

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: September 11, 2020

CLAIM NO. 201863199

DAWN KAYS

PETITIONER

VS. APPEAL FROM HON. CHRISTINA D. HAJJAR,  
ADMINISTRATIVE LAW JUDGE

THE CASTLE  
and HON. CHRISTINA D. HAJJAR,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
VACATING IN PART AND REMANDING

\* \* \* \* \*

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

**STIVERS, Member.** Dawn Kays (“Kays”) appeals from the April 24, 2020, Opinion, Award, and Order and the May 22, 2020, Order on Petition for Reconsideration of Hon. Christina Hajjar, Administrative Law Judge (“ALJ”). The ALJ awarded Kays temporary total disability benefits, permanent partial disability (“PPD”) benefits, and medical benefits for work-related neck and right shoulder injuries. The ALJ dismissed Kays’ claims for low back and psychological injuries.

On appeal, Kays asserts the ALJ erred by failing to enhance her PPD benefits via the three multiplier pursuant to KRS 342.730(1)(c)1.

### **BACKGROUND**

The Form 101 alleges on September 5, 2018, Kays sustained work-related injuries to multiple body parts in the following manner: “Plaintiff was involved in MVA while driving a company car. When the other driver pulled out in front of her, she hit her right side, and shoulder on the steering wheel. This resulted in injury to her right shoulder, neck right hip and right leg.”

On December 12, 2018, Kays filed a “Motion to Amend Form 101 Application for Benefits” to include a “cumulative trauma injury to her back.”<sup>1</sup> By order dated December 27, 2018, the ALJ granted Kays’ motion.

The February 25, 2020, Benefit Review Conference Order and Memorandum lists the following contested issues: “work-related injury/causation/injury as defined by the Act concerning lumbar and psych claim; income benefits per KRS 342.730, including multipliers; TTD benefits; ability to return to work; exclusion for pre-existing impairment; unpaid or contested medical expenses; and proper use of the AMA Guides.” Under “other contested issues” is the following: “past and future medical benefits, reasonableness and necessity of venaflow pneumatic compression device.”

---

<sup>1</sup> In the Motion to Amend, Kays also refers to her original injuries sustained during the September 5, 2018, motor vehicle accident (“MVA”) as “cumulative trauma injuries.” This Board can only assume all references to cumulative trauma injuries in the Motion to Amend is a typographical error, as this injury claim is clearly premised on acute injuries allegedly occurring during an acute MVA event. A review of the Form 101 reveals no allegations of cumulative trauma injuries.

Kays was deposed on January 14, 2019. She described her duties at The

Castle as an assistant manager:

A: I was assistant manager, opening and closing the store.

Q: Were you an assistant manager even when you stopped working?

A: Yes.

Q: At what location did you work for the company?

A: I worked at Richmond Road, and before that I worked at Nicholasville Road.

Q: And I know you said you opened and closed the store, but what other job duties consisted of being assistant manager?

A: We'd help the other employees sell jewelry, solved regular problems in the store, broke down, set up the store, like set up jewelry; just normal everyday stuff in a jewelry store.

Q: Now you've not mentioned any other items aside from jewelry. Is that the only thing that you dealt with?

A: Yeah, at the Richmond Road store.

...

Q: Would you have to do any sitting or standing while you worked?

A: Yes, standing.

Q: How long?

A: Most of the time unless you were eating lunch.

Q: What about any bending or stooping?

A: Bending.

Q: How often?

A: If you were setting up or breaking down the store, breaking down the cases.

Q: Would you say that was occasional or frequent?

A: That was frequent. I mean, that was in the morning and in the evening.

Q: Now when you said breaking down the cases, how do you do that?

A: Like when you break down, like you'd have to get the jewelry out of the cases, then you'd have to put them up, put them on the tray – I mean, put them on the cart.

Q: And I believe there's a vault at that location?

A: Yeah.

Q: So what you'd do is you'd just put the jewelry –

A: Yeah.

