

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: April 9, 2021

CLAIM NO. 201901306

CRYSTAL HILL

PETITIONER

VS.

APPEAL FROM HON. PETER J. NAAKE,  
ADMINISTRATIVE LAW JUDGE

FORD MOTOR CO. and  
HON. PETER J. NAAKE,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**ALVEY, Chairman.** Crystal Hill (“Hill”) appeals from the Opinion and Order rendered September 28, 2020 by Hon. Peter J. Naake, Administrative Law Judge (“ALJ”). The ALJ found Hill failed to prove she sustained work-related cervical or lumbar injuries, and dismissed her claim for benefits. No Petition for Reconsideration was filed.

On appeal, Hill argues the ALJ erred in dismissing her claim. She asserts the ALJ misinterpreted the evidence, and a contrary result is compelled. Hill also argues the ALJ erred in overruling her oral motion to amend the Form 101 at the final hearing to conform to the evidence. Because substantial evidence supports the ALJ's determination, and a contrary result is not compelled, we affirm. We also determine the ALJ did not abuse his discretion in overruling Hill's motion.

Hill filed a Form 101 on October 25, 2019 alleging, "[a]s a result of repetitive job duties, conditions in back and neck became occupationally disabling." Hill listed November 20, 2018 as the injury date. At all relevant times, Hill worked on the assembly line at Ford Motor Company ("Ford").

A Benefit Review Conference was held on August 11, 2020. The parties stipulated Hill allegedly sustained work-related injuries on November 20, 2018. The parties identified the following contested issues: physical capacity to return to pre-injury job, benefits per KRS 342.730, work-relatedness/causation, notice, average weekly wage, unpaid or contested medical expenses, injury as defined by the Act, exclusion for pre-existing disability/impairment, and temporary total disability.

Hill testified by deposition on February 24, 2020 and at the final hearing held August 28, 2020. Hill was born in March 1988 and resides in Louisville, Kentucky. She began working at Ford on April 16, 2018. Hill confirmed the date of injury was November 20, 2018 at both the deposition and the hearing. Hill performed the "double 05, wire loom job." She worked on the driver's side of SUVs processing 200 to 220 trucks per shift.

Hill testified that for the first part of her job, she stood and was required to bend and push down firmly on the wire looms and power running board with both hands until they snapped into place. Hill indicated the wires were stiff and difficult to handle because the heaters they were kept in were either not hot enough or were broken. For the second part of her job, Hill turned around and sat inside the truck frame, with her legs hanging outside facing the driver's side door. Hill twisted her body to the right and applied the wires along the frame of the truck to the moon roof post. Hill also pushed a grommet in a hole underneath the steering column, and pulled it back out. Hill estimated it took 80 to 85 pounds of pressure to pull the grommet back.

Hill testified that while performing her job duties on November 20, 2018, she felt a pop in both her low back and neck, and experienced pain radiating down her right arm and hand. Hill allegedly notified her supervisor of her injury, and went to Ford medical the same day. Hill indicated she again went to Ford medical on December 20, 2018, and then was off for a couple of weeks for the holiday season. Hill treated at the emergency room on January 10, 2019. Hill began treating with Dr. John Johnson for her lumbar condition in April 2019. He ordered a lumbar MRI, administered injections, and assigned restrictions. Dr. Johnson recommended surgical intervention, which has yet to be performed. Dr. Johnson referred Hill to Dr. Chris Shields for her cervical complaints. Dr. Shields ordered physical therapy and prescribed Gabapentin. Hill testified she experienced no symptoms or injuries in her low back or neck requiring treatment prior to November 20, 2018.

Subsequent to November 20, 2018, Hill continued to work on the wire loom job with light duty restrictions, which Ford was able to accommodate. Hill stopped working on September 10, 2019 for approximately one month when Dr. Johnson restricted her from work. Hill returned to light duty work on October 10, 2019 and continued to work until December 5, 2019 when she underwent emergency eye surgery, unrelated to her alleged work injuries. Hill did not return to work after the eye surgery, and was subsequently terminated due to excessive absences in January 2020.

