in there – well, strike that. Did you tell them you didn’t have an accident?

A: Yes. I told them that it wasn’t anything drastic, is what I informed them of. Whenever I think of an injury in a place like that, I’m thinking maybe a slip and fall, maybe getting hit. Forklift drivers, you know, they got a lot of vehicles running around there, or maybe something falling on me, and nothing like that happened.

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<sup>1</sup> Dr. Chou is with the Thompson & Chou Center for Physical Medicine and Rehabilitation.

Q: Okay. And did you really know what was going on at that point?

A: I'm not a doctor. I'm not exactly sure.

Q: Okay. But you did go to Ford Medical –

A: Yes.

Q: -- and told somebody?

A: Yes, I did.

Q: Okay. And that's why you told them there was no acute – or no accident, per se?

A: Yes, sir.

Davidson insisted he went to Ford Medical on April 18<sup>th</sup> and April 20<sup>th</sup> 2017.

Numerous medical records and reports were submitted by the parties.

In his May 28, 2019, decision, after summarizing the lay and medical evidence, the ALJ provided the following findings of fact and conclusions of law in support of his dismissal of Davidson's claim:

11. Injury is defined as “any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.” KRS 342.0011(1).

12. An employee has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of his worker's compensation claim. *Snawder v. Stice*, 576 SW2d 276 (Ky. App. 1979).

13. The ALJ in this matter is most persuaded by the opinion issued by Dr. Sexton who opined that the Plaintiff's condition was degenerative in nature and not the result of an acute injury. The ALJ finds that this

opinion is supported by the Plaintiff's repeated denials of a specific incident causing injury.

14. The ALJ further finds that the opinion of Dr. Nazar lacks credibility because Dr. Nazar demonstrated a misunderstanding of the basic nature of the Plaintiff's job as depicted in the DVD. Specifically, Dr. Nazar referenced neck twisting and extension which do not appear to be involved in the job depicted as evidence herein.

15. The ALJ finds that the Plaintiff has failed to satisfy his burden to establish a work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.

16. The ALJ therefore relies upon the opinion of Dr. Sexton in support of the finding that the Plaintiff's impairment rating was not due to his work duties for the Defendant, but was rather the result of a degenerative condition.

Davidson filed a petition for reconsideration requesting additional findings of fact regarding whether there was any evidence of neck pain or problems prior to the work injury and whether the work accident caused the degenerative condition to become active. He asked the ALJ to answer the following question: Was the degenerative condition dormant before Davidson started complaining of pain to Ford Medical? Concerning the job video, Davidson requested additional findings "on whether the allegation of injury matches this job video." The ALJ was also requested to determine whether talking to another employee while working required twisting and neck extension. Further, Davidson sought additional findings as to whether there was any objective medical evidence that riding his motorcycle caused problems as described by Dr. Sexton and whether Dr. Sexton provided an alternative theory or

explanation of how he sustained a disc herniation other than at Ford. Davidson also requested additional findings regarding his hearing testimony which he asserted “was mentioned but difficult to distinguish in the opinion.” The ALJ was asked to state whether Davidson’s testimony was credible and what “facts in the hearing testimony” were used to dismiss his claim. Notably, Davidson did not point to a patent error appearing in the opinion nor did he assert the ALJ’s findings of fact and conclusions of law were erroneous in any way.

The ALJ denied the petition for reconsideration finding the petition for reconsideration failed to point to a patent error and merely sought a re-determination.

Davidson first contends the ALJ misunderstood the evidence in reaching his decision, as the ALJ did not reference or list the method of injury nor provide Davidson’s account of how the injury occurred. Davidson maintains the fact the ALJ did not address “Davidson’s neck was turned to look over his shoulder is detrimental to deciding the issue of causation.”

Davidson also observes there is no evidence of prior neck problems or treatment. He references his testimony indicating the injury caused immediate pain along with pain in his arm in arguing this account “matches the disc herniation.” Davidson observes he is not a medical doctor and is not required to self-diagnose. Davidson asserts that, because the ALJ did not think an accident occurred, he harshly punished him for failing to recognize the severity of his injury when it occurred.

Davidson further asserts the ALJ listed the job video as a crucial piece of evidence and agrees it depicts his everyday job. However, he argues his account of the injury is different from what the video shows, because he was talking to a forklift

driver “with his neck extended to look over his shoulder.” Thus, the ALJ disregarded Dr. Nazar’s opinion, because he cited “the correct method of injury when compared to the job video.” Davidson asserts for this reason, the decision should be vacated and the claim remanded for a decision based on a correct understanding of how the accident occurred.

