Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 28, 2019

CLAIM NO. 201686757

DIANA LYNN MILLER — PETITIONER

VS. **APPEAL FROM HON. R. ROLAND CASE, ADMINISTRATIVE LAW JUDGE**

RALLCO, INC.;
DR. MICHAEL R. HEILIG;
DR. GREGORY F. GRAU;
DR. JAMES RICE; and
HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE — RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, & REMANDING

* * * * * *

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

ALVEY, Chairman. Diana Miller ("Miller") appeals from the Opinion, Award, and Order rendered February 5, 2019 by Hon. R. Roland Case, Administrative Law Judge ("ALJ") awarding her temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits for a left shoulder injury she

sustained on April 22, 2016 while working for Rallco, Inc. ("Rallco"). Miller also appeals from the March 13, 2019 Order overruling her petitions for reconsideration.

On appeal, Miller argues the ALJ erred in dismissing her alleged left knee injury claim and in awarding PPD benefits for her shoulder injury based upon a 7% impairment rating. The ALJ's finding that the left knee condition is not work-related is supported by substantial evidence, and therefore, on this issue, we affirm. However, we vacate in part and remand for additional analysis pursuant to Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007), regarding the left shoulder injury.

Miller filed a Form 101 alleging she injured her head, neck, back, left foot, left shoulder and left knee on April 22, 2016 when she fell while trying to prevent a refrigerator from falling. The ALJ found only the left shoulder injury compensable. We will only discuss the evidence related to the alleged left shoulder and left knee injuries since the issues on appeal only pertain to those body parts. The Form 104 indicates Miller worked as a cashier for a Rally's restaurant, owned by Rallco, from 2014 to 2016.

Miller testified by deposition on September 20, 2018, and at the hearing held December 14, 2018. Miller worked for Rally's for approximately three years prior to the April 22, 2016 work injury. She operated the drive-thru window, performed cleaning tasks, and stocked products. Miller has not returned to any work since the April 22, 2016 work incident. She does not believe she is able to return to work for Rallco due to her alleged work-related conditions.

Miller testified that on April 22, 2016, she opened the door of an unstable refrigerator while working at Rally's. The refrigerator fell toward her, causing her to fall to the ground onto her left side with her left arm extended. Miller experienced pain in the left side of her neck, left shoulder and arm, low back, left knee and right ankle. An ambulance transported Miller to the hospital, although these records are not in evidence. Since the work injury, Miller has undergone a total left knee replacement, a left shoulder surgery, and an open-heart surgery, all of which she attributes to the work incident. Dr. Michael Heilig treated Miller both before and after the April 22, 2016 work incident, and performed the left knee and shoulder surgeries in 2017. Miller continues to treat with Dr. Heilig, as well as a pain management physician, her primary care physician, and her cardiologist. Miller denied that she or her sister, who also worked at Rally's, tampered with video cameras at work as insinuated by her former supervisor at Rally's, Tiffany Watkins ("Watkins").

Miller acknowledged she previously sustained a work injury in 2001 or 2002 while working at a Steak and Shake in Florida, but did not recall which body part she injured or whether she received medical treatment. At her deposition, Miller denied experiencing any previous pain in her neck, left shoulder, left arm, or low back, but admitted she had experienced prior pain in both knees. Miller acknowledged she underwent bilateral carpal tunnel releases in 2007 or 2008, and had arthroscopic surgery on both of her knees performed by Dr. Heilig in 2009 or 2010. At the hearing, Miller testified she had no formal restrictions, and was not

taking medication for, nor experiencing any problems with her left knee or shoulder immediately prior to the work injury.

Watkins, the general manager at Rally's, testified by deposition on October 3, 2018. Watkins was Miller's supervisor at the time of the alleged work accident. Watkins testified she did not witness Miller's fall. Watkins stated the cameras at Rally's were not working on the day of the accident. Watkins insinuated Miller's sister, who also worked at the same Rally's as a shift leader, might have tampered with them.

