Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 2, 2021

CLAIM NO. 201979830

DILLARD'S INC. PETITIONER

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

ESSEX LOLLAR
and HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

STIVERS, Member. Dillard's Inc. ("Dillard's") appeals from the October 10, 2020, Opinion, Award, and Order and the November 12, 2020, Order of Hon. Peter J. Naake, Administrative Law Judge ("ALJ"). The ALJ awarded Essex Lollar ("Lollar") permanent partial disability benefits and medical benefits for a work-related right hip injury.

On appeal, Dillard's asserts the ALJ erred in finding Lollar sustained a work-related injury. Dillard's further asserts the ALJ erred in discounting its "idiopathic injury" argument. Finally, Dillard's asserts the ALJ erred by finding Dr. Michael Heilig's impairment rating is compliant with the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides").

BACKGROUND

The Form 101, filed on November 11, 2019, alleges Lollar sustained work-related injuries to "multiple body parts" on November 12, 2018, in the following manner: "I was working and had been up on ladder and put it up and walking to the bathroom and felt pop in my right groin/hip."

Dillard's filed the January 15, 2019, Proscan Imaging MRI report which notes the following: "1. Mild age indeterminate but likely acute right adductor longus strain without tear or hematoma. No avulsion. 2. Mild chronic bilateral pars defects, grade 1 anterolisthesis, mild stenosis and bilateral exiting nerve impingement at L5-S1."

Dillard's also filed Dr. Rodney Chou's medical records. Compelling to the ALJ is the February 25, 2019, record which details the following history of Lollar's injury: "The patient works for Dillard's as a store engineer. He reports he was walking and felt a pop in the groin and had some burning down the leg on 11/12/18." At the time of the appointment, Lollar was experiencing right leg pain and described the pain as having "a shooting, a burning, and tingling quality." The record notes Lollar was treated with eighteen sessions of physical therapy that were

"ineffective" and non-steroidal anti-inflammatories that were "somewhat effective." Attached to the medical record is a questionnaire revealing Dr. Chou's opinion that Lollar experienced a "muscle strain in leg @ time of work incident."

Dillard's filed the March 26, 2019, medical record of Dr. George Popham with Ellis & Badenhausen Orthopaedics, PSC. The record reveals Lollar was complaining of right hip pain at the appointment. After performing a physical examination, Dr. Popham diagnosed a right hip adductor strain.

Lollar introduced the February 12, 2018, Independent Medical Evaluation ("IME") report of Dr. Heilig. After performing a physical examination and medical records review, Dr. Heilig diagnosed the following: "1. Persistent right hip pain with questionable internal derangement, such as a labral tear. 2. Persistent lumbar spine pain." Pursuant to the AMA Guides, Dr. Heilig calculated an impairment rating:

> Based on my client's information, he would have a 2% impairment for the right hip associated with pain found on Table 18-7, Page 584, of the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5th Edition.
>
> He would also have a 2% impairment rating for pain in his lumbar spine as found on Table 18-7, Page 584.
>
> This, on the Combined Values Chart on Page 604, comes out to a 4% whole person impairment rating for the work-related injury.

Dr. Heilig opined Lollar's right hip and lumbar spine injuries are related to the November 12, 2018, work incident.

Lollar was deposed on March 2, 2020. He described his duties as a maintenance engineer at Dillard's as follows:

A: Oversees all maintenance of the building. Pretty much – whenever I got hired, they were saying that – you know, pretty much filling in the blanks, saying, oh, you just take care of filter changes and roof top units and, you know, just minor maintenance things. And then I take the job and they give me a binder full of stuff that says what I take care of actually, you know.

Q: Without reciting the entire binder, what are the primary responsibilities in your job?

A: It is, like I said, the overseeing of the whole entire building, leaks, roof leaks, roof top unit like I said, filter changes, bathrooms, sinks, toilets, stalls, lighting, ballasts, switches, receptacles. I mean, it just – all maintenance of the buildings.

Q: Okay.

A: Exterior lighting. If there's any – like we just – I don't know if anybody's noticed, but the cleaning of the building, I had to get quotes for the cleaning of the building.

Q: So you're in charge of all that?

A: Yeah.

Lollar testified as follows regarding the events surrounding the November 12, 2018, injury:

A: I had just got done – well, I'll tell you from the beginning. I got a call about a roof ceiling leak, but it wasn't the roof, but a ceiling leak in shoes in the east building, Men's building, 391 East.

Q: That's the – okay.

A: Went and got the ladder. Went and looked at the location of the leak. Got up on – because we have plumbing that runs through there also. So it could be anything, okay.