Hill continues to experience neck stiffness and pain radiating down her right arm and fingers, tingling and burning sensations, and low back pain radiating down her legs. Hill testified her right hand cramps, gives out, and causes her to drop things. Hill testified Drs. Shields and Johnson have restricted her from twisting, bending, lifting over ten pounds, pinching, pulling, and grasping. In light of her symptoms and restrictions, Hill does not believe she is able to return to the wire loom job, or any other job, at Ford. Likewise, Hill believes she is totally disabled.

The following testimony was elicited on cross-examination at the hearing regarding the date of injury:

Q: I believe you testified that you reported that you - - you said you had a pop in your neck and your lower back and you reported that to Ford Medical on November 20<sup>th</sup>, 2018; is that correct?

A: Correct.

. . . .

Q: So in looking through the Ford records, I don't see a record from November 20, 2018, but I do see one from December 20, 2018. Do you think, maybe, you got the dates confused?

A: I've been up there several times . . . . I don't believe, but I know I went as well as December. But I complained repeatedly, I've been up there complaining about my job.

Q: . . . When you went on December 20, 2018, it looks like it's kind of the first time you reported that to them. There's no mention of you going a month earlier. There's also no mention of the pop in your neck and your lower back. It looks like you just were having some pain in your neck going down your right side. Are these different instances?

A: No, it's the same one. And he wanted to keep giving me the ice pack or heat pad and I explained to him, I'm hurting. I do not want the ice pack or the heating pad. I need to see someone . . . and that's when I went to Ford Medical. And I explained to him that ice pack that I've been coming up there getting is not working.

Subsequently, Hill's counsel made an oral motion to "amend the date to include or to amend it from 11/20 of '18 to December 20<sup>th</sup> of '18" to which counsel for Ford objected. The ALJ denied the motion, stating as follows:

Judge Naake: . . . There's - - you know, there's - - there's been plenty of time to get the records of - - any records you wanted to file and I don't see - - you know, of course, we would have to reopen proof as to date of - - as to average weekly wage, all the other proof would have to be reconfigured to conform. That said, you know, you still have time to file a new claim if there's a different - - there's a different injury date of November 2018. So I'm going to OVERRULE your Motion.

The parties filed the treatment records from OHSIM and Kentucky One Health Medical Center Jewish Southwest. On December 20, 2018, Hill sought treatment at the Ford medical facility, OHSIM. Hill reported *verbatim*, "I repetitive pull the frozen grommet through the hole and I have to use more force to push it through and bring it back through and then I have to lean to my right to connect the

wire under the dash board and this is causing the right side of my neck to hurt radiating down my right thumb and index finger from folding the grommet.” Dr. Brenden Wetherton noted Hill complained of right arm pain for the past one or two months. He further noted Hill had been performing the wire loom job, which requires pushing in the grommet and pulling it out. He noted, “It is frozen at times and hurts. Heaters do not seem to work well. Upper arm and shoulder hurt from pulling and right hand hurting and sore.” Dr. Wetherton performed an examination and noted, “TTP over the right hand 1/2 digits noted. Right hand with mild edema and right shoulder with spasm noted in trap. Normal ROM noted and no concern for tear, suspect muscle soreness.” Dr. Wetherton prescribed Motrin and applied a cold compress.

On January 10, 2019, Hill sought treatment at the emergency room at Kentucky One Health Medical Center Jewish Southwest. She reported she “twisted her back” pulling on grommets on November 20, 2018. X-rays of her right wrist returned normal. A cervical CT scan demonstrated “non-compromising disc bulge at C2/3 and C3/4.” Hill was diagnosed with musculoskeletal pain and overuse injury. She was prescribed medication and returned to work without restrictions.