Lastly, Davidson contends the ALJ failed to make adequate findings of fact. Davidson posits a finding as to the presence of evidence of prior neck pain or problems and whether a degenerative condition was dormant before he began complaining of pain to Ford Medical are important findings which the ALJ should have made in light of Dr. Sexton’s diagnosis of a cervical strain due to the work accident. Davidson maintains if there was not a prior active condition the resulting surgery and neck condition is related to the cervical strain. Alternatively, Davidson asserts he is entitled to temporary benefits based on Dr. Sexton’s findings, and he contends the claim should be remanded to address these issues.

### **ANALYSIS**

As the claimant in a workers’ compensation proceeding, Davidson had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Davidson 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).

We find no merit in Davidson's first argument the ALJ misunderstood the evidence. On page 2 of his decision, the ALJ discussed Davidson's testimony noting he recalled the work injury occurred while he was putting in front door glass

and heard a pop in his neck. The ALJ noted Davidson estimated the glass weighed between 15 and 20 pounds, and he experienced a pop in his shoulder where his shoulder blades meet. He also noted Davidson continued to work for a bit until the pain radiated into his shoulders. The failure to mention Davidson's neck was turned to look over his shoulder is at worst harmless error. Furthermore, in his petition for reconsideration, Davidson did not point out the ALJ failed to discuss his version of the injury, i.e. his neck was turned to look over his shoulder. Instead, Davidson requested additional findings and posed questions to the ALJ. Moreover, Davidson's petition for reconsideration did not reference a patent error nor did it assert the ALJ's findings are inaccurate.

A factual issue in a workers' compensation case which has not been raised in a petition for reconsideration is waived. Shelby Motor Co. Inc. v. Quire, 246 S.W.3d 443, 446-447 (Ky. 2007); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327, 330 (Ky. App. 2000). Since Davidson did not request a more explicit finding as to his account of his physical activity at the time of the injury, the issue is not properly preserved for review by the Board. See Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 893 (Ky. 2007) (failure to make statutorily-required findings of fact is a patent error which must be requested in a petition for reconsideration in order to preserve further judicial review). Further, the fact Davidson had no pre-existing neck problems is irrelevant for two reasons. First, no doctor attributed his injury to an arousal of a dormant or non-disabling condition into disabling reality. Second, Dr. Sexton addressed this issue finding Davidson's cervical problems were the result of age-

disappropriate cervical spondylosis. We add that Davidson told multiple medical providers he experienced a gradual onset of pain/discomfort and not an acute injury.

We find nothing in the ALJ's decision which punished Davidson for his failure to recognize the severity of his injury when it occurred. Rather, the ALJ relied upon the opinions of Dr. Sexton and the fact Davidson repeatedly denied that he sustained a specific acute injury. The ALJ found Dr. Sexton's opinions to be buttressed by Davidson's repeated denial a specific incident caused his injury.

The ALJ has the discretion to discount Dr. Nazar's opinions since the video of Davidson's job does not match Davidson's account of how the injury occurred. Notably, Davidson's account of the April 18, 2017, event during his deposition and at the hearing is contradicted by multiple medical records.

Similarly, we find no merit in Davidson's second argument that the ALJ failed to make adequate findings of fact. Although Davidson filed a petition for reconsideration, he did not assert the ALJ's findings were insufficient to advise him of the basis for the decision. Davidson's appeal brief evidences his understanding that the ALJ relied upon Dr. Sexton's report along with the fact Davidson did not report a specific injury on multiple occasions. Moreover, Davidson's petition for reconsideration, while seeking additional findings, did not assert the ALJ's findings were inaccurate or insufficient to inform him of the basis for the decision.

The ALJ's findings regarding Davidson's credibility are sufficient to apprise the parties of the basis for his decision. While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, he is not required to recount the

record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

Having addressed Davidson's arguments and finding them unconvincing, our task then is to determine whether substantial evidence supports the ALJ's decision. We conclude it does.

Dr. Sexton's December 12, 2018, report reveals he obtained a medical history from Davidson, conducted a physical examination, and neurological examination.<sup>2</sup> He also reviewed the cervical MRI of May 15, 2017, and the video of Davidson's job. Dr. Sexton set forth the other medical records he reviewed including those of OHSIM. He provided the following diagnosis:

Mr. Davidson's diagnoses related to his cervical spine are as follows:

- a) Age-inappropriate excessive cervical spondylosis, multilevel, characterized by
  - Large broad-based disc protrusion C4-5 with nerve root entrapment.
  - Osteophyte formation and DDD C3-4, C5-6.
- b) Acute myofibrous strain, cervical, without additional discopathy, radiculopathy, myelopathy or neuropathy.
- c) S/P ACDF with partial corpectomy and plating at C4-5.

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<sup>2</sup> Attached to Dr. Sexton's December 12, 2018, report is the December 6, 2018, report containing the histories received from Davidson, and the results of his physical and neurological examinations, and his diagnostic impression.