Q: Sure.

A: It could be the pipe. It could be, you know, a leak from anywhere. So I'm like physically getting up and seeing it with my own eyes what it is before I make a call on it, you know. So I got a ladder, got up there, seen where it was coming from. Knew the location, went upstairs. Usually go by fright elevator.

Went up, went across the bedding area of the Men's building, and I had – as I was walking across there, I had this like pop and burning sensation, and my leg kind of gave out walking across there. And I was like, well, that's kind of weird, you know. Kept on to the bathroom. So I seen the location.

Went back downstairs and ended up putting the ladder up, and then I came back upstairs and went to the rooftop and told the guys about what had happened.

Q: So what I heard you say, and I may have missed something, is you were walking through the bedding area and your leg gave out on you?

A: Yeah. It was like a pop and burning sensation.

Q: In your back?

A: Went down the inseam of my leg.

Q: All right. So let's explore this a little more. You identify – and maybe we will take it from here. Body parts injured, multiple body parts according to your application and resolution of injury claim. What body parts are you claiming you injured today?

A: The actual hip is what – what happened that day.

Q: Okay.

A: With the pop, burning sensation down the inseam of my leg, I have problems with the lower of my back from the situation that happened. They went in and seen, you know, what was going on with it.

And come to find out that there was apparently a pars defect in there. Never before did I have any problems with, you know, my lower back. You know, medically, I

had never been to the doctor for it or anything like that. And then also, they were saying that this leg is –

Q: You're pointing toward your right leg.

A: Right leg. In my hip area I'm also having a slight pull on the left side of my hip because they said that it was compensating for, I guess, the injury for the leg.

Q: So your right and left hip and your low back, are those the body parts you're making claims for today?

A: Yes.

Q: All right. So you know about this leak. You're talking through the bedding department of the Men's building, and your right leg – it looked like you pointed to – gave out on you, is that right?

A: Yes. I was walking across there, and the leg, it was like a – it felt like a pop in my leg and a burning sensation shot down my leg, the inseam of my leg down to my foot. And my leg actually felt like it was going to fall. But it straightened – you know, I straightened myself back up.

Q: So you were just walking?

A: I was just walking.

Q: You were not bending?

A: No, sir.

Q: Stooping.

A: No.

Q: Crouching , lifting, running, anything like that? Just walking?

A: No. I mean, if we have to, we can pull the video. I mean, there's a video of me walking across there, I'm pretty sure. Unless the camera wasn't on me.

Q: Sure. Understood. Understood. And I'm just trying to picture this in my mind, okay?

A: Yeah.

Q: So you're walking. You didn't trip on anything, did you?

A: No, sir.

Q: Did you fall?

A: No.

Q: Were you carrying anything?

A: No.

Q: Okay. You were just walking from one part of the building to another?

A: Yeah.

Q: And you were – were you on break or anything? Had you been on break?

A: No.

Q: All right. Were you on the phone or on a walkie-talkie or anything like that?

A: Not that I can remember. I mean, I could have been. I mean, the phone is part of my job, you know.

Q: Sure. And it's just a tile floor, is that right?

A: Yes, the pathway is.

Q: The path-

A: The rest of it is carpet.

Q: Sure. Understood. But the pathway where you were walking is what I'm talking about.

A: Yeah.

Q: And you were just wearing work boots?

A: At the time I may have had a different pair of work boots on, but yes, I was wearing work boots.

Q: Steel toed?

A: They were – composite is what I usually wear. So it's lighter than a steel toe.

Q: Understood. And was anybody around you when this occurred?

A: No, not a single person.

Q: So you are just walking and you feel this sensation down the inner part of your thigh, is that correct?

A: Yes.

Q: All right. Did you have any pain then in your lower back?

A: Yes. It increased throughout the day.

Q: All right. But in that moment you had just a little pain, but the primary pain was in your – the inner part of your right thigh?

A: The way I want to explain it is the pressure in the hip actually – whatever is wrong, okay, it's connected because the pressure in the hip will go in the pressure of the back.

Lollar also testified at the September 1, 2020, hearing. Regarding his injury, he testified, in relevant part, as follows:

A: I was walking across, and all of a sudden I had this popping burning sensation down the inseam of my leg, and my leg kind of acted like it was going to give out. And then I ended up catching myself, and it didn't and that's what happened so…

Q: And which leg are we talking about?

> A: I went in – the right side, it was in the hip, leg. It went down my whole – the whole leg. The burning sensation and stuff went down my whole leg to my foot.

