Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 10, 2021

CLAIM NO. 201850746

CUMBERLAND MILLWORK & SUPPLY INC. PETITIONER

VS. **APPEAL FROM HON. GRANT S. ROARK, ADMINISTRATIVE LAW JUDGE**

JAMES VIARS (DECEASED)
BETTY STEWART, ADMINISTRATRIX
MANDI EMERSON N.F. ALEXANDER VIARS
MANDI EMERSON N.F. GIANNH VIARS
ANGELLA CAMPBELL N.F. ELIAS HAWK YOUNG
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING

* * * * * *

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

STIVERS, Member. Cumberland Millwork & Supply, Inc. ("Cumberland") appeals from the May 19, 2020, Opinion, Order, and Award, the June 22, 2020, Order on Petition for Reconsideration, the April 16, 2021, Opinion, Order, and Award, and

the May 14, 2021, Order on Petition for Reconsideration of Hon. Grant S. Roark, Administrative Law Judge ("ALJ"). In the May 19, 2020, Opinion, Order, and Award, the ALJ set forth interlocutory findings and determined the intoxication defense, as set forth in KRS 342.610(4), is not applicable, as the blood of Decedent James Viars ("Viars") was never tested for intoxicating substances. The ALJ also determined a reduction in the income benefits pursuant to KRS 342.165(1) is not applicable due to Viars' alleged failure to wear his seatbelt at the time of the motor vehicle accident ("MVA"). The ALJ awarded the Estate of Decedent James Viars ("Estate") a lump sum payment of $83,336.22. The ALJ also awarded the dependents of Viars - Giannh Viars, Alexander Viars, and Elias Young a total of $255.08 per week split equally among them until each turns eighteen years of age. Finally, the ALJ awarded all medical expenses associated with Viars' injury and death. The ALJ finalized his ruling and award in the April 16, 2021, Opinion, Order, and Award.

On appeal, Cumberland frames three arguments. First, it asserts the ALJ erred by concluding the intoxication defense, pursuant to KRS 342.610(3), is only available when a blood test has been performed. Next, Cumberland asserts that the ALJ erred in determining an intoxication defense cannot be established by evidence other than a blood test. Finally, Cumberland asserts the ALJ erred by failing to find Viars committed a safety violation because he was not wearing a seatbelt when the MVA occurred.

BACKGROUND

The Form 101 (Claim No. 201850746), filed on August 1, 2019, alleges Viars was involved in a work-related MVA on December 21, 2018, that resulted in his death.[1] Attached to the Form 101 is the January 15, 2019, Death Certificate which lists traumatic brain injury, blunt force trauma to the head, and motor vehicle collision as the underlying causes of death. Under "significant conditions contributing to death" is "methamphetamine toxicity."

The Form 111 lists voluntary intoxication as a defense in a Special Answer with the following details provided: "Urine drug test on the date of injury revealed Meth, THC, Versed and Fentanyl in claimant's system. UK report attached to 101."

On August 19, 2019, Cumberland filed a Motion to Amend Form 111 Denial to include a safety violation for Viars' alleged failure to wear a seatbelt in contravention of KRS 189.125(6).

Cumberland filed medical records from the University of Kentucky revealing the results of post-MVA lab work and other diagnostic testing. The records include the results from a series of three urine drug screens conducted on December 21, 22, and 23, 2018. All three drug screens indicate "abnormally high" to "high" levels of amphetamines and methamphetamines and cannabinoids.

[1] By Order dated September 4, 2020, the ALJ consolidated Claim No. 201850746 with Claim Nos. 202000959 (filed by the Viars Estate), 202000960 (filed by Mandi Emerson as Next Friend of Alexander Viars, a minor), 202000961 (filed by Mandi Emerson as Next Friend of Giannh Viars, a minor), and 202000962 (filed by Angella Campbell as Next Friend of Elias Hawk Young, a minor).