Q: - on the cart and roll it to the vault.

A: Yeah. Then you'd have to close the door.

...

Q: Have to do any stooping?

A: Not too much, no.

Q: How much would you have to carry weight-wise?

A: Probably about ten to 15 pounds.

Q: And what would those items be?

A: The jewelry.

Q: Are you saying that one of those would be 15 – ten to 15 pounds?

A: No. Like you would take like three trays, and that was about ten to 15 pounds. And then you've got to think of

the chains. The chains are a little bit more, and that's like you stack them up, and that's probably about 20 pounds.

Q: Are those also in a tray?

A: No.

Q: How are those stored?

A: Those you would still put there – you'd stack those up, and then you'd put them on the rack where the other jewelry is.

Q: And again, were you just moving these around once a day?

A: You move them around twice a day, but I moved them around once a day because usually I would close.

Kays testified that she stopped working because of the MVA. She explained as follows:

Q: Did you ever come back to work after that last week that you worked?

A: I tried.

Q: What do you mean, you tried?

A: I talked to Carol, I talked to Amy, I talked to Phil. I even tried to get my doctors to release me, and they sent a note, and they didn't – and Phil Block didn't want me to come back until I was a hundred percent.

Q: And Phil that you're referring to, he's the owner; is that correct?

A: Yes.

Kays also testified at the February 25, 2020, hearing. At the time of the hearing, Kays was working at Heights Finance as a credit manager. She provided the following comparison of the requirements of her previous and current job:

Q: If you compare the physical requirements of a credit manager at your current job to the assistant manager job at The Castle, how does it compare?

A: There's no comparison.

Q: Now, see, that don't [sic] help me.

A: Sorry.

Q: Describe...

A: I mean...

Q: ...how there's no comparison.

A: I sit down at my job at Heights Finance. At The Castle, you don't sit down, unless you're closing or – or opening the store and, when you open the store at The Castle, you're setting up the store and you're putting the jewelry in the cases and then, if you're breaking down the store, if you're not the closing manager, you're breaking down that store and you're taking jewelry out of those cases.

Q: So, do you have less pain when you sit than when you stand now?

A: Oh, yeah.

Q: Okay. Could you do your job at The Castle if you were sitting as much as you're sitting now?

A: Yes.

Q: Would they allow that at....

A: No.

Q: ...The Castle?

A: No, I wish they would...

Q: Okay.

A: ...because I'd go back in a heart-beat.

Kays testified she did not plan on continuing her work at Heights Finance because she did not earn enough money. The work also hurts her neck. She does not believe she could return to her job at The Castle. The following testimony transpired:

Q: What would be the biggest problems you would struggle with?

A: Lifting, standing and just – more – more than anything, lifting and standing.

Kays recounted the following pertaining to her post-injury return to The Castle:

Q: Now, I believe you actually did return to The Castle for a few days after the wreck, is that right?

A: Yeah, right after the wreck, actually.

Q: Okay. I believe you told me it was about five days.

A: Was it? Yeah, five – what, about a week after, yeah.

...

Q: Now, when you testified when I took your deposition, you said that you returned to your same job performing the same duties and earning the same or greater pay. Is that still correct today?

A: Yes.

Q: Were you still working the same hours as well?

A: Yes, I was trying to.

After the work-related MVA, Kays had trouble with her neck, right shoulder, both legs, and right foot. She also experienced headaches, anxiety, and

flashbacks. At the time of her deposition, Kays was scheduled for right shoulder surgery.

The Castle filed Dr. David Muffly's January 24, 2019, orthopedic evaluation report. After performing a physical examination and medical records review, Dr. Muffly set forth the following diagnosis: "Cervical strain with chronic neck pain, no sign of cervical radiculopathy. Resolved lumbar strain. Bone contusion right shoulder with chronic right shoulder pain and mild limitation of motion and pre-existing AC joint arthritis. Pre-existing history of cervical injury in 2014." Dr. Muffly assessed the following impairment:

5% impairment cervical DRE II. This impairment is apportioned 50% to the 2014 neck injury and 50% to the 9-5-2018 injury. 0% impairment lumber DRE I. 1% impairment right shoulder using Figures 16-40, 16-43 and 16-46. I disagree with Dr. Gilbert's impairment because I do not detect cervical radiculopathy, she has a normal neurologic exam. I disagree with his lumbar impairment since she does not have current complaints of low back pain.