Miller filed treatment records from Dr. William Davis, her primary care physician. On April 27, 2016, Dr. Davis noted Miller fell the previous Friday at work hitting her head and hurting her left shoulder. Miller described left neck and scapula pain. Dr. Davis stated Miller was treated and released from the Clark Regional Medical Center on April 22, 2016, noting all workups were normal, but Miller was wearing a sling. Dr. Davis noted her surgical history included three knee surgeries in 2010. Dr. Davis diagnosed a cervical muscle strain, a left deltoid contusion, and epicondylitis. Dr. Davis recommended she continue using the sling and take the Norco prescribed by Dr. Heilig approximately two weeks prior when she saw him for her knee problems. Miller reported no improvement in her neck and left shoulder symptoms on May 5, 2016. Miller also complained of "continued bilateral knee pain . . . had been seeing Dr. Heilig for this until she fell. . . ." Dr. Davis diagnosed Miller with left arm pain, neck pain, weakness and paresthesia of the left arm, and long-term current use of opiate analgesics. Miller underwent physical therapy in 2016, but was discharged due to non-compliance.

Miller also submitted records from Kentucky Orthopedic Associates and Clark Regional Medical Center. On January 12, 2017, Dr. Heilig performed a left shoulder rotator cuff repair; SLAP repair; distal clavicle resection; chondroplasty; and subacromial decompression. Thereafter, Dr. Heilig recommended post-operative physical therapy and restricted Miller from using her upper left extremity. On June 21, 2017, Miller reported severe left knee pain. Dr. Heilig noted Miller "has had two arthroscopies and failed that, as well as therapy and multiple injections. She does have severe degenerative joint disease per x-ray and arthroscopy." Dr. Heilig diagnosed severe left knee degenerative joint disease and recommended a left total knee arthroplasty which he performed on August 22, 2017. Thereafter, Dr. Heilig recommended post-operative physical therapy and prescribed medication. Dr. Heilig noted complaints of left shoulder pain on December 27, 2017 and persistent left knee pain on March 2, 2018 and April 11, 2018.

Miller went to Clark Regional Medical Center on August 28, 2018 and reported she fell due to her legs giving out. The next day, Miller followed up with Dr. Gregory Grau, who also practices at Kentucky Orthopedic Associates, for left knee pain and the recent fall. He diagnosed left knee pain, and noted the following: "She has multiple symptoms that I frankly cannot explain. She has symptoms of weakness and dizziness. She has feelings of total body numbness that are completely unrelated to her previous history. I have advised that she follow-up with her [PCP]. At this point in time I have no further options left to provide for her. . . ."

Rallco filed the pre-injury records from Kentucky Orthopedic Associates for treatment Miller received in 2010, 2011, 2012 and 2014. On February

5, 2010, Miller reported a left knee injury occurring in June 2009 for which Dr. Heilig ordered an MRI. The February 10, 2010 left knee MRI demonstrated medial patellar retinacular insufficiency; sprains of both the medial and lateral collateral ligaments; a questionable tear of posterior horn of lateral meniscus; a partial tear of popliteus muscle; a large knee joint effusion; and a small synovial cyst. Based upon his review of the left knee MRI, Dr. Heilig diagnosed a lateral meniscus tear of the left knee, left knee pain, and swelling. A left knee arthroscopy was performed on April 20, 2010. Dr. Heilig also recommended post-operative physical therapy. Despite the left knee surgery, Miller continued to complain of left knee pain and swelling on May 14, 2010. On August 25, 2010, Miller reported right knee pain and swelling. Dr. Heilig ordered a right knee MRI, and then recommended a right knee arthroscopy. It is unclear from the medical records if that procedure was performed.

Dr. Heilig noted that on several occasions in 2011, Miller reported she continued experiencing left knee pain, swelling and stiffness. Miller was prescribed medication, and a home exercise program. A repeat left knee MRI was ordered. On August 9, 2011, Dr. Grau noted the left knee MRI demonstrated severe chondromalacia patella and effusion. Dr. Grau diagnosed Miller as status-post left knee arthroscopy, and ordered an injection. On August 12, 2011, Miller complained of left knee and shoulder pain. Dr. Heilig administered an injection to her left knee and ordered a left shoulder MRI. Dr. Heilig reported the August 26, 2011 left shoulder MRI revealed AC arthrosis and a partial biceps tear. He administered trigger point injections to the left shoulder. He diagnosed Miller with a left shoulder partial biceps tear and pain, and noted she was status post a left knee arthroscopy.

