Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 30, 2022

CLAIM NO. 202177142

DEAZEE MILLER PETITIONER

VS. **APPEAL FROM HON. W. GREG HARVEY, ADMINISTRATIVE LAW JUDGE**

LEAR CORPORATION AND
HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART & REMANDING

* * * * * *

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

MILLER, Member. Deazee Miller ("Miller") appeals from the May 26, 2022 Opinion, Award, and Order and the June 20, 2022 Order on Petition for Reconsideration rendered by Hon. W. Greg Harvey, Administrative Law Judge ("ALJ"). The ALJ dismissed Miller's claim for income and future medical benefits in determining he suffered a temporary injury to the left upper extremity and solely

awarded temporary medical benefits from April 20, 2021 through December 20, 2021.

On appeal, Miller argues the ALJ did not provide a sufficient analysis in finding he sustained only a temporary injury and requests he be awarded future medical benefits. He also argues he is entitled to an award of temporary total disability ("TTD") benefits.

For the reasons set forth below, we affirm the ALJ's Opinion, Award, and Order with respect to his finding that Miller suffered only a temporary injury. We also affirm the ALJ's findings regarding medical benefits; however, we vacate in part and remand for additional findings regarding Miller's entitlement to TTD benefits.

BACKGROUND

Miller testified by deposition and at the final hearing. He is 37 years old and is lefthand dominant. He has certifications in forklift operation and hazmat procedures. He previously completed some courses toward a degree in sports administration with a minor in communications. He has worked in janitorial services, shipping, and grocery/retail services.

Miller began working for Lear Corporation ("Lear") and its predecessor, Integrated Manufacturing Assembly, in 2015. Lear manufactures car seats for Corvettes. His job required him to rotate between three stations, each of which involved different production processes for the car seats. The Island position required him to put seat leather on foam cushions. He gripped the leather, stretched it over the seat foam, and pulled it tight before sending it along. The Trim station

required the same task for the entire seat frame. When the leather did not fit properly over the seat frame, Miller had to use special tools to force the foam into the leather which required gripping the leather, pulling it, and stretching it to fit. At the Stanchions position, Miller grabbed metal stanchions and placed them on a conveyor belt, and then put metal pans onto them. Miller cycled between these three stations approximately every two hours for 10 to 12 hours per day. Miller described his role as fast-paced and requiring constant bending at the elbow, reaching, gripping, pulling, and stretching with the arms and wrists.

Miller first had left upper extremity symptoms in 2016 but he continued working. In 2019, Miller again began experiencing pain in his upper left extremity, particularly his wrist. He was evaluated at Concentra where treatment notes indicated he had an "injury to left wrist lifting pans and tracks at a fast pace." He also saw Dr. Ellen Ballard for diagnostic tests of the left wrist and was released to full duty. Miller ended treatment with Concentra around early 2020 and did not seek additional medical treatment until April 2021 when he began experiencing pain again in the left upper extremity. When he left work on April 19, 2021, Miller experienced numbness and tingling down his left arm. He called EMS, as he thought it could be a heart attack, but did not go to the hospital that day.

The next day, April 20, 2021, Miller was working when the pain worsened in his left arm with tingling and numbness moving up his arm to the elbow. He left work early and went to the emergency room at the University of Louisville Hospital. The physician assessed "suspect tendonitis vs ulnar neuropathy

likely from overuse of L arm." The diagnosis was ulnar neuropathy of left upper extremity, musculoskeletal chest pain, and anxiety. No restrictions were listed.

Miller was sent to Concentra by Lear on April 22, 2021, and the notes reflect "L elbow injury sustained from repetitive movement. […] He has a high stress job on a line making car seats that involves a lot of repetitive hand/wrist/forearm work." Concentra provided an elbow strap for tennis elbow. Miller was placed on modified duty with a recheck in one to three days. Restrictions were assigned as follows: "May lift up to 5 lbs frequently; May push/pull up to 5 lbs frequently: no repetitive L elbow and wrist movement." Miller returned to work that day.