He opined Kays had reached maximum medical improvement if she did not undergo right shoulder surgery.

The following questions and answers are pertinent to the issue on appeal:

3. Does the Plaintiff retain the physical capacity to return to her employment with the Defendant/Employer and continue her prior employment into the indefinite future as it relates to the September 05, 2018 alleged incident?

She can return to her previous employment without restrictions.

...

6. Are any restriction medical necessary? If so, which, if any, are related to the September 05, 2018 alleged injury? Are any of the restrictions permanent?

No restrictions.

The Castle filed Dr. Muffly's October 24, 2019, supplemental report. In his supplemental report, Dr. Muffly increased Kays' right shoulder impairment rating from 1% to 5% because of the right shoulder surgery. Dr. Muffly further opined as follows:

I would agree that current impairment is 5% to the right shoulder. I continue to believe there is 5% impairment cervical and 0% impairment lumbar. Appropriate impairment is 10% to the whole person. I continue to believe that the cervical impairment is apportioned 50% to pre-existing injury in 2014 and 50% to the 9/5/2018 injury. This would equate of 7.5% impairment related to the 9-5-2018 injury. I continue to believe that she could return to her previous employment as assistant manager at the Castle without restrictions.

The April 24, 2020, decision contains, in relevant part, the following findings which are set forth *verbatim*:

**Work-relatedness/Causation & Injury as Defined by the Act**

The parties agree Kays sustained work-related injuries to her neck and right shoulder, but disagree as to whether she sustained a lumbar spine and psychological injury. Kays has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of her workers' compensation claim. *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). When the causal relationship between an injury and a medical condition is not apparent to a lay person, the issue of causation is solely within the province of a medical expert. *Elizabethtown Sportswear v. Stice*, 720 S.W.2d 732, 733 (Ky. App. 1986); *Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc.*, 618 S.W.2d 184 (Ky. 1981).

### Lumbar Spine

On December 6, 2018 report, Dr. Gilbert diagnosed mobility issues at times, muscle spasms, weakness, lumbar degenerative disc disease, spondylosis, lower back pain, radiculopathy, and sciatica. He assessed an 8% lumbar impairment (Chapter Number 15, Table 15(5) of the AMA Guides, 5<sup>th</sup> Edition). His physical examination included spasm, tenderness and decreased range of motion and positive straight leg raise to the right.

In Dr. David Muffly's January 24, 2019 report, Dr. Muffly noted Kays had no complaints of back pain, and thus, he assessed 0% impairment. On October 7, 2019, Dr. McEldowney indicated Kays reported significant resolution of her lower back pain, but he diagnosed a lumbar sprain and assessed a 5% impairment rating due to her lower back pain.

Based upon a careful review of the evidence, this ALJ relies on Dr. Muffly and finds Kays did not sustain a low back injury as a result of the motor vehicle accident. Kays described back pain immediately at the time of the accident. However, she only received treatment for the low back through September 17, 2018, when she had a CT of the lumbar spine. It revealed degenerative changes and no evidence of acute fracture or malalignment. On September 27, 2018, Dr. Talwalkar mentioned Kays returned to the ER for a CT scan of her neck and low back because of some numbness and tingling. However, she had no back complaints at the time of his exam, and no complaints when she saw Dr. Muffly.

At her deposition, she stated she was having numbness and tingling into her right leg, but her back was "not that bad." When she described her current complaints at the hearing, she described pain shooting up her back. However, she denied having any treatment for the low back, including no physical therapy and no injections. Even though Dr. McEldowney assessed a 5% impairment rating, he diagnosed only a low back strain, noting she had significant improvement with her low back pain. This ALJ finds Dr. Muffly's 0% impairment rating is more consistent with the treatment records which indicate she had no further treatment after the initial CT scan.