Dr. Heilig administered an injection to Miller's left shoulder on October 24, 2011 after noting continued complaints of pain. Miller returned on December 21, 2011 with left shoulder, left knee and cervical complaints. A left knee x-ray demonstrated "mild MC DJD and moderate PF DJD." Dr. Heilig ordered another left knee MRI.

On January 24, 2012, Dr. Grau noted the left knee MRI demonstrated severe chondromalacia in the patella and in the lateral compartment. Dr. Grau's diagnoses included left shoulder partial biceps tear; left shoulder pain; left knee mild to moderate degenerative joint disease; status post left knee arthroscopy; and a questionable recurrent meniscus tear. Dr. Grau ordered a left knee arthroscopy which was performed in January or February 2012.

The last relevant pre-injury record reflects Miller sought treatment on November 3, 2014. Miller reported bilateral knee pain which had been ongoing for the past eight months with no accidents, injuries or treatment. Dr. Heilig stated that Grade 3 chondral changes in the trochlea and retropatellar region were noted in 2011. Dr. Heilig's diagnoses included right knee degenerative joint disease; left knee degenerative joint disease; left shoulder partial biceps tear; left shoulder pain; and left knee mild to moderate degenerative joint disease, status post scope. Dr. Heilig prescribed Diclofenac and bilateral hinged knee braces. He also discussed injection therapy.

Miller filed the September 24, 2018 report of Dr. Richard Holt, which was partially amended at a subsequent date. Dr. Holt reviewed the medical records both pre-dating and subsequent to the work injury, including the left shoulder and left knee surgeries. Dr. Holt diagnosed Miller as status post rotator cuff repair and

resection arthroplasty of the distal clavicle of the left shoulder, status post total knee on the left, and low back pain with right radicular symptoms.

Pursuant to the Fifth Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), Dr. Holt assessed a 15% impairment rating for the left shoulder and a 10% rating for the left total knee replacement, yielding a combined total of 24% impairment. Dr. Holt opined Miller sustained harmful changes to the human organism due to the work injury which consisted of "an exacerbation of her left knee pain, which resulted in a total knee arthroplasty and a rotator cuff tear, which resulted in left shoulder arthroscopic surgery and resection arthroplasty." Dr. Holt opined Miller had reached maximum medical improvement ("MMI") for both her back and shoulder injuries. Dr. Holt opined Miller does not retain the physical capacity to return to the same type of work. He noted, "[w]ith her multiple comorbidities of a history of cerebrovascular and cardiovascular disease and her dependence on a walker for stability, she would be limited to sedentary work."

In his original report, Dr. Holt stated, "I believe the patient had a preexisting active condition in her left shoulder and a preexisting dormant condition in her left knee as demonstrated by multiple imaging studies prior to her fall." In the amended report, Dr. Holt stated, "Ms. Miller had a pre-existing dormant condition in the left shoulder and a pre-existing active condition in the left knee . . . . [T]he patient had a preexisting dormant condition in her left shoulder and a preexisting active condition in her left knee as demonstrated by multiple imaging studies prior to her fall."

Rallco filed Dr. Gregory Snider's October 25, 2018 report. He noted Miller's April 22, 2016 fall and subsequent treatment rendered, including the left shoulder and left knee surgeries. He also reviewed the medical records from 2010 to 2015 addressing complaints and treatment of Miller's left knee, hands, right knee, left shoulder and right foot. Dr. Snider diagnosed a left shoulder sprain or strain superimposed on pre-existing shoulder complaints, noting the left shoulder surgery in January 2017. Regarding impairment for the left shoulder, Dr. Snider stated:

> According to the AMA Guides, 5th Edition, Ms. Miller's shoulder complaints can be rated. For distal clavicle excision, according to Table 16-27, there is 10% EEI. For ROM, according to Figures 16-40, -43 and -46, there is 5% difference between the left affected shoulder and the right baseline unaffected and unoperated shoulder. Using the Combined Values Chart yields 15% UEI. According to Table 16-3, this yields 9% WPI. In my opinion, half of the ROM deficit is attributable to preexisting, active complaints. The distal clavicle excision was performed after the injury in question, ostensibly to protect the rotator cuff repair.
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> Total: Estimate 7% WPI for the injury in question.