Cumberland also filed Dr. Daniel Wolens' October 15, 2019, report. After performing a medical records review, Dr. Wolens noted as follows regarding the lack of drug testing of the blood:

> What was not available in Mr. Viars' case was a drug test using blood as its source. It is extremely rare to see a blood test for drugs. The two primary reasons are that urine is easier and less traumatic to access, and secondly, blood levels of drug [sic] do not help to determine intoxication, the exception being alcohol. Therefore, the medical standard for determining the presence of drug abuse is the urine drug analysis. There are several "reliable" tests for urine drug analysis, one being that of LCMS.
>
> Although no blood drug testing was performed in this case, drug [sic] had to have been in the blood. The means by which a drug reaches the kidney and the urine is by the blood. Once drug enters the blood, it is filtered by the kidney and concentrated into the urine. Therefore, one cannot have drug in the urine without drug being in the blood. This can be confirmed absolutely in the case of Mr. Viars, as serial drug testing was performed on three occasions over the course of 48 hours. Abnormal levels of methamphetamine and THC were present over that entire 48-hour period. Therefore, there had to be drug in the blood over that 48-hour period of time for the drug to have reached the kidney and the urine.

Dr. Wolens then set forth the following summary:

> The question that has been posed in this case is whether the urine drug screen test revealing the methamphetamine and THC in his system would indicate that he had the same in his blood, and assuming same, whether the preceding could cause a disturbance of mental or physical capacities.
>
> Both methamphetamine and THC were identified in Mr. Viars [sic] case, not on a screening tests [sic], but LCMS confirmation. LCMS is a higher standard for urine drug detection than is a "screen." LCMS testing was performed on three occasions over 48 hours, and in each was the presence of elevated levels of

> methamphetamine and THC. Given that these drugs were present within the urine over a 48-hour period would confirm that these drugs had to have been within the blood during that period of time. Both methamphetamine and THC are consciousness-altering substances which can affect both mental and physical performance. Hence, why they are both drugs of abuse.

Cumberland filed Dr. Wolens' January 7, 2020, supplemental report addressing Viars' alleged failure to utilize his seatbelt at the time of the work-related MVA. Dr. Wolens' supplemental report reads as follows:

> This follows my report of 10/15/2019. That report regarded a 42-year-old male involved in a motor vehicle accident on 12/21/2018. My report of that date addressed the significance of methamphetamine and tetrahydrocannabinol (THC) in his urine.
>
> I have now been asked to assess the effects of Mr. Viars having not been protected by a seat belt restrain system. Mr. Viars' accident history per the Kentucky Uniform Police Traffic Collision Report (KUPTCR) indicates Mr. Viars had run a stop sign, impacting another vehicle. Mr. Viars was transported to Fort Logan Hospital from where he was then transferred to the University of Kentucky. Briefly, Mr. Viars was found to have a traumatic brain injury with occlusion of multiple arteries suppling the brain. This resulted in a right temporal lobe infarct. Mr. Viars was unconscious upon arrival at Fort Logan, remained unconscious at the University of Kentucky, never regained consciousness, and exhibited findings on 12/22/2018 consistent with brain death. Mr. Viars was finally declared deceased on 12/26/2018. The coroner's report identified the cause of death to be 'traumatic brain injury – blunt force trauma to the head.'
>
> I have now been informed that Mr. Viars' seatbelt was not in place at the time of the accident. The KUPTCR indicates the airbag switch was on. It does not indicate, however, whether the airbag had deployed. Mr. Viars' vehicle is otherwise reported after impact to have 'traveled app. 41 feet before entering the shoulder area, then traveled in a counterclock direction, traveling app. 75 feet, coming to a rest in a northeasterly direction.' Given that the vehicle had rotated, even with airbag

> deployment, there would not have been complete protection to the head.
>
> Seatbelt wear has been legally mandated because seatbelt use has been proven to substantially reduce injuries associated with motor vehicle accidents. In the absence of seatbelt restraint, and for frontal impact, there is a high probability of striking the head on the steering wheel or windshield. Even with an airbag in place, the efficacy of the airbag is reduced when the vehicle occupant is not restrained by a seatbelt. Therefore, the lack of a seatbelt restraint in this case greatly increased this individual's risk for head injury.
>
> Although I can state with certainty that this individual's risk of injury was increased substantially in the absence of a seatbelt restraint, I cannot state why that seatbelt was not in place. Whether Mr. Viars failed to use his seat belt or the seatbelt had failed is not a determination I can make from the documentation.