...

### **Temporary Total Disability**

Temporary total disability is defined in KRS 342.0011(11)(a) as the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement which would permit a return to employment. *Magellan Health v. Helms*, 140 SW 2d 579 (Ky. App. 2004).

Defendant paid temporary total disability benefits from April 19, 2019 through September 9, 2019 at the rate of \$356.03 per week. Neither party addressed the specific dates upon which TTD benefits should be paid in their briefs.

The ALJ has reviewed the medical evidence concerning the date of maximum medical improvement. Dr. Gilbert stated Kays reached maximum medical improvement on December 6, 2018. However, his assessment of MMI was premature since she underwent surgery in April 2019. Dr. Muffly indicated she would not be at MMI if she underwent the surgery. Thus, this ALJ finds Dr. McEldowney's assessment of MMI on September 5, 2019 more appropriate.

Upon reviewing the records and considering Kays' testimony, this ALJ finds that she did not reach a level that would permit her to return to work until Dr. Muffly determined she could return to work without restrictions on January 24, 2019. Dr. Talwalkar's notes indicate on September 27, 2018, that she "has yet to go back to work." He further recommended to keep her off work until further notice. His notes do not indicate when she was released to return to work. However, on December 6, 2018, Dr. Gilbert opined if Kays were allowed frequent breaks to sit down, she would at least be able to do a trial return to work.

According to the wage certification, it appears Kays worked the week following the accident, ending on September 16, 2018. Kays testified she stopped because of the wreck. She stated she tried to return to work for The Castle for a short period of time following the accident but ultimately left her position. She tried to get her doctors to release her and they sent a note, but the owner did not want her to return until she was 100%.

This ALJ finds based upon the totality of the evidence including Kays' testimony, she was unable to work and did not reach a level that would permit a return to employment until January 24, 2019. Although Dr. Gilbert recommended a trial of return to work, she tried to return to work but was unable to do so because the owner would not allow her to return until she was 100%. This testimony was uncontested.

Kays underwent shoulder surgery on April 19, 2019, and she reached maximum medical improvement on September 5, 2019. Defendant voluntarily paid benefits during her recovery from the surgery.

This ALJ finds TTD benefits are due from September 17, 2018 through January 24, 2019, and April 19, 2019 through September 5, 2019, at the rate of \$356.01 per week.

### **Permanent Partial Disability**

In order to qualify for permanent partial disability under KRS 342.730, the claimant is required to prove not only the existence of a harmful change as a result of the work-related traumatic event, but also required to prove that the harmful change resulted in a permanent disability as measured by an AMA impairment.

### **Right Shoulder**

Both Dr. McEldowney and Dr. Muffly assessed a 5% impairment rating as a result of the injury following her distal clavicle resection. Thus, Kays has a 5% whole person impairment rating for her right shoulder as a result of her injury.

### **Cervical Spine**

In the December 6, 2018 report, Dr. Gilbert diagnosed cervical protrusion, cervical osteophytes, relative cervical stenosis primarily C4 through C7, cervical disc degeneration, spondylosis, neck pain, cervical radiculopathy, cervicogenic tension headaches, limb pain, numbness, and mobility issues at times, muscle spasms, weakness, spondylosis, radiculopathy, and

sciatica. He assessed a 15% impairment rating for the cervical spine based upon Chapter 15 Table 15(5). In Dr. Anthony McEldowney's October 7, 2019 report, he diagnosed cervical sprain/strain with exacerbation of previous dormant and asymptomatic cervical spondylosis and stenosis. He assessed an 8% impairment rating under DRE Cervical Category II, Table 15-5 on page 392.