On January 17, 2019, Hill returned to OHSIM. Dr. Wetherton noted Hill had returned from a cervical MRI. Hill questioned why she did not get a lumbar MRI. “I explained that in 5 visits there was one mention of the back with soreness from turning and twisting. She c/o neck and right arm pain on all visits and requested ice and heat for these. I explained that even low back soreness is not an

indication for MRI.” The OHSIM records indicate Hill was diagnosed with a sprain/strain injury of the right shoulder, hand, neck, and low back.

Hill also submitted an August 22, 2019 “Worker Compensation Report” from Kentucky One Health. The treating physician diagnosed chronic cervical strain with right radiculopathy and low back pain, prescribed medication, and referred her to occupational medicine. The date of injury was identified as November 20, 2018.

Hill submitted documentation of work restrictions. On June 26, 2019 and August 22, 2019, Ford temporarily restricted Hill to limited pinching, pulling, and grasping with both hands. On September 10, 2019, Dr. Johnson took Hill off work until October 8, 2019. On October 11, 2019, Dr. Johnson allowed Hill to return to work with restrictions of no repetitive bending, twisting, or lifting.

In support of her claim, Hill filed the January 8, 2020 report and May 27, 2020 supplemental report by Dr. James Farrage. In the January 2020 report, Dr. Farrage noted Hill sustained a work-related injury on December 20, 2018. Hill reported, “performing repetitive work activities that involved pulling on grommets . . . . She experienced pain in the cervical region with radiation into the right shoulder and numbness involving the first and second digits of her right hand.” Hill’s symptoms worsened over the process of repetitively manipulating materials. Dr. Farrage reviewed the diagnostic studies obtained at the emergency room, as well as a cervical MRI performed on January 17, 2019. The MRI demonstrated mild left C3-4 and mild bilateral C4-5 foraminal narrowing. Dr. Farrage noted “during this

timeframe” Hill also began complaining of low back pain radiating into her hips, and had a lumbar MRI and two epidural injections.

Dr. Farrage diagnosed cervical spondylosis involving the C3-C5 levels and right upper extremity pain. He noted Hill continues to have pain complaints, restricted range of motion, decreased strength, and impaired functional capacity without any interval decline in her focal neurological status or evidence of intersegmental instability. Dr. Farrage also diagnosed repetitive overuse syndrome involving the right upper extremity with possible right carpal tunnel syndrome and lumbar spinal stenosis without pseudoclaudication, and responsive to epidural steroid injections. Dr. Farrage concluded Hill’s clinical presentation and historical account are consistent with the alleged mechanism of injury. He opined forceful repetitive activities involving the right upper extremity exacerbated previously dormant and non-disabling degenerative cervical spine conditions into disabling reality. However, Dr. Farrage opined Hill’s lumbar condition is a developmental degenerative condition unrelated to her reported work injury.

Dr. Farrage recommended an electrodiagnostic evaluation of the right upper extremity to determine the etiology of her symptoms. Dr. Farrage imposed restrictions and opined Hill does not retain the physical capacity to return to her prior job with Ford. Dr. Farrage opined Hill had not yet obtained maximum medical improvement (“MMI”) since he recommended additional diagnostic studies.

In the May 2020 supplemental report, Dr. Farrage noted the recommended EMG/NCS was denied by workers’ compensation. He also reviewed additional medical documentation, including Dr. Thomas Loeb’s March 10, 2020

report and an evaluation by Dr. Shields. Dr. Farrage diagnosed, “HNP C3/4 with right radicular pain” and opined Hill had attained MMI. He reiterated his opinion Hill’s work activities brought her asymptomatic and non-limiting cervical condition into disabling reality based upon an exacerbation of the cervical disc herniation with resultant nerve root irritation and radicular pain. He further opined Hill’s “persistent pain complaints and functional limitations are a direct result of job-related activities and not the sequelae of a naturally occurring or age-related degenerative process.” Dr. Farrage assigned restrictions and opined Hill is unable to return to her previous job. Dr. Farrage assessed a 7% impairment rating for Hill’s cervical condition pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, wholly attributable to her work injury.