Dr. Wolens was deposed on January 16, 2020. When asked whether the presence of methamphetamine in Viars' urine indicated that it was also in his blood, he testified as follows:

> Q: Now, with reference, again, to the presence of the substance in his urine, if the substance is in his urine or detected in his urine, was it in his blood?
>
> A: Yes, because to get in the urine, it has to come through the kidney, and the drug gets to the kidney by being transported there by blood.
>
> Q: So within a reasonable degree of medical probability, would the presence of the drugs in his urine indicate that the substance was present in his blood?
>
> A: Yes.
>
> Q: And that is within a reasonable degree of medical probability?
>
> A: Yes.
>
> …

> Q: And it is your opinion that for the substances to be in his urine, they have to have been in his blood?
>
> A: Yes, and I can say it with absolute certainty because this isn't a one-time process. That is, again, testing was conducted over a two-day process. So for the methamphetamine/amphetamine to have remained in his urine over that two-day process, there had to be continual supply of methamphetamine from the blood to the kidney to the urine.
>
> Q: So it would not be in his urine unless it were in his blood?
>
> A: That's correct.

Dr. Wolens also confirmed that there was THC noted in Viars' system which can potentially cause the following problems:

> Q: Now, with reference to the THC, can THC cause a disturbance of mental or physical capabilities?
>
> A: Yes, probably more so than amphetamines, because it's a central nervous system depressant.
>
> Q: And could you at least list some of the potential mental or physical disturbances caused by THC?
>
> A: Yes. Going to the physical, you're going to see changes in coordination, in balance. To the central nervous system, again, cognition, judgment, perception, be it auditory or visual. So you will see both those physical and central nervous system effects with THC, more so than you may with amphetamines.

According to Dr. Wolens, methamphetamine use can cause blurred vision and mental and behavioral changes.

The December 3, 2019, Benefit Review Conference Order and Memorandum lists the following contested issues: benefits per KRS 342.730 [handwritten: "death benefits"], average weekly wage, unpaid or contested medical

expenses, KRS 342.165 violation. Under "Other" is the following: "Intoxication defense 342.610(4)."

In the May 19, 2020, Opinion, Order, and Award, the ALJ set forth, in relevant part, the following interlocutory findings of fact and conclusions of law *verbatim*:

> **Intoxication Defense KRS 342.610 (4)**
>
> As a threshold issue, the defendant maintains plaintiff was intoxicated at the time of the motor vehicle accident which caused his death and, as a result, his claim is barred by recently amended KRS 342.610(4), which states:
>
> *If an employee voluntarily introduced an illegal, non-prescribed substance or substances or prescribed substance or substances in amounts in excess of prescribed amounts into his or her body detected in the blood, as measured a scientifically reliable test, that could cause a disturbance of mental or physical capacities, it shall be presumed that the illegal, non-prescribed substance or substances or the prescribed substance or substances in amounts in excess of prescribed amounts caused the injury, occupational disease, or death of the employee and liability for compensation shall not apply to the injury, occupational disease, or death of the employee.* (Emphasis not ours).
>
> As a preliminary matter, there is no dispute that plaintiff's blood was never tested following his motor vehicle accident. Instead, the defendant argues that toxicology reports based on plaintiff's urine clearly demonstrated the presence of illegal substances in plaintiff's system at levels which would likely cause disturbance of mental or physical capacities. However, KRS 342.610(4) clearly requires the presence of illegal substances be determined by a scientifically reliable test of the claimant's blood. Plaintiff's toxicology expert, Mr. Ward, testified quite clearly and persuasively that the only way to determine the presence of illegal substances in the blood is to perform some kind of blood test, and that testing urine cannot determine the presence or level of intoxicating substances in somewhat's blood. The defendant's expert, Dr. Wolens, opined that if illegal

substances are detected by a urine test, then such substances would be present in the blood. However, he also acknowledged that he could not accurately determine what was in plaintiff's blood from testing his urine.