The next day, April 23, 2021, Miller was terminated, apparently for reasons unrelated to the left arm condition. There is no question he was fired and did not apply for unemployment benefits. There is little testimony as to the exact job Miller performed on April 22nd and April 23rd, or the reason for being fired, other than doctor's notes which discussed sleeping on the job.

Miller began treating with Dr. Tuna Ozyurekoglu after his termination through December 20, 2021. Miller reported left hand pain with tingling and numbness in the fourth and fifth fingers with some dyspnea. Dr. Ozyurekoglu diagnosed Miller with left elbow epicondylitis and referred him to physical therapy. A May 2021 EMG was interpreted as normal with no evidence of velocity changes. Dr. Ozyurekoglu believed Miller had left cubital tunnel syndrome with a left subluxing ulnar nerve. An October 4, 2021 MRI noted mild enlargement and high signal within the left ulnar nerve within the cubital tunnel suggesting focal neuritis.

There was no evidence of ulnar nerve subluxation. Dr. Ozyurekoglu opined the symptoms and signs indicated cubital tunnel syndrome with evidence of ulnar neuritis. A repeat EMG/NCV was performed on December 20, 2021. Those findings were normal as well. Dr. Ozyurekoglu stated: "…[T]here is no diagnosis that is confirmed objectively and his subluxing nerve is what showed on the MRI does not mean that he has cubital tunnel syndrome to a degree that he needs surgery."

Dr. Jeffrey Fadel evaluated Miller at his counsel's request on November 11, 2021. He diagnosed Miller with subluxation of the ulnar nerve in both elbows. Dr. Fadel stated:

> It is my medical opinion that the specific work requirements placed upon his upper extremities were the sole cause for the cumulative trauma creating the subluxation of both ulnar nerves with resultant cubital tunnel syndrome involving he left upper extremity.

Dr. Fadel opined Miller has a 10% left upper extremity impairment converting to a 6% whole person impairment rating according to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). He assigned restrictions of no repetitive flexion or extension of the elbows or wrists, no use of vibratory equipment, and no pushing or pulling more than 40 pounds occasionally. Dr. Fadel opined Miller could not return to his previous employment. Dr. Fadel believed future medical treatment including surgery be considered as definitive treatment for the left upper extremity.

Dr. Ellen Ballard initially treated Miller between September and October 2019. Miller reported tendonitis in the left hand and complained of his hand locking up. Dr. Ballard ordered an MRI of the left hand and an EMG/NCV. The

EMG/NCV study was normal. Dr. Ballard opined Miller did not require further care or any restrictions. Dr. Ballard saw Miller again after the onset of symptoms in 2021. Dr. Ozyurekoglu referred Miller to Dr. Ballard to perform an EMG/NCV, which occurred on May 24, 2021. The results were interpreted as normal with no evidence of nerve entrapment or cervical radiculopathy.

Dr. Michael Nicoson evaluated Miller on June 29, 2021 at Lear's request. He diagnosed subluxation of the ulnar nerves but did not believe the condition was work-related. He opined no acute injury occurred in April 2021 to Miller's upper extremities. He also opined the injuries were not due to work-related cumulative trauma, and therefore, did not assign an impairment rating. Dr. Nicoson believed Miller had reached maximum medical improvement ("MMI") and required no restrictions. He opined Miller could return to his previous work. Dr. Nicoson issued a supplemental report on February 7, 2022, reiterating that any future medical treatment would be unrelated to the work activity and Miller could return to his regular job with no restrictions.

Dr. Thomas Gabriel evaluated Miller on January 4, 2022 at Lear's request. He filed a report and a supplemental report reiterating his earlier conclusions. He diagnosed Miller with symptomatic bilateral elbow ulnar nerve subluxation, left worse than right. He opined that neither diagnosis was related to his work. Dr. Gabriel believed Miller has congenital developmental variant of bilateral ulnar nerve subluxation at the elbows. He stated, "In my opinion, Mr. Miller has not developed a cumulative trauma injury to his left elbow due to his work activities at Lear Corporation manifesting on or about 4/12/21 or 4/21/21." Dr. Gabriel opined

Miller could return to work without restrictions, and he did not provide an impairment rating.