Dr. Snider declined to assign permanent restrictions for the left shoulder injury. He noted restrictions for her other complaints are unrelated to the April 22, 2016 work incident. Considering her work-related left shoulder injury only, Dr. Snider opined Miller is able to return to work at Rally's and requires no further medical treatment.

Regarding the other alleged body parts injured due to the April 22, 2016 fall, Dr. Snider stated as follows:

> I do not see convincing evidence that Ms. Miller suffered injuries to her neck, back or knee in the incident described. . . . I do not see convincing evidence that Ms.

> Miller's neck, back or knee complaints are ratable for the 4/22/16 injury. It is clear that her knee condition was advanced prior to this incident. Further review of records is required before assessment can be made within a reasonable degree of medical certainty . . . I see no reason to believe that Ms. Miller's knees were affected by the 04/22/16 fall in a substantial or ratable way.

Dr. Snider provided a supplemental report on November 27, 2018 after reviewing surveillance video of Miller. He stated his opinions remained unchanged.

In his opinion, the ALJ determined only Miller's left shoulder is work-related. The ALJ relied upon the opinion of Dr. Snider in finding the alleged neck, low back and left knee conditions are unrelated to the work injury. The ALJ determined Miller is not permanently, totally disabled from the left shoulder injury. The ALJ adopted the 7% impairment rating assessed by Dr. Snider for the left shoulder. The ALJ determined Miller retains the physical capacity to return to the work she performed at the time of the work injury, considering only the work-related left shoulder condition, based upon the Dr. Snider's opinion. The ALJ found Miller reached MMI from her left shoulder condition on June 21, 2017. The ALJ awarded TTD benefits, PPD benefits, and medical benefits for Miller's left shoulder condition.

Miller filed a petition for reconsideration, making essentially the same arguments she now makes on appeal. Miller requested additional findings supporting the ALJ's conclusion Miller's neck and left knee conditions are not work-related, and explaining how the ALJ determined her left knee condition was not activated by the fall. Miller requested the ALJ provide findings in support of a pre-existing, active impairment calculated by Dr. Snider and indicating her left shoulder condition was both symptomatic and impairment ratable immediately prior to April

22, 2016, consistent with Finley v. DBM Technologies, supra. Miller filed a second petition for reconsideration requesting the ALJ find that Dr. Holt opined Miller's left knee condition was dormant prior to the work injury.

In the order overruling the petitions, the ALJ provided further findings:

> Initially, the Plaintiff argues for more specific findings of fact regarding the rationale for adopting Dr. Snider's opinion. The ALJ notes Dr. Snider's opinion was based on his examination of the Plaintiff and an extensive review of medical records. . . . Concerning the left knee, attention is directed to Dr. Snider's report and additionally the report of Dr. Holt wherein he says there was a pre-existing active condition in the left knee. Additionally, records indicate the Plaintiff was seen by Dr. Helig[sic] with an MRI being performed as early as January 16, 2012 revealing severe chondromalacia of the patella and lateral compartments. She was seen by Dr. Grau on January 24, 2012 for left knee pain and swelling. In view of all these findings, the ALJ remains persuaded the left knee condition is not work-related.
>
> The Plaintiff next argues for findings relative to Dr. Snider excluding part of his impairment for a pre-existing active condition. Dr. Snider, in his report, clearly indicates under discussion #2 why he excluded part of the impairment. Again, records from Dr. Helig[sic] indicate treatment on August 12, 2011 for left shoulder pain and an MRI of the left shoulder performed August 18, 2011 indicated joint arthritis and a partial biceps tear. The records would indicate the Plaintiff was treated for the left shoulder prior to the injury and the carve out by Dr. Snider is both reasonable and consistent with the AMA Guides.
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> Next, Plaintiff asserts the amended report of Dr. Holt with a date of service December 12, indicates, "I believe the patient had a pre-existing dormant condition in her left shoulder and a pre-existing dormant condition in left knee as demonstrated by multiple imaging studies prior to the fall." This is simply inconsistent with the report