In Dr. David Muffly's January 24, 2019 report, he diagnosed cervical strain with chronic neck pain and no sign of cervical radiculopathy. Dr. Muffly assessed 5% to the cervical spine with 2.5% attributed to the September 5, 2018 accident. Dr. Muffly opined the other half of the cervical impairment (2.5%) would be attributable to a pre-existing injury in 2014.

This ALJ is convinced by Dr. Muffly and Dr. McEldowney that she has an impairment rating consistent with DRE Category II 5-8%. The ALJ considered Dr. Gilbert's report, but found it less convincing, as it was prepared prior to her shoulder surgery, and may not have taken into account symptoms stemming from her right shoulder injury. Further, Dr. Muffly found no signs of radiculopathy to support Dr. Gilbert's assessment. The ALJ finds Dr. McEldowney's report most convincing she sustained an 8% impairment. Kays' testimony was convincing concerning her current pain and the assessment of the 8% impairment is appropriate.

The ALJ apportions none of the impairment to a pre-existing and active condition. In order to be characterized as an active condition, an underlying pre-existing condition must be symptomatic and have impairment pursuant to the AMA *Guides* immediately prior to the occurrence of the work related injury. *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007). There is no testimony or records indicating that she had any symptoms of neck pain leading up to the injury. Further, Dr. Muffly's 2.5% apportionment appears to have no basis in the *Guides*. Dr. McEldowney's determination that she had an asymptomatic and dormant neck condition prior to the injury is more credible. Kays' condition was not active or impairment ratable at the time of the injury. Thus, the entire 8% assessed by Dr. McEldowney is attributed to the

September 5, 2018 work injury.

PPD benefits based upon the 13% combined impairment are calculated as follows:  $\$356.01 \times .13 \times 1.0 = \$46.28$  per week for 425 weeks.

### **2x Multiplier**

Kays returned to work for one week at a weekly wage equal to or greater than the average weekly wage at the time of the injury, and she is also making more now than her pre-injury average weekly wage. She is making \$590 per week (\$14.75 per hour for 40 hours per week). She qualifies for the 2x multiplier when she ceases employment at equal or greater wages. Thus, for any period in which Kays' wages are less than \$534.02 per week, Kays shall receive double the benefit, or \$92.56 per week.

### **3X Multiplier**

Under KRS 342.730, if, due to an injury, an employee does not retain the physical capacity to return to the type of work she performed at the time of the injury, the benefit for permanent partial disability shall be multiplied by three (3) times.

Kays returned to employment with the defendant/employer for a short time following the motor vehicle accident and currently works as a credit manager for Heights Finance. The ALJ is persuaded that Kays is not entitled to the 3x multiplier, and she can return to the job she was performing at The Castle when she was injured.

Dr. Muffly opined Kays can return to the work she was performing at the time of the injury. Dr. McEldowney did not believe Kays retains the capacity to return to the type of work she was performing at the time of her injuries. He assessed restrictions of no frequent or repetitive bending, no simultaneous bending with twisting, lifting, carrying, pushing, or pulling, carrying to 10 pounds, lifting to 16 pounds, pushing and pulling to 40 pounds, frequent positional changes to avoid prolonged standing, walking, sitting, and driving, no frequent, repetitive or sustained labor activities, no step stool or ladder climbing, neck and lower back sit down breaks

throughout the day and ongoing need for medication. However, most of these restrictions do not apply to her job at the Castle.

Her job was not particularly strenuous. Kays testified if she were allowed to sit when she needs to, she would be able to return to work and perform her job for The Castle. Although she testified about lifting tools and other merchandise when she working at other locations in the past, the work she was performing at the time of the injury only involved lifting jewelry, and her lifting was limited to about 15 pounds. Even Dr. Gilbert, who assessed a 22% impairment rating thought she could try to return to work, noting her job was not heavy duty.

Kays admitted she is not working with restrictions at her current job with Heights Finance. She also passed a pre-employment physical. Thus, even if Kays could not return to work at the Castle, given that Kays currently earns more than she was making at the time of the injury, and she plans to work into the foreseeable future, she would not be entitled to the 3x multiplier under the *Fawbush* analysis. *Fawbush v. Gwinn*, 103 S.W.3d 5 (Ky. 2003).