Ford submitted the March 10, 2020 report by Dr. Loeb, who also testified by deposition on April 22, 2020. In his report, Dr. Loeb noted Hill’s alleged work injury occurred on November 20, 2018 while performing her job of wiring application, which required the use of both arms, overhead work, twisting of the low back, and rapid repetition. Dr. Loeb noted Hill had a normal neurological exam of her neck, back, both upper extremities, and both lower extremities. When asked if Hill sustained a harmful change to the human organism during the course and scope of her employment on November 20, 2018, Dr. Loeb stated as follows:

There is no evidence objectively in the record that Ms. Hill sustained any alteration of her underlying structural anatomy as a result of the alleged accumulative trauma that she has referred to culminating on November 20, 2018. She has longstanding degenerative disc disease in the cervical and lumbar spine, congenital spinal stenosis. She may have transiently aggravated her underlying progressive active condition, causing increasing

symptomology, but there is absolutely no evidence that a true injury occurred in the classic sense. All diagnostic studies, including CT scans, MRIs, of both the cervical and lumbar spine have not revealed any acute anatomic changes to the underlying structural integrity of these anatomic areas. Therefore, in my opinion, Ms. Hill did not and has not suffered a harmful change to the human organism during the course and scope of her employment on November 20, 2018.

Dr. Loeb stated that if Hill had incurred cervical and lumbar strains from her work activities, she would have reached MMI within six to eight weeks at each injury site. Dr. Loeb opined no further treatment was necessary or work-related, and would be due to pre-existing degenerative changes following a natural course. Dr. Loeb acknowledged Hill should not return to her former job at Ford as this aggravated her underlying condition at least transiently. Dr. Loeb declined to impose any work-related restrictions or impairment. Dr. Loeb assessed a 5% impairment rating for Hill's cervical condition and 5% for her lumbar condition, entirely attributable to her pre-existing conditions. Dr. Loeb stated, "All findings appear to be due to longstanding, pre-existing degenerative changes following a natural course."

Dr. Loeb's testimony is consistent with his report. He testified Hill had pre-existing conditions consisting of congenital spinal stenosis and multilevel degenerative disc disease in the cervical spine and some degenerative changes in the lumbar spine. Dr. Loeb characterized Hill's pre-existing conditions as asymptomatic, but not necessarily dormant. Dr. Loeb acknowledged Hill denied experiencing any low back or cervical symptoms prior to November 20, 2018.

Likewise, he was unaware of any medical treatment for Hill's neck or low back prior to November 20, 2018.

Dr. Loeb testified that Hill reported her symptoms had been occurring and worsening over time, but they were markedly worse on November 20, 2018. Based upon Hill's account of her injury, Dr. Loeb characterized her alleged injuries as cumulative since she described a buildup of symptoms. Dr. Loeb testified as follows regarding causation:

Q: Okay. How would you apportion between the pre-existing degenerative condition that you've noted as being asymptomatic and the work injury?

A: I still think she had a - - I believe she had a transient soft tissue injury. There was no alteration of her underlying anatomy whatsoever. She has a condition in the general population which is exactly as she has experienced, even though there's no workplace involvement. It's pretty common. And I'm sure there was some aggravation from the type of job requirements she was performing, but simply just aggravated the underlying condition, which in my opinion resulted in her current symptoms whether she had any type of work-related problems or not.

....

Q: . . . And in the cumulative category, do you feel certain work activities either hasten or accelerate the degenerative process that you've noted?

A: It all depends on the nature of the underlying condition and what the nature of the work is of course. And I don't believe that's - - I mean, I can see where in this particular case there could be some aggravation, but I can't find any evidence of structural alteration as a result of her repetitive requirements, you know, on this particular job she was on. I see how it aggravated it, but not cause any permanent changes . . . . But what I do see are people like Ms. Hill who get transient aggravation and it might bring a condition, you know, into positive symptoms but not cause any structural change.

....