> filed on LMS on December 12, 2018. Attention is directed to page 5 of the report under #4 question, which clearly states, "I believe the patient had a pre-existing dormant condition in her left shoulder and a pre-exiting active condition in her left knee as demonstrated by multiple imaging studies prior to her fall." Additionally, on page 5 of his report under Comments Dr. Holt notes "Ms. Miller had a pre-existing dormant condition in the left shoulder and pre-existing active condition in the left knee." Dr. Holt's report would clearly indicate the Plaintiff's left knee was due to a pre-existing active condition and not to the work injury.
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> Next, the Plaintiff requests additional findings to explain how the ALJ determined the Plaintiff's left knee condition was not activated by her fall at work. This is based on the report of Dr. Snider as well as the report of Dr. Holt indicating it was pre-existing active.

On appeal, Miller argues the ALJ erred in dismissing her left knee claim. She notes she had not sought treatment for her left knee from November 3, 2015 thru the April 22, 2016 fall. Miller asserts there is no evidence she was symptomatic immediately prior to her fall. Miller also asserts Dr. Snider could not determine work-relatedness because he ignored her testimony and the medical records generated after her fall. She also points to Dr. Snider's statement that he could not make an assessment regarding Miller's left knee injury "within a reasonable degree of medical certainty" and therefore his opinion does not amount to substantial evidence. Miller further asserts Dr. Holt's characterization of her pre-existing left knee condition as medically active does not render it legally active under Kentucky law, and notes he did not indicate her left knee condition was symptomatic or impairment ratable immediately prior to her work injury.

Miller also argues the ALJ erred in awarding PPD benefits for her left shoulder condition based upon the 7% impairment rating assessed by Dr. Snider. Miller points out Dr. Snider assessed a 9% impairment rating, but apportioned 2% to pre-existing, active range of motion deficits. Miller argues Rallco failed to satisfy the requirements pursuant to Finley v. DBM Technologies, supra.

Miller also argues that if the Board determines the ALJ erred in dismissing her left knee claim, his findings regarding the multiplier and permanent total disability will need to be re-evaluated.

As the claimant in a workers' compensation proceeding, Miller had the burden of proving each of the essential elements of her cause of action, including work-relatedness/causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Miller was unsuccessful in proving the April 22, 2016 work accident caused her left knee condition, 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).

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, regardless of whether it comes from the same witness or the same adversary party's total proof. 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). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). 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 made 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).

We find substantial evidence supports the ALJ's determination that Miller's left knee condition is unrelated to the April 22, 2016 work injury, and no contrary result is compelled. The ALJ primarily relied upon Dr. Snider's opinion in

reaching his determination. In the order on reconsideration, the ALJ also pointed to Dr. Holt's statement that there was a pre-existing active left knee condition based upon her prior left knee treatment in 2012, and a previous left knee MRI revealing severe chondromalacia of the patella and lateral compartments.

Dr. Snider's report demonstrates he extensively reviewed and summarized the medical records, both pre-dating and subsequent to the work accident. Dr. Snider noted Miller denied a history of injuries, but found the record suggested otherwise to an extensive degree. After performing an examination, Dr. Snider found:

> I do not see convincing evidence that Ms. Miller suffered injuries to her neck, back or knee in the incident described. . . . I do not see convincing evidence that Ms. Miller's neck, back or knee complaints are ratable for the 4/22/16 injury. It is clear that her knee condition was advanced prior to this incident. Further review of records is required before assessment can be made within a reasonable degree of medical certainty . . . I see no reason to believe that Ms. Miller's knees were affected by the 04/22/16 fall in a substantial or ratable way.

In addressing the issue of causation, an expert medical witness is not required to use any particular "magic words" including the words "reasonable medical probability." The requirement of "reasonable probability" relates to the proponent's burden of proof and an ALJ must determine whether the evidence is of sufficient quality and substance to rise to the level necessary to prove causation. Turner v. Commonwealth, 5 S.W.3d 119 (Ky. 1999).