Kays' Petition for Reconsideration requested additional findings regarding "why, in the face of overwhelming evidence demonstrating that she cannot and has not returned to her pre-injury work with no restrictions, that the 3-factor is inapplicable."

In the May 22, 2020, Order overruling the Petition for Reconsideration, the ALJ stated as follows:

This matter is before the undersigned Administrative Law Judge for consideration of Plaintiff's petition for reconsideration of the Opinion, Award, and Order dated April 24, 2020. Therein, Plaintiff contends that the undersigned failed to provide essential findings of fact. Specifically, Plaintiff believes the wrong multiplier was applied and the ALJ did not perform a *Fawbush* analysis, set forth in *Kentucky River Enterprises, Inc. v. Elkins*, 107 S.W.3d 206 (Ky. 2003). Plaintiff argues that a finding concerning whether she is likely to be able to continue

earning an equal or greater wage for the indefinite future and whether the injury has permanently altered the worker's ability to earn an income is essential.

Plaintiff argues that she has not performed her job at Heights Finance since March 3, 2020 because she was terminated due to her inability to perform her job. However, the hearing was on February 25, 2020, and this information was not in submitted into evidence.

KRS 342.281 provides that an administrative law judge is limited on review on petition for reconsideration to the correction of errors patently appearing upon the face of the award, order or decision. The ALJ may not reweigh the evidence and change findings of facts on petition for reconsideration. *Garrett Mining Co. v. Nye*, 122 S.W.3d 513 (Ky. 2003).

The ALJ is also not aware of authority that would permit her to consider facts not in evidence at the time of the hearing. Having reviewed Plaintiff's petition for reconsideration, the undersigned notes that it is simply an impermissible re-argument of the merits of the claim, and is also a request for the ALJ to consider facts not in evidence. Thus, the petition for reconsideration is **OVERRULED**.

To the extent that the Opinion was unclear, this ALJ previously considered the issue of the multipliers and found that she retained the ability to return to her prior job, noting that her job at The Castle was not as strenuous as she claimed, as the physical work she was performing at the time of the injury involved lifting jewelry of up to 15 pounds and standing. The ALJ relied upon Dr. Muffly to find that Kays can return to the work she was performing at the time of the injury. The ALJ also noted that even if she could not return to such work, under the *Fawbush* analysis, since she was working at equal or greater wages and planned to work into the foreseeable future, she would not be entitled to the 3x multiplier.

As indicated in the Opinion, if she ceases earning equal or greater wages, she is entitled to the 2x multiplier for any period of cessation of such employment.

On appeal, Kays asserts she, “without a doubt,” met her burden of proof supporting her entitlement to the three multiplier. We vacate the ALJ’s determination Kays is not entitled to the three multiplier and remand for additional findings.

### ANALYSIS

KRS 342.730(1)(c)1 states as follows:

If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments.

The plain language of the statute and the pertinent case law requires the ALJ to analyze the actual tasks Kays performed prior to the work-related MVA. Voith Industrial Services, Inc. v. Gray, 516 S.W.3d 817 (Ky. App. 2017). The Kentucky Supreme Court in Ford Motor Co. v. Forman, 142 S.W.3d 141, 145 (Ky. 2004) held: “[w]hen used in the context of an award that is based upon an objectively determined functional impairment, ‘the type of work that the employee performed at the time of injury’ was most likely intended by the legislature to refer to the actual jobs that the individual performed.”

In determining Kays is not entitled to the three multiplier, the ALJ devoted only one sentence of her analysis in the April 24, 2020, Opinion, Award, and Order to discussing the actual tasks Kays performed at The Castle prior to the work-related MVA. The ALJ stated, “the work [Kays] was performing at the time of the injury only involved lifting jewelry, and her lifting was limited to about 15 pounds.”