Ultimately, the Administrative Law Judge is not persuaded the defendant has carried its burden of establishing this affirmative defense. In reaching this conclusion, Mr. Ward's opinions are considered most persuasive and the ALJ is simply not persuaded that the evidence supports a finding that plaintiff's blood was scientifically, reliably tested to determine the presence of illegal substances at levels which would cause disturbance of mental or physical capacities. Accordingly, plaintiff's claim is not barred by KRS 342.610(4).

…

KRS 342.165 Violation

The next issue becomes whether plaintiff's award of death benefits should be reduced due to his failure to wear a seatbelt at the time of his accident, in violation of KRS 342.165(1), the relevant portion of which states:

. . . If an accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter shall be decreased fifteen percent (15%) in the amount of each payment. (Emphasis not ours).

Although the defendant correctly points out that there is no evidence plaintiff was wearing a seatbelt at the time of his accident, there is also no evidence to preclude the possibility that plaintiff was wearing a seatbelt but that it was not functioning properly and came loose at the time of impact. Quite simply, there is very little evidence concerning whether the seatbelts were properly functioning and whether plaintiff intentionally failed to wear his seatbelt. More importantly however, there is no evidence that plaintiff's accident was caused by a lack of a seatbelt. The statue quoted above indicates a reduction

> is required when an accident is caused in any degree by an intentional failure to use a safety appliance. Moreover, even if that statute is interpreted to mean that if any injury from an accident is caused by the safety violation, there is simply no evidence to establish that plaintiff would not have died in the motor vehicle accident had he been wearing a seatbelt. This is not a situation where the plaintiff was driving a vehicle without an airbag, in which case the lack of a seatbelt would clearly cost significantly more trauma to the head in a frontal collision that otherwise. Even accepting as accurate Dr. Wolens' opinion that a seatbelt in conjunction with an airbag further reduces blunt force trauma to the head, his opinion does not support any conclusion that plaintiff would not have died from the accident had he been wearing a seatbelt. Accordingly, it is determined there is no basis for a 15% reduction in the award based on plaintiff's death.
>
> …

In its Petition for Reconsideration, Cumberland made the same arguments it now makes on appeal. Cumberland also set forth an alleged error pertaining to the ALJ's calculation of the award to be split between Viars' dependents. In the June 22, 2020, Order, the ALJ sustained Cumberland's argument regarding the amount to be split among Viars' beneficiaries but denied all other requests for reconsideration

After the May 19, 2020, interlocutory ruling, Cumberland filed the November 12, 2020, deposition of Allan Larkin ("Larkin"), owner and operator of Cumberland.[2] Larkin testified that Viars had used the work truck involved in the work-related MVA in the past and had not complained about the seatbelt not working. Further, no other employee of Cumberland complained about the seatbelt

[2] Larkin was also deposed on September 11, 2019, but his testimony has no relevance to the issues on appeal.

not working. Larkin used the truck and experienced no problems. He testified as follows:

> Q: Okay. From your recollection in the Year 2018 until the date of the incident, 12/21/18, was that vehicle ever repaired, or were there any problems with the seat belts, specifically, either malfunctioning or not working?
>
> A: No, sir. I can't tell you exactly when I drove that truck personally, it would have been at some point during that year of 2018 I used it myself and everything was working properly. As a matter of fact, I drove it to – I drove it to Ft. Wayne, Indiana at some point in that year. I think it was like September maybe, October when I drove that truck.
>
> Okay. And when you did drive it, the seat belts were functioning properly?
>
> A: Yes.
>
> Q: They would lock in place?
>
> A: Yes.

The ALJ finalized his findings and award in the April 16, 2021, Opinion, Order, and Award. Both parties filed Petitions for Reconsideration. Cumberland asserted the same arguments raised on appeal which were overruled by Order dated May 14, 2021.