Q: If I understand your report and your testimony correctly, it's your conclusion that Ms. Hill's job duties did not affect her underlying condition; is that accurate?

A: I think it affected her underlying condition transiently, but did not cause any structural changes. In other words, she didn't tear any ligaments, she didn't rupture a disk, she didn't cause - - sustain a fracture. There's no anatomic changes. She has findings of strain and inflammation, but not any structural changes. I think her ongoing symptoms now are due to her progressive underlying condition, which would have occurred anyway over the course of time.

The ALJ rendered an opinion on September 28, 2020. He emphasized inconsistencies between Hill's testimony and the treatment records filed into the record. The ALJ noted Hill testified she felt a pop in her neck and low back on November 20, 2018 and went to Ford's Medical Department the same day. However, the ALJ noted treatment records demonstrate she did not report to Ford's Medical Department on November 20, 2018. Rather, the records show Hill went to Ford's Medical Department on December 20, 2018 and Hill reported an overuse injury and not a specific injury. The ALJ also noted Hill continued to work after the December 2018 holidays for another nine months before Dr. Johnson assigned any restrictions. Hill was later terminated because of being off work for a non-work-related eye surgery. In specifically addressing the alleged low back and cervical injuries, the ALJ found as follows, *verbatim*:

#### **LOW BACK INURY**

Dr. Farrage, the Plaintiff's expert witness, did not offer testimony that Ms. Hill's low back was injured by doing work at Ford, stating that she suffers from a pre-existing lumbar spine condition. Dr. Loeb agreed that Ms. Hill's

lumbar spinal condition was not work-related. Yet, the Plaintiff argues that she should be awarded income benefits based on 5% impairment for the lumbar spine. There is no persuasive evidence in the record which shows treatment for a lumbar injury. There are restrictions given by Dr. John Johnson, whom the Plaintiff testified was treating her for her low back, but none of the records relate the restrictions to a lumbar injury or treatment for the lumbar spine. Because Dr. Farrage and Dr. Loeb both give opinions that Ms. Hill did not suffer any kind of a lumbar spine injury at work, the Administrative Law Judge may not disregard that evidence. “[W]hen the question is one properly within the province of medical experts, the [ALJ] is not justified in disregarding the medical evidence.” *Kingery v. Sumitomo Electric Wiring*, 481 S.W.3d 492, 496 (Ky. 2015). Accordingly, any claim for a lumbar injury must be dismissed.

#### **CERVICAL SPINE INJURY**

The evidence shows that the claimant felt pain in her cervical area and right arm after approximately four (4) months of performing the job of installing wiring looms. During her deposition, and also at the Final Hearing, the Plaintiff testified that she was performing the wire loom job on November 20, 2018 and felt a pop in her neck and went immediately to Ford’s medical department. However, there are no records submitted into evidence which substantiate this allegation. Instead, the first record of a neck injury in the record is a note from OHSIM, which is Ford’s internal medical department, which describes pain in the neck and fingers of the right hand which began 1 to 2 months prior as a result of performing the job of installing wire looms. The next medical report is from Kentucky One Health in which an overuse injury is reported, an x-ray of the right wrist is taken, and a CT scan of the neck is referenced, which states: “non-compromising HNP shown on CT scan”. These differing versions of events, between what the Plaintiff testified had happened and what she reported to medical providers when she began feeling pain, damage the Plaintiff’s credibility concerning whether an injury happened at work and how it happened.

The claimant testified that Dr. Shields was treating her for her cervical pain. The Plaintiff testified concerning what Dr. Shields had told her about her condition and what treatment he recommended. This testimony is hearsay and is not substantial evidence as to the truth of the diagnoses, or as to the results of tests upon which they were allegedly based. Dr. Shields' opinions related by the Plaintiff through her testimony are not substantial evidence of those opinions because it is also hearsay. Although a factfinder in an administrative hearing may admit hearsay evidence and consider it, the final decision must be supported by competent evidence. *Big Sandy Community Action Program v. Chaffins*, Ky., 502 S.W.2d 526 (1973) at 530.