The ALJ repeated these findings in the May 22, 2020, Order ruling on the Petition for Reconsideration with the addition of “standing.” However, Kays’ testimony demonstrates that her pre-injury job at The Castle involved more than “only” lifting jewelry weighing up to fifteen pounds and “standing.” In fact, Kays testified at her deposition that she was required to lift up to twenty pounds, not fifteen, when stacking the chains. Kays testified at both her deposition and hearing, her job involved frequent bending. She also testified she was responsible for opening and/or closing the store, which entailed either setting up or breaking down the jewelry cases and bringing jewelry either to/from the vault. These specific details of Kays’ job were not discussed by the ALJ in her analysis of the applicability of the three multiplier.

An ALJ is obligated to provide a sufficient basis to support his or her determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). The parties are entitled to findings sufficient to inform them of the basis for the ALJ’s decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. However, the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). This is particularly true in light of the fact that Kays requested additional findings in her Petition for Reconsideration which were not provided in the May 22, 2020, Order. Merely stating that Kays lifts

jewelry and stands is insufficient. Blanket statements such as “[h]er job was not particularly strenuous” are not insightful without substantiating findings of fact. On remand, the ALJ must consider the full range of Kays’ actual work tasks in the renewed analysis of Kays’ entitlement to the three multiplier.

We acknowledge the ALJ relied, in part, upon the opinion of Dr. Muffly who opined, in both his January 24, 2019, report and the October 24, 2019, post-surgery supplemental report that Kays is able to return to her pre-injury job at The Castle. However, Dr. Muffly’s opinion does not negate the ALJ’s obligation to conduct a thorough analysis of Kays’ entitlement to the three multiplier and provide adequate findings of fact and conclusions of law.

Further, the ALJ erroneously considered Kays’ ability to perform her job at Heights Finance in analyzing the applicability of the three multiplier. The ALJ stated: “Kays admitted she is not working with restrictions at her current job with Heights Finance. She also passed a pre-employment physical.” These findings of fact are irrelevant to the applicability of the three multiplier.

Finally, the ALJ appears to have conducted a quasi-analysis pursuant to Fawbush v. Gwinn, 103 S.W.3d 5 (Ky. 2003) in both the April 24, 2020, Opinion, Award, and Order and the May 22, 2020, Order on Petition for Reconsideration. Not only is the ALJ’s Fawbush analysis premature, but by concluding the three multiplier is inapplicable because Kays “plans to work into the foreseeable future” strays from the appropriate legal standard. Rather, as articulated by the Court in Fawbush the standard is whether Kays is likely “to be able to continue earning a wage that equals or exceeds the wage at the time of injury for the indefinite future.” Id. at 12. Therefore,

should the ALJ, on remand, determine the three multiplier is applicable she must conduct the above analysis.

Accordingly, the determination Kays is not entitled to the three multiplier set forth in the April 24, 2020, Opinion, Award, and Order and the May 22, 2020, Order on Petition for Reconsideration is **VACATED**. This claim is **REMANDED** to the ALJ for additional findings consistent with the views set forth herein.

ALVEY, CHAIRMAN, CONCURS.

BORDERS, MEMBER, NOT SITTING.

**COUNSEL FOR PETITIONER:**

HON MCKINNLEY MORGAN  
921 S MAIN ST  
LONDON KY 40741

**LMS**

**COUNSEL FOR RESPONDENT:**

HON LEE JONES  
HON SARA MAY  
P O BOX 1167  
PIKEVILLE KY 41502

**LMS**

**LMS**

**RESPONDENT:**

DR JANAK TALWALKER  
BHMG ORTHOPEDIC SURGERY  
1760 NICHOLASVILLE RD STE 101  
LEXINGTON KY 40503

**USPS**

**ADMINISTRATIVE LAW JUDGE:**

HON CHRISTINA D HAJJAR  
MAYO-UNDERWOOD BUILDING  
500 MERO ST 3<sup>RD</sup> FLOOR  
FRANKFORT KY 40601

**LMS**