I would relate the diagnosis noted in #1B above to the work injury alleged as of 4-8-17.

Although Dr. Sexton indicated that riding a motorcycle which Davidson owned “could much more likely lead to premature degeneration” than his work, he did not offer an opinion that riding the motorcycle caused the herniated disc at C4-5. Dr. Sexton opined as follows:

It is medically unlikely that Mr. Davidson had the significant cervical discopathy that he turned out to have, as a resulting complication of his job on 4-18-17. The following objective data attest to the validity of this opinion:

a) Mr. Davidson repeatedly noted to the Ford Motor Company physicians and staff that he recalled no injury as having any specific injury at work.

b) Dr. David Rouben, MD (OS) who saw and evaluated Mr. Davidson on 5-3-17 [sic] noted “no specific traumatic known event.”<sup>3</sup>

c) The degenerative changes at C3-4 and C4-6, the levels above the below the disc at C4-5, indicates a process, rather than an acute trauma.

d) Mr. Davidson never was documented to have a specific cervical radiculopathy until he saw Dr. Becherer.

Dr. Sexton believed the surgery performed was reasonable and necessary for the cure of the cervical condition. As a result, he assessed a 9% permanent impairment rating based on the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”).

In a supplemental report dated January 8, 2019, Dr. Sexton clarified some of his opinions expressed in his previous report. He stated the 9% impairment

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<sup>3</sup> Dr. Rouben provided this history in his May 17, 2017, note, not the May 3, 2017, note.

rating assumes no acute injury occurred to Davidson as a result of his Ford job. His opinion was based on the following factors:

1. The IME and the reports generalized by me in December 2018.
2. The opinion of Dr. David Rouben, MD (OS) on 5-7-17 [sic] that “no specific work injury” was a portion of Mr. Davidson’s medical history.
3. Dr. Wetherton’s repeat testimony that Mr. Davidson repeatedly denied any work injury.
4. The video and written job description that medically ruled out any work-relatedness to his multilevel cervical spinal degeneration.
5. Dr. Nazar’s recantation that Mr. Davidson recalled a very specific movement of his neck to look at a fork-lift driver, an action that is ergonomically neutral.

Therefore my opinion is that there was **NO ACUTE INJURY** that contributed to Mr. Davidson’s condition, which on very clear and unassailable medical grounds is the result of age-inappropriate cervical spondylosis. (emphasis not ours).

Dr. Sexton revised his impairment rating pursuant to the AMA Guides to 15%. He concluded none of the rating was attributable to the theoretical work injury denied by both Davidson and his treating physician.

The records of OHSIM reveal Davidson first reported he experienced right neck discomfort on April 20, 2017, not April 18, 2017. Ford’s records reveal Davidson provided the following history on April 20, 2017, at 6:39 p.m.:

Employee states that he noticed right neck discomfort last night around midnight. No acute injury. Employee states increasing neck discomfort today, with discomfort that begins in right neck and radiates down right arm.

Right neck discomfort onset around midnight last shift, discomfort becoming progressively worse and radiates down right arm.

Employee denies acute injury, states progressively increasing discomfort.

Employee presents with right neck and upper shoulder/back discomfort. He states that he noticed last night but there was no specific injury. He has been on the same job since July 2016 and no problems. He c/o pain with turning head and with right arm movement into the neck and upper trap region. He c/o slight tingling at times. No CP < soa, or weakness.

OHSIM's April 25, 2017, record reveals the following:

Employee presents with continued right neck and right shoulder pain. He started with pain on the evening of the 19<sup>th</sup> and presented to medical on the 20<sup>th</sup>. He denies any specific injury but c/o pain in the neck and shoulder and into arm. He was seen on 20<sup>th</sup> and twice on 21<sup>st</sup>. He was sent to the ED and had a CT that showed large Right paracentral disc protrusion at C4/5. He denies any previous neck injuries and does not remember having neck pain after MVA in the past. He states that he does not remember a specific incident that started the pain. He c/o continued tingling. This is odd with a significant finding in a healthy young male without specific injury.

Similarly, on April 27, 2017, Dr. Wetherton noted as follows:

I feel that the CT findings of cervical spine are not c/w injury stated since he does not remember a specific injury.

Contrary to Davidson's assertions, the opinions expressed by Dr. Sexton in his initial report and supplemental report, as well as the OHSIM records, constitute substantial evidence upon which the ALJ was free to rely in reaching a decision on the merits. Kentucky Utilities Co. v. Hammons, 145 S.W.2d 67, 71 (Ky. App. 1940) (citing American Rolling Mill Co. v. Pack et al., 128 S.W. 2d 187, 190 (Ky. App. 1939)). While the contrary opinions espoused by Drs. Nazar and Becherer

could have been relied on by the ALJ to support a different outcome in Davidson's favor, in light of the remaining record, the views articulated by those physicians represent nothing more than conflicting evidence compelling no particular result. Copar, Inc. v. Rogers, 127 S.W. 3d 554 (Ky. 2003). As previously stated, where the evidence with regard to an issue preserved for determination is conflicting, the ALJ, as fact-finder, is vested with the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Because the outcome selected by the ALJ is supported by the record, we are without authority to disturb his decision on appeal. Special Fund v. Francis, *supra*.