Miller testified he does not believe he can return to the type of work he was performing at Lear. When asked about a second job he was working at Kimco,[1] he stated it is a one hour per night cleaning job at Chase banks and that, while he unlocks the doors and disables the alarm system, his girlfriend performs the cleaning work. He testified he previously assisted her but could no longer help due to his injury. He has not returned to any other work since his termination from Lear.

The ALJ rendered his Opinion, Award, and Order on May 26, 2022, finding Miller's work aggravated his subluxing ulnar nerve in his left arm, but there was no objective medical evidence that the ulnar nerve was injured or compressed in a permanent way. The ALJ found the medical treatment by Dr. Ozyurekoglu is compensable as treatment of a temporary exacerbation of Miller's dormant congenital subluxing ulnar nerve. Accordingly, the ALJ awarded medical benefits for treatment with Dr. Ozyurekoglu but dismissed the claim for income benefits and future medical benefits. In determining Miller is not entitled to TTD benefits, the ALJ stated he was "not persuaded by the evidence that Miller was ever taken off work or restricted from activity such that he qualified for TTD."

Miller filed a Petition for Reconsideration, arguing the ALJ overlooked evidence of restrictions in finding Miller was not entitled to TTD benefits. Miller further requested the ALJ make a specific finding as to when Miller reached MMI. Miller also requested additional findings regarding the ALJ's finding

[1] In the Hearing Transcript and the ALJ's Opinion, Miller's second job is referred to as "Chemco."

of a temporary injury and requested a reconsideration of the dismissal of future medical benefits. The ALJ issued an Order overruling the Petition for Reconsideration on June 20, 2022. Regarding the light duty restrictions, the ALJ stated, "Those records do not indicate he was taken completely off work." Further, the ALJ stated he "was simply not persuaded Miller was unable to return to work as he was working for Chemco during the time he is claiming TTD." This appeal follows.

ANALYSIS

Miller raises three arguments on appeal: 1) The ALJ failed to provide sufficient findings of fact regarding the finding of a temporary injury, 2) the evidence compelled an award of future medical benefits, and 3) the ALJ misapplied the law when dismissing his claim for TTD benefits.

As the claimant in a workers' compensation proceeding, Miller had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Miller was unsuccessful in his 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, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the 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 regarding an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

We first address Miller's argument that the ALJ failed to provide sufficient factual findings and analysis regarding the conclusion Miller sustained a temporary injury. In finding Miller did not have a permanent injury, the ALJ stated, in part, as follows:

> The absence of objective medical evidence establishing some permanent alteration to the ulnar nerve compels the ALJ to find, in reliance upon Dr. Nicoson and Dr. Gabriel's opinions, that no permanent injury has occurred. Although the ALJ has considered Dr. Fadel's opinion, it is not as persuasive as the final treatment note from Dr. Ozyurekoglu and the opinions of Dr. Nicoson and Dr. Gabriel.

In summarizing the evidence, the ALJ noted Dr. Fadel found Miller has a 6% whole person impairment rating attributable to work-related activities; however, Dr. Nicoson and Dr. Gabriel found Miller does not have any permanent impairment and they believed the subluxation of the ulnar nerve is congenital and not work-related. The ALJ also noted EMG/NCV studies came back normal.