The Administrative Law Judge concludes that the Plaintiff has failed to prove that a work-related injury occurred, or when it occurred, while working at Ford Motor Company. While there is evidence that the Plaintiff felt pain at work while doing her job there, the inconsistency with the few records of treatment, and the lack of evidence from treating sources showing objective medical evidence of the claimed injuries, fails to convince the Administrative Law Judge that an injury occurred at work on November 20, 2018. A claim for cumulative trauma arising from overuse is contradicted by the Plaintiff's own statement that she felt a pop in her neck, and her right arm and low back began hurting, which describes an acute injury. Dr. Farrage's report supports a cumulative trauma injury which became symptomatic on December 20, 2018, but the claimant testified that she stopped working immediately thereafter for holiday shutdown, while Dr. Farrage states that her condition worsened due to additional overuse resulting in the January 10, 2019 visit to the KentuckyOne Health emergency room. Furthermore the Plaintiff continued working at the wire loom installation job for many months thereafter, until she was removed from the job due to her low back pain, and then terminated from employment due to being off of work for eye surgery. While the evidence does support a finding that the Plaintiff had pain at work, in her neck, right arm, and low back, pain alone does not constitute an injury under KRS 342.0022(1). In addition to pain experienced at work, an injured worker must prove, by objective

medical evidence that a harmful change to the body was caused by the work. *Gibbs, supra*.

The Administrative Law Judge relies upon Dr. Loeb's report and testimony to find that the Plaintiff did not suffer an injury at work. The Plaintiff suffers from a pre-existing cervical condition which causes her pain. The pre-existing condition was not exacerbated, aggravated, or altered in any way by the Plaintiff's work at Ford. The Administrative Law Judge cannot discern from the evidence whether there was a temporary injury or exacerbation of a pre-existing condition because the Plaintiff has not proven by a preponderance of the evidence that a specific injury occurred on November 20, 2018, nor that a cumulative trauma injury occurred manifesting when a physician informed the Plaintiff that her cervical spine condition was work-related, or that any injury in fact occurred at all. Therefore the Administrative Law Judge concludes that the Plaintiff has not met her burden of proof in showing that any kind of injury occurred, either cumulative trauma or specific injury causing either temporary or permanent disability. Because the claimant's allegation of injury is dismissed, all other issues preserved for adjudication are moot.

Neither party filed a Petition for Reconsideration. On appeal, Hill argues the ALJ erred by dismissing her claim for benefits for conditions in her neck, right arm, and back. Hill asserts the ALJ "made clearly erroneous findings and misapplied Chapter 342 to the facts of the present case" and the evidence compels a contrary result. Hill points to her testimony regarding her repetitive job duties, and Dr. Farrage's causation and impairment opinions. Hill asserts the ALJ erred in finding her hearing testimony regarding conversations she had with Dr. Shields were hearsay and not substantial evidence. Hill asserts the ALJ misinterpreted Dr. Loeb's causation opinions. Based on Dr. Loeb's testimony, Hill argues she is at the minimum entitled to benefits for a temporary aggravation or transient injury of her

underlying conditions. Hill asserts she did not sustain a single traumatic injury, but she sustained either a cumulative trauma injury or a temporary transient injury entitling her to benefits. Hill also argues the ALJ erred in denying her oral motion at the final hearing to amend the Form 101 to conform to the evidence.

As the claimant in a workers' compensation proceeding, Hill had the burden of proving each of the essential elements of her claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Hill was unsuccessful in her 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 they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, *supra*.

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 sole authority to judge 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); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is inadequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his 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 the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. As 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, supra.

We note that neither party filed a Petition for Reconsideration. In the absence of a Petition for Reconsideration, on questions of fact, the Board is limited to a determination of whether substantial evidence in the record supports the ALJ's conclusion. Stated otherwise, where no petition for reconsideration was filed prior to the Board's review, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record supporting the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, our sole task on appeal is to determine whether substantial evidence supports the ALJ's decision. We conclude it does.