Moreover, even though the ALJ did not specifically cite the medical records evidencing Davidson's denial of a specific injury, we note that Dr. Wetherton in a June 21, 2017, report concluded as follows:

Mr. Davidson presented with c/o right sided neck pain but denied any specific injury. He was asked multiple times and did not remember an injury. He denies any personal injuries of history of such. I have reviewed the RH glass install job and this job requires minimal if any turning of the neck. ... It is impossible that this job could cause disc protrusion with the limited movement and lack of immediate onset. It is unlikely but possible that you could experience a slight strain in the neck but would also be challenging.

This record supports the ALJ's determination and also contradicts Davidson's testimony that he sustained an acute injury on April 18, 2017. Similarly, the records of Norton Healthcare also contradict Davidson's assertion he sustained an acute injury on April 18, 2017. Norton Healthcare's record of May 3, 2017, reveals Davidson complained of a "right-sided neck with radiation to the right upper back and shoulder which began on April 26, 2017, while at work." (Emphasis added). That

record also states Davidson was employed by Ford and his job was placing front windows in doors which required him to pick up pieces of glass, flipping them, and then placing them in the door. Davidson felt a pull in his neck and immediate pain in the deltoid region. Norton Healthcare's May 17, 2017, notation authored by Dr. David Rouben states, "The patient noticed within the last month the onset of neck pain and right upper extremity pain numbness and weakness without any specific traumatic known event."

The records of Drs. Thompson and Chou also contradict Davidson's assertion he sustained an acute injury. Davidson attached to his Form 101 records from these doctors dated August 28, 2017, September 18, 2017, September 25, 2017, October 12, 2017, November 9, 2017, December 7, 2017, February 8, 2018, and March 6, 2018. All of the records state Davidson worked at Ford and reported in "mid-April he developed pain in the right shoulder." There is nothing contained within these records which reveal Davidson felt a pop in his neck and immediately experienced pain in his neck and shoulder. Rather, the records reveal Davidson informed his physical therapist that in mid-April he developed right shoulder pain. The records contain no mention of an acute injury in April. The record also contains two UniCare forms dated October 12, 2017, and October 23, 2017, completed and signed by Dr. Chou in which he characterized the description of injury as "gradual onset shoulder pain." On both forms, Dr. Chou wrote "No" in response to the following question: "Is disability the result of any injury?" Consequently, there appears to be no dispute that Dr. Chou nor his staff were ever informed that Davidson sustained an acute injury as contended by Davidson throughout the proceedings.

Finally, the OHSIM incident investigation report reveals the investigation was initiated on April 20, 2017, and Davidson stated he “noticed right neck discomfort last night around midnight, no acute injury.” Davidson further stated he was experiencing increased neck discomfort on April 20, 2017, that began in right neck and radiated down his right arm and theorized it could be due to stress. Under “Object or Substance that Directly Harmed the Person,” is the following: “employee denies acute injury, states progressively increasing discomfort.” The job Davidson was performing was “RH front glass install job” involving repetitive motion.

Dr. Sexton’s opinions and the records of OHSIM, Drs. Thompson and Chou, UniCare, and Norton Healthcare constitute substantial evidence amply supporting the ALJ’s decision. Thus, a contrary result is not compelled.

We also reject Davidson’s alternative argument asserting the claim should be remanded for a determination of whether temporary benefits are warranted based on Dr. Sexton’s findings. Although Dr. Sexton initially diagnosed an acute myofiberous strain cervical without additional discography, radiculopathy, myelopathy, and neuropathy due to Davidson’s work, he subsequently revised his opinion in the January 8, 2019, supplement stating there was no acute injury which contributed to Davidson’s condition. He added none of the 15% impairment rating is attributable to the theoretical work injury “denied by both [Davidson] and his treating physician.” Consequently, the ALJ was free to accept the opinions of Dr. Sexton contained in his January 8, 2019, supplement and disregard his previous diagnosis of an acute myofiberous strain. Moreover, we note in the petition for reconsideration, Davidson did not raise the issue of the ALJ’s failure to award income and medical

benefits based on a temporary injury. Davidson did not request additional findings as to his entitlement to temporary income and medical benefits.

Accordingly, the May 28, 2019, Opinion and Order and the June 28, 2019, Order denying the petition for reconsideration are **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

RECHTER, MEMBER, CONCURS IN RESULT ONLY.

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