As fact-finder, the ALJ is tasked with determining whether Miller met his burden in proving he suffered a work-related permanent injury. In doing so, the ALJ has the sole authority to assess the weight, credibility, and substance of the evidence. Square D Co. v. Tipton, supra. Where there is conflicting medical opinion, the ALJ as fact-finder has wide discretion to pick and choose whom and what to believe. Pruitt v. Bugg Bros., 547 S.W.2d 123 (Ky. 1977). Although an opposing party may note evidence supporting a conclusion contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

Here, the ALJ considered the medical opinions of Drs. Fadel, Nicoson, Gabriel, and Ozyurekoglu. While Dr. Fadel assessed a permanent impairment rating, Dr. Nicoson and Dr. Gabriel found there was no work-related permanent impairment. Dr. Ozyurekoglu also released Miller to return to work without restriction on November 23, 2021 and stated there was "no diagnosis"

confirmed by objective findings. The ALJ explained he relied on the opinions of Drs. Nicoson, Gabriel, and Ozyurekoglu in finding there was no permanent injury. This constitutes substantial evidence upon which the ALJ may rely. The evidence does not compel a contrary finding. Accordingly, the ALJ's finding of a temporary injury is affirmed.

Miller also contends he is entitled to future medical benefits. The ALJ noted there was no evidence establishing a permanent alteration of the ulnar nerve and the treating physician, Dr. Ozyurekoglu, did not feel surgery was necessary and released Miller to return to regular work. *See* Robertson v. United Parcel Serv., 64 S.W.3d 284, 286-287 (Ky. 2001). The ALJ also relied on the medical opinions of Drs. Nicoson and Gabriel in finding Miller did not sustain a permanent injury related to the work activity and the condition of a symptomatic ulnar nerve subluxation was not caused by work. Dr. Nicoson did not believe any future medical treatment is required for the work-related condition. While Dr. Fadel believed future medical treatment is necessary and related to the work activities, resolution of conflicting medical opinions is within the province of the ALJ. The ALJ's finding regarding medical benefits is supported by substantial evidence and a different result is not compelled.

Miller's third contention is the ALJ misapplied the law in determining his eligibility for TTD benefits and he failed to provide a proper analysis. The Board agrees that portion of the Opinion must be vacated and remanded to the ALJ for clarification of the standard used to deny TTD benefits and the evidence reviewed to support the denial.

Temporary total disability is statutorily 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 that would permit a return to employment." In Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed that until MMI is achieved, an employee is entitled to TTD benefits as long as he remains disabled from his customary work or the work he was performing at the time of the injury. In Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000), the Kentucky Supreme Court explained, "It would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but not the type that is customary or that he was performing at the time of his injury." Thus, a release "to perform minimal work" does not constitute a "return to work" for purposes of KRS 342.0011(11)(a).

In Livingood v. Transfreight, LLC, et, al., 467 S.W.3d 249 (Ky. 2015), the Supreme Court declined to hold a claimant is entitled to TTD benefits so long as he or she is unable to perform the work performed at the time of the injury. The Court stated, "... we reiterate today, Wise does not 'stand for the principle that workers who are unable to perform their customary work after an injury are always entitled to TTD.'" Id. at 254. Most recently in Trane Commercial Systems v. Tipton, 481 S.W.3d 800 (Ky. 2016), the Supreme Court clarified when TTD benefits are appropriate in cases where the employee returns to modified duty. The Court stated:

> We take this opportunity to further delineate our holding in Livingood, and to clarify what standards the ALJs should apply to determine if an employee "has not reached a level of improvement that would permit a