After careful review, we find substantial evidence supports the ALJ's determination Hill did not sustain a lumbar injury due to cumulative trauma on

November 20, 2018, and a contrary result is not compelled. The ALJ relied upon the opinions of Drs. Farrage and Loeb in reaching this determination. Dr. Farrage diagnosed lumbar spinal stenosis without pseudoclaudication. He opined Hill's lumbar condition is developmental, degenerative, and unrelated to her reported work injury. Likewise, in the March 2020 report, Dr. Loeb opined Hill did not sustain any alteration of her underlying structural anatomy due to the alleged cumulative trauma and she had longstanding lumbar degenerative disc disease. He opined Hill did not sustain a harmful change to the human organism during the course and scope of her employment on November 20, 2018. The above constitutes substantial evidence supporting the ALJ's determination regarding Hill's alleged lumbar injury and no contrary result is compelled. Therefore, we affirm.

We likewise determine substantial evidence supports the ALJ's determination Hill failed to prove she sustained a work-related cervical injury, either permanent or temporary. The ALJ noted several inconsistencies in the record. Important to the ALJ, Hill testified at both the deposition and hearing she experienced a pop in her neck and back on November 20, 2018 and sought treatment at the Ford medical facility the same day. However, the first treatment note on record from Ford is dated December 20, 2018. In that record, Hill reported neck and right upper extremity pain due to repetitively pulling frozen grommets through a hole then connecting the wire under the dashboard. There is no mention of a popping sensation in her neck and back. Likewise, the records from the emergency room and the reports of Drs. Farrage and Loeb do not mention a popping in the back and neck on November 20, 2018.

In the March 2020 report, Dr. Loeb found no objective evidence that Hill sustained any alteration of her underlying structural anatomy due to the alleged cumulative trauma. He noted Hill had longstanding cervical and lumbar degenerative disc disease. He noted all diagnostic studies failed to show any acute anatomic changes to the underlying structural integrity of the cervical spine. Dr. Loeb's neurological examination of Hill's cervical spine was normal. Finally, the ALJ was not compelled to find Hill sustained temporary injuries to either the lumbar or cervical spine. The ALJ specifically rejected this argument, and thoroughly explained his reasons for doing so. Accordingly, substantial evidence supports the ALJ's determination and a contrary result is not compelled.

We also find the ALJ did not abuse his discretion by denying Hill's oral motion to amend the injury date to December 20, 2018 to conform to the evidence. It is well settled an ALJ has broad discretion to control the taking and presentation of proof in a worker's compensation proceeding. New Directions Housing Authority v. Walker, 149 S.W.3d 354 (Ky. 2004). While the goal of Chapter 342 and the administrative regulations are intended to facilitate prompt resolution of claims, "they do not deprive an ALJ of the authority to make exceptions where warranted by circumstances that arise during litigation." Id. Any purported error by the fact-finder must be reviewed under the abuse of discretion standard. Abuse of discretion by definition "implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." Kentucky National Park Commission v. Russell, 301 Ky. 187, 191 S.W.2d 214

(1945). We do not find the ALJ abused his discretion in denying Hill's oral motion made at the end of the final hearing.

Accordingly, the September 28, 2020 Opinion and Order rendered by Hon. Peter J. Naake, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER:**

**LMS**

HON CHED JENNINGS  
401 W MAIN ST, STE #1910  
LOUISVILLE, KY 40202

**COUNSEL FOR RESPONDENT:**

**LMS**

HON JOSHUA W DAVIS  
401 S 4TH ST, STE #2200  
LOUISVILLE, KY 40202

**ADMINISTRATIVE LAW JUDGE:**

**LMS**

HON PETER J NAAKE  
MAYO-UNDERWOOD BLDG  
500 MERO STREET, 3<sup>rd</sup> FLOOR  
FRANKFORT, KY 40601