ANALYSIS

Cumberland first asserts the ALJ erred by determining the presumption of intoxication in KRS 342.610(3) requires a blood test. On this issue, we affirm.

KRS 342.610(3), before amended by House Bill 2, effective July 14, 2018, stated as follows: "Liability for compensation shall not apply where injury,

occupational disease, or death to the employee was proximately caused primarily by voluntary intoxication as defined in KRS 501.010, or by his or her willful intention to injure or kill himself, herself, or another." Following House Bill 2, KRS 342.610(3), now KRS 342.610(4), reads as follows:

> (4) If an employee voluntarily introduced an illegal, nonprescribed substance or substances or a prescribed substance or substances in amounts in excess of prescribed amounts into his or her body detected in the blood, as measured by a scientifically reliable test, that could cause a disturbance of mental or physical capacities, it shall be presumed that the illegal, nonprescribed substance or substances or the prescribed substance or substances in amounts in excess of prescribed amounts caused the injury, occupational disease, or death of the employee and liability for compensation shall not apply to the injury, occupational disease, or death to the employee.

The above firmly demonstrates the presumption of voluntary intoxication contained in KRS 342.610(4) can *only* be established through a "scientifically reliable test" of the individual's blood. "The most commonly stated rule in statutory interpretation is that the 'plain meaning' of the statute controls." Wheeler & Clevenger Oil Co., Inc. v. Washburn, 127 S.W.3d 609, 614 (Ky. 2004). Where the language of a statute is clear and unambiguous, it is not open to construction or interpretation and must be applied as written. Hall v. Hospitality Resources, Inc., 276 S.W.3d 775 (Ky. 2008). Stated another way, when the plain language and meaning of the statute is without ambiguity, the intent of the legislature is discerned from what the General Assembly said, not what it might have said, and further interpretation is unwarranted as a matter of law. Clark v. Clark, 601 S.W.2d 614 (Ky. App. 1980); Lane v. Newberg, 841 S.W.2d 181 (Ky. 1992). Here,

the legislature, in its 2018 amendment, added the following language: "If an employee voluntarily introduced an illegal, nonprescribed substance or substances or a prescribed substance or substances in amounts in excess of prescribed amounts into his or her body **detected in the blood**, **as measured by a scientifically reliable test**…." As held by the ALJ in the May 19, 2020, Opinion, Order, and Award, "KRS 342.610(4) clearly requires the presence of illegal substances be determined by a scientifically reliable test of the claimant's blood." There is no other interpretation of the phrase "detected in the blood, as measured by a scientifically reliable test" outside of its plain meaning.

Further convincing the ALJ of his interpretation of KRS 342.610(4) is the following testimony of Dr. Michael Ward:

> Q: Okay. So I know Dr. Woolens [sic] has stated in his report, and he stated in his deposition at various times, that because the urine drug screens at UK showed that there were drugs in his system that, therefore, there had to be drugs in his blood; is that an accurate statement in your opinion?
>
> A: No, sir, I would disagree with that.
>
> Q: And would you explain your disagreement – why you would disagree with Dr. Woolens' opinion?
>
> A: Yes, sir. As we sort of laid out, the – the absorption process involves and the distribution process involves getting a substance into the blood so that it can, in fact, be distributed throughout the body. But the time that it is in the blood and the time that it's actually – we're actually able to measure and talk about effects is much more limited than the amount of time that you can detect things in the urine. Typically, for – for a lot of drugs, hours to maybe a day, a drug can be detected in the blood. And if you find it in the blood, then you can talk about effects. As the blood goes through the kidneys

and is filtered – and there's like millions of these little filters within your kidney, and their whole job is to take out things out [sic] that don't belong there. And so they're filtering this drug out, getting this drug out of the blood and sending it to the urine. And so that process can put that – that drug in the bladder, in the urine. It gets excreted over a course of time. So, therefore, it's entirely possible that it could all be filtered out, all be taken out of the blood, but still remain in the urine after the blood has been cleared of that particular drug.