> return to employment." KRS 342.0011(11)(a). Initially, we reiterate that "[t]he purpose for awarding income benefits such as TTD is to compensate workers for income that is lost due to an injury, thereby enabling them to provide the necessities of life for themselves and their dependents." Double L Const., Inc., 182 S.W.3d at 514. Next, we note that, once an injured employee reaches MMI that employee is no longer entitled to TTD benefits. Therefore, the following only applies to those employees who have not reached MMI but who have reached a level of improvement sufficient to permit a return to employment.
>
> As we have previously held, **"[i]t would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but not the type [of work] that is customary or that he was performing at the time of his injury."** Central Kentucky Steel v. Wise, 19 S.W.3d at 659. However, it is also not reasonable, and it does not further the purpose for paying income benefits, to pay TTD benefits to an injured employee who has returned to employment simply because the work differs from what she performed at the time of injury. Therefore, absent extraordinary circumstances, an award of TTD benefits is inappropriate if an injured employee has been released to return to customary employment, *i.e.* work within her physical restrictions and for which she has the experience, training, and education; and the employee has actually returned to employment. We do not attempt to foresee what extraordinary circumstances might justify an award of TTD benefits to an employee who has returned to employment under those circumstances; however, in making any such award, an ALJ must take into consideration the purpose for paying income benefits and set forth specific evidence-based reasons why an award of TTD benefits in addition to the employee's wages would forward that purpose. (Emphasis added)
>
> Trane Commercial Systems v. Tipton, supra, at 807.

In the instant claim, the ALJ found, *verbatim,* as follows regarding Miller's eligibility for TTD benefits:

> The statute is clear that a claimant must demonstrate he is not at MMI and has not reached a level of improvement from an injury that would permit a return to employment. A review of Dr. Ozyurekoglu's records do not support the contention that Miller was unable to work or was otherwise taken off work while he was undergoing treatment. Although there are varying dates of maximum medical improvement the ALJ is not persuaded by the evidence that Miller was ever taken off work or restricted from activity such that he qualified for TTD. The evidence suggests he went back to work after the onset of symptoms and was fired two days later for falling asleep on the job. It may be that work status was not important as a result of his termination but, nonetheless, the ALJ is not persuaded by the evidence that Miller was ever restricted from full duty work. For that reason, both prongs of the test for determining whether Miller is entitled to TTD are not met and no award of TTD can be made.

In his Order on Petition for Reconsideration, the ALJ stated the following:

> [Miller] contends the ALJ overlooked evidence from Dr. Ozyurekoglu and Concentra that he was, in fact, restricted from work such that an award of TTD should have been made. On page 11 of the Opinion, the undersigned found Miller was not restricted from full duty work. Plaintiff points out the treatment records on April 20, 2021, April 22, 2021 and May 11, 2021 indicate Miller was on light duty restrictions. Those records do not indicate he was taken completely off work. Miller testified he was also working a second job at Chemco performing cleaning. He was doing "a little bit" of the physical work after his injury and then he claimed his girlfriend did the physical work and he was just there to get in and out of the bank that they cleaned. The checks were still made to him and he was being paid for that work. The ALJ was simply not persuaded Miller was unable to return to work as he was working for Chemco during the time he is claiming TTD.

We must determine whether the ALJ properly analyzed Miller's eligibility for TTD benefits under each prong of KRS 342.0011(11)(a): 1) whether the

claimant was placed at MMI, and 2) whether he had reached a level of improvement permitting a return to employment. In determining entitlement to TTD benefits, the ALJ was required to provide an adequate basis to support his/her determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). 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). While 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, he is required to adequately set forth the basic facts upon which his 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).

First, the ALJ must determine when Miller had reached MMI. While the ALJ stated there are "varying dates of maximum medical improvement," he did not make a finding regarding whether Miller was at MMI during the period in which he claims entitlement to TTD benefits. Stating there are varying MMI dates does not sufficiently apprise the parties of whether the ALJ found Miller was not at MMI as required by KRS 342.0011(11)(a). The ALJ is free to choose a specific date, whether it was assigned from Dr. Ozyurekoglu, Dr. Nicoson, or other medical evidence. The key point is that a specific date must be found.

Second, the ALJ must determine whether Miller reached a level of improvement permitting a return to employment. KRS 342.0011(11)(a). The ALJ must decide whether Miller was disabled from performing his customary work or the

work he was performing at the time of the injury. Central Kentucky Steel v. Wise, supra; Trane Commercial Systems v. Tipton, supra. The availability of minimal work offered by the employer does not negate the payment of TTD benefits. Therefore, the ALJ must support his decision by determining whether the employer made work available and what type of work was offered. Miller has testified he could not physically perform his regular job at Lear.