Dr. Snider's opinion alone constitutes substantial evidence supporting the ALJ's determination regarding the left knee condition, and no contrary result is

compelled. The ALJ additionally considered Dr. Holt's opinion and Miller's prior treatment records in reaching this determination. We acknowledge Miller is able to point to conflicting evidence supporting her position on appeal. However, the ALJ as fact-finder determines the credibility of the evidence. The ALJ may also choose whom and what to believe when faced with conflicting evidence. It was the ALJ's prerogative to rely on Dr. Snider's opinions regarding the left knee condition. Because substantial evidence supports the ALJ's determination regarding causation, and no contrary result is compelled, we affirm.

We also note the ALJ was not required to determine whether Miller's left knee condition was symptomatic and impairment ratable prior to the work injury pursuant to Finley v. DBM Technologies, supra. This is not a case where the ALJ concluded Miller sustained a permanent, work-related injury and then was required to engage in a carve-out for pre-existing active impairment pursuant to Finley v. DBM Technologies, supra. However, the same cannot be said regarding Miller's left shoulder condition.

We vacate in part and remand for the ALJ to perform an analysis pursuant to Finley v. DBM Technologies, supra, addressing Miller's pre-existing left shoulder condition. It appears undisputed Miller sustained a left shoulder injury due to the April 22, 2016 work incident. Dr. Snider assessed a 9% impairment rating for the left shoulder condition, but found, "half of the ROM deficit is attributable to preexisting, active complaints." Therefore, he carved out 2%, yielding a 7% impairment rating for the work-related shoulder injury.

The arousal of a pre-existing dormant condition into disabling reality by a work injury is compensable. However, an employer is not responsible for a pre-existing active condition present at the time of the alleged work-related event. McNutt Construction/First General Services vs. Scott, 40 S.W.3d 854 (Ky. 2001). In Finley v. DBM Technologies, 217 S.W.3d at 265, the Court of Appeals stated a pre-existing condition is deemed active, and therefore not compensable, if it is "symptomatic and impairment ratable pursuant to the AMA [Guides] immediately prior to the occurrence of the work-related injury." Moreover, as an affirmative defense, the burden to prove the existence of a pre-existing active condition falls on the employer. Id. The Court concluded by stating as follows:

> To summarize, a pre-existing condition that is both asymptomatic and produces no impairment prior to the work-related injury constitutes a pre-existing dormant condition. *When a pre-existing dormant condition is aroused into disabling reality by a work-related injury, any impairment or medical expense related solely to the pre-existing condition is compensable.* A pre-existing condition may be either temporarily or permanently aroused. If the pre-existing condition completely reverts to its pre-injury dormant state, the arousal is considered temporary. If the pre-existing condition does not completely revert to its pre-injury dormant state, the arousal is considered permanent, rather than temporary. With these legal principals in mind, we shall undertake a review of the ALJ's award. Id. (emphasis ours)

With the above standards in mind, we find the ALJ's analysis does not conform to the direction provided in Finley v. DBM Technologies, supra. The ALJ stated his belief that 7% is an adequate representation of Miller's impairment based on the AMA Guides. In the order on petition for reconsideration, the ALJ also noted the August 12, 2011 treatment note and August 18, 2011 left shoulder MRI.

The ALJ concluded the records indicate Miller "was treated for the left shoulder prior to the injury and the carve out by Dr. Snider is both reasonable and consistent with the AMA Guides." The ALJ did not perform an analysis addressing whether Miller's pre-existing left shoulder condition was "symptomatic and impairment ratable pursuant to the AMA [Guides] immediately prior to the occurrence of the work-related injury."

In light of the above, the ALJ is directed on remand to conduct an analysis pursuant to McNutt Construction/First General Services vs. Scott, supra, and Finley v. DBM Technologies, supra, in determining whether Miller's pre-existing left shoulder condition was symptomatic and impairment ratable pursuant to the AMA Guides immediately prior to the work-related injury. If not, a carve-out for the pre-existing condition is inappropriate.

Miller's third argument is moot considering the above determinations.

Accordingly, the February 5, 2019 Opinion, Award, and Order, and the March 13, 2019 Order overruling Miller's petitions for reconsideration rendered by Hon. R. Roland Case, Administrative Law Judge, are **AFFIRMED IN PART** regarding the alleged left knee condition. We **VACATE IN PART** the remainder of his determinations and **REMAND** this claim to the ALJ for entry of an award in accordance with the views expressed herein.

ALL CONCUR.

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