Q: In looking at the urine drug screen that you have seen the reports, are you able to make a determination as to whether there was any impairment of Mr. Viars?

A: No, sir. You cannot make any kind of decision about impairment or any pharmacological effect based on a level only in the urine. All that really tells you is that ingestion occurred at some point.

Q: Then in the statute it goes on to state that it would – something that would cause a disturbance of mental or physical capacity. So looking at the testing that was done of the urine of Mr. Viars, are you able to – is anyone – can you conclude that there was a disturbance of his mental or physical capacities?

A: No, sir. Based on a urine drug screen alone without having a blood specimen with the detection of a drug in the blood, I would not be comfortable making any determination of impairment in that case.

Q: Okay. And you've – the results of – there was – in the urine there was, I think, Methamphetamine that was found; is that correct?

A: Yes, sir, there was.

Q: And there was – and I know there were three different drug screens that were done as listed in your report on three different days. So does that – is that any – what's the significance of that to you as a toxicologist?

A: Essentially, that he was, in fact, excreting this drug. But, again, you know, I guess I emphasized that it takes longer to get it completely out of the body by excreting it

> through the urine than it will actually be in the blood and having a direct impact on an individual.
>
> Q: Okay. And so the statements by Dr. Woolens [sic] that if they did it over three days in the urine, then it would have to be in the blood, is – you disagree with that?
>
> A: I do disagree with that, yes, sir.

Dr. Ward's testimony substantiates the ALJ's interpretation of KRS 342.610(4) as mandating a blood test since a urine drug test is unable to detect the presence or level of substances in the blood. On this issue, we affirm.

Cumberland next asserts the ALJ erred by determining voluntary intoxication cannot be established by other evidence. It argues, in relevant part, as follows:

> Even if the statute requires a test to be performed on the blood, such test is required only to qualify for the presumption that the substances caused the injury. It does and should not preclude a separate determination that the decedent in this case was intoxicated based on the totality of evidence. The Defendant asserts that the overwhelming evidence in the claim including the opinions of Dr. Wolens, the urine testing and the coroner's opinion that the decedent suffered from methamphetamine toxicity, establishes that the decedent was intoxicated at the time of the accident at issue and that the claim for benefits should have been dismissed.
>
> We remand for additional findings.

Cumberland is not entitled to the statutory presumption in KRS 342.610(4) as a blood test was not performed. However, there is nothing within the statutory scheme of KRS 342.610(4) preventing the ALJ, after making a determination that the presumption does not apply, from reviewing the evidence in the record and making a determination as to whether Viars' was intoxicated and, if

so, whether that intoxication was the primary causal factor of his accident and fatal injuries. *See* Gary W. Campbell v. City of Booneville, 85 S.W.3d 603 (Ky. 2003); Wilson v. Wizor, 544 S.W.2d 231 (Ky. 1976); Ford Motor Co. v. Smith, 143 S.W.2d 507 (Ky. 1940). In other words, there is nothing within KRS 342.610(4) that imposes an absolute ban upon the ALJ considering other evidence in the record in the event the statutory presumption is not applicable.

There is evidence in the record for consideration that is relevant to this inquiry, some of which has been cited herein. However, this Board is not a fact-finding tribunal, and it would be inappropriate for us make any findings that may persuade the ALJ to reach one resolution over another. Therefore, we vacate the award of income and medical benefits, and remand to the ALJ to review the pertinent evidence in the record and make an appropriate determination as to whether Viars was intoxicated and, if so, whether that intoxication was the primary causal factor of his accident and fatal injuries.

Finally, Cumberland asserts that the ALJ committed error when he failed to impose a 15% reduction in compensation for Viars' alleged failure to wear his seatbelt pursuant to KRS 342.165(1). On this issue, we affirm.

KRS 342.165(1) provides in pertinent part as follows:

> If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased thirty percent (30%) in the amount of each payment. **If an accident is caused in any degree by**

> **the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable order or administrative regulation of the commissioner or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter, shall be decreased fifteen percent (15%) in the amount of each payment.** (Emphasis added).