The parties agree Miller left work early on April 20, 2021 and went to University of Louisville Hospital. They stipulated he returned to work on April 22, 2021. Miller treated at Concentra on April 22, 2021, and this provider allowed him to return to work but placed him on modified duty and issued restrictions of lifting up to five pounds frequently, pushing or pulling up to five pounds frequently, and no repetitive left elbow and wrist movement. Miller testified he never returned to full duty work at Lear after April 20, 2021. He was terminated on April 23, 2021 for reasons apparently unrelated to the work injury. Though he has a part-time job at Kimco, a cleaning service for banks, Miller testified his girlfriend largely performs the work, though he acknowledged the checks are paid to him.

Records from an April 26, 2021 Concentra visit also indicate Miller could return on "modified duty." Additionally, Dr. Ozyurekoglu placed Miller on "light duty" with restrictions on May 11, 2021.

The ALJ found Miller was never "restricted from full duty work;" however, the treatment records indicate restrictions were issued on April 22, 2021, the same day Miller returned to Lear after the alleged injury on April 20, 2021. In his Order on Petition for Reconsideration, the ALJ stated the "records do not indicate

he was taken completely off work." Whether a claimant is taken completely off work is not the correct standard. An ALJ must determine whether the claimant could not perform the type of work that is customary or that he was performing at the time of injury. While the ALJ noted Miller was working a second job, Kentucky courts have acknowledged that a claimant can receive TTD for an injury sustained at one job while able to continue working a second job. Double L Construction, Inc. v. Mitchell, 182 S.W.3d 509, 514 (Ky. 2009). Here, there was no explanation as to how Miller's part-time job at Kimco contributed to the finding that he could return to his customary work or the work he was performing at Lear at the time of injury.

We finally note the ALJ's finding that Miller was terminated for sleeping on the job. During the final hearing, Miller acknowledges he was terminated, but the only proof of the reason for his termination is hearsay contained in medical reports from Drs. Nicoson and Gabriel. While there is little evidence regarding the reason for Miller's termination, if he was unable to return to his customary work due to his injury, the reason for his termination is not dispositive in determining his eligibility for TTD benefits. Lear has vigorously contended that work was available to Miller, yet it is precisely the description of this work that is at issue.

The ALJ did not state when Miller reached MMI and failed to properly analyze whether he could return to his customary work or his work at the time of injury. Accordingly, we must vacate this portion of the ALJ's Opinion, Award, and Order and Order on Petition for Reconsideration and remand for entry of a new Order making sufficient findings regarding 1) whether Miller was at MMI and, 2) whether he was able to return to employment performing his customary work

or the work he was performing at Lear at the time of injury as required by KRS 342.0011(11)(a). On remand, the ALJ must consider the treatment records and lay testimony in determining whether Miller could perform his customary work at Lear at the time of his injury or other work there per the dictates in Trane, supra. The Board does not direct any particular outcome and is cognizant that the Petitioner bears the burden in proving entitlement to TTD benefits. Snawder v. Stice, supra.

Accordingly, the May 26, 2022 Opinion, Award, and Order and the June 20, 2022 Order on Petition for Reconsideration, rendered by Honorable W. Greg Harvey, Administrative Law Judge are **AFFIRMED** in part. We **VACATE** the portion of the ALJ's opinion addressing Miller's eligibility for TTD benefits and **REMAND** the claim to the ALJ to provide additional findings in accordance with this opinion.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER: **LMS**

HON IAN GODFREY
312 S FOURTH ST, STE 700
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT: **LMS**

HON C PATRICK FULTON
1315 HERR LANE, STE 210
LOUISVILLE, KY 40222

ADMINISTRATIVE LAW JUDGE: **LMS**

HON W GREG HARVEY
MAYO-UNDERWOOD BLDG
500 MERO ST, 3rd FLOOR
FRANKFORT, KY 40601