Hence, before the 15% reduction in an injured worker's benefits may occur, the record must establish by means of substantial evidence that the injured worker either (1) intentionally failed to use a safety device furnished by the employer, or (2) intentionally failed to obey the safety orders of the employer or a safety regulation imposed by law. Further, there must be evidence in the record establishing a causal connection between the claimant's intentional failure to use a safety device and the accident.

The ALJ must review the evidence and make a determination as to whether or not to impose the 15% reduction in compensation. In the May 19, 2020, interlocutory decision the ALJ concluded, in relevant part, as follows:

> Although the defendant correctly points out that there is no evidence plaintiff was wearing a seatbelt at the time of his accident, there is also no evidence to preclude the possibility that plaintiff was wearing a seatbelt but that it was not functioning properly and came loose at the time of impact. Quite simply, there is very little evidence concerning whether the seatbelts were properly functioning and whether plaintiff intentionally failed to wear his seatbelt.

In other words, the ALJ was unable to rule out a malfunctioning seatbelt at the time of Viars' work-related MVA. Bolstering the ALJ's resolution of this issue are the opinions of Dr. Wolens as set forth in his January 7, 2020, report

and January 16, 2020, deposition. The relevant opinion in the January 7, 2020, report is as follows: "Although I can state with certainty that this individual's risk of injury was increased substantially in the absence of a seatbelt restraint, I cannot state why that seatbelt was not in place. Whether Mr. Viars failed to use his seat belt or the seatbelt had failed is not a determination I can make from the documentation." Similarly, in his deposition, Dr. Wolens testified as follows:

> Q: I guess my whole point is, you didn't do any analysis at all of this accident and you made an assumption as to whether or not Mr. Viars was actually wearing a seatbelt or not; is that right?
>
> A: No, I would say that was incorrect. I was responding to a query by Mr. Carlos as to what the effects would be for an individual who was not wearing a seatbelt. I did not make any assumptions beyond that. And also specifically it was in my report that I did not make any determination as to whether the absence of a seatbelt was due to inattention of Mr. Viars, or whether it was seatbelt failure.
>
> Q: And is it fair to say that your report is more in terms of a general analysis basically saying that, you know, you're better off if you wear a seatbelt in an accident? Is that what it is, as opposed to a specific analysis of this specific accident?
>
> A: That's correct.
>
> Q: More of a general analysis?
>
> A: Yes.
>
> …
>
> Q: And the same thing, on the seatbelt, you're – what you're giving us is a general analysis. You're not giving us anything specific in regard to this particular accident that you did, no testing, and you're really not qualified as a biomechanical engineer, correct?

A: That's correct.

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. 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 function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings 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). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

The ALJ determined the evidence does not support the reduction in compensation because he is unable to determine whether Viars failed to wear his

seatbelt or if he wore his seatbelt and the seatbelt malfunctioned. This is harmonious with Dr. Wolens' testimony.

Further, assuming, *arguendo*, the ALJ had determined Viars failed to wear his seatbelt, there is nothing in the record causally linking this failure to the work-related MVA. In order words, KRS 342.165(1) permits the 15% reduction in compensation in the event that a causal connection is established between the employee's intentional failure to utilize a safety device and the accident. Here, no such causal connection was established. As substantial evidence supports the ALJ's decision to not impose the 15% reduction in compensation pursuant to KRS 342.165(1), we must affirm.

Accordingly, to the extent the ALJ determined Viars' claim is not barred by KRS 342.610(4) and KRS 342.165(1) is inapplicable, the May 19, 2020, Opinion, Order, and Award, the June 22, 2020, Order, the April 16, 2021, Opinion, Order, and Award, and the May 14, 2021, Order are **AFFIRMED**. However, the award of income and medical benefits is **VACATED**. The claim is **REMANDED** to the ALJ for a consideration of the evidence in the record and findings, pursuant to applicable case law, as to whether Viars was intoxicated and, if so, whether that intoxication was the primary causal factor in his work-related MVA and ultimate death.

ALL CONCUR.

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