The Benefit Review Conference Order and Memorandum ("BRC Order") lists the following contested issues: benefits per KRS 342.730, work-relatedness/causation, unpaid or contested medical expenses, injury as defined by the ACT, and exclusion for pre-existing disability/impairment.

Dillard's "Motion to Amend BRC Order" seeking to amend the Order to add the contested issue of the "proper use of the AMA Guides, 5th Edition" was sustained by Order dated September 1, 2020.

In the October 10, 2020, Opinion, Award, and Order, the ALJ provided, in relevant part, the following findings of fact and conclusions of law which are set forth *verbatim*:

> **CAUSATION/WORK RELATED INJURY**
>
> The claimant in a workers' compensation claim bears the burden of proving each of the essential elements of his claim. *Burton v. Foster Wheeler Corp.*, 72 S.W.3d 925, 928 (Ky. 2002). As fact-finder, an 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 party's total proof. *Gaines Gentry Thoroughbreds/Fayette Farms v. Mandujano*, 366 S.W.3d 456, 461 (Ky. 2012).
>
> KRS 342.0011(1) defines a compensable injury as being "any work related traumatic event or series of traumatic events, including cumulative trauma," that is the proximate cause producing a harmful change in the human organism. Even the strain of working in an awkward position or performing a motion repetitively may provide trauma sufficient to cause a compensable injury. *Ryan's Family Steakhouse v. Thomasson*, 82 S.W.3d 889 (Ky. 2002). A worker is not required to self-diagnose the mechanism of an injury when seeking medical

treatment for the injury's symptoms; instead, a plaintiff is required to prove causation of an injury by presenting expert medical testimony, if causation is not apparent to a layperson. *Mengel v. Hawaiian-Tropic Northwest & Central*, Ky. App., 618 S.W.2d 184 (1981). *Staples. Inc. v. Konvelski*, Ky., 56 S.W.3d 412 (2001) illustrated the type of evidence that was required to show a harmful change has occurred and of showing such a harmful change, and explained that although KRS 342.0011(1) requires objective medical findings of a harmful change, it does not require such evidence of causation. The objective evidence of Mr. Lollar's injury to his hip includes increased signal intensity of the adductor muscle on MRI, which was reported on the ProScan imaging report of January 15, 2019 as indicating an acute strain, and pain upon physical examination as reported by Drs. Heilig and Dr. Popham.

The Defendant/Employer argues that an injury cannot have been caused by simply walking across a floor at work, and that simply walking could have occurred at home or in a non-work situation. The Administrative Law Judge views this as two types of an argument that the injury did not arise out of and in the course and scope of employment. That walking can or cannot cause a hip muscle strain is really a medical question. The Administrative Law Judge must rely on medical testimony to prove or disprove that the incident when the plaintiff was walking at work and felt a pop in his hip, and immediate pain thereafter, caused a strain or tear of the adductor muscle, and whether it aroused a lumbar spine condition into disabling reality. Dr. Ballard stated that it could not have caused injury, while Drs. Chou and Popham indicate that walking was the cause of the strain.

The Defendant also argues that the injury could have occurred at home as easily as at work, or, whether the injury occurred in the course and scope of employment. However, the fact that an injury may have occurred in other situations does not negate the fact that this injury happened at work. Had Mr. Lollar's hip popped while he was walking in a non-work situation, he would not have a workers' compensation claim, but that is not the case in this claim. Mr. Lollar testified that he was walking from one place to another on the employers'

premises, during his working hours, when he felt his hip pop and he began to feel pain. Because the plaintiff's job duties included attending to maintenance at various locations in the buildings he serviced, his job required him to walk from one place to another within the buildings. Therefore, the Administrative Law Judge finds that the injury arose out of and in the course of employment.

The objective medical evidence on MRI which supported Dr. Popham's and Dr. Heilig's conclusions, in addition to pain on physical examination, was that the Plaintiff suffered an acute adductor strain in his right hip. Dr. Ballard in her initial report recommended two additional weeks of therapy and Naprosyn for the injury, stating that he would be at MMI in two weeks. In answering questions about the work-relatedness of the injury at that time, she was addressing the low back problems which she clearly stated were not work-related. Later, in a supplemental report, she stated that the hip muscle strain could not have been injured by the reported work injury. Her reports indicate that she reviewed the MRI report stating that the adductor muscle showed evidence of an acute strain, but failed to explain that finding in stating that there was no objective evidence of an injury. The Administrative Law Judge is not persuaded by Dr. Ballard's opinion because of the inconsistency of her two reports, and her failure to address the objective finding on MRI of an acute adductor strain.

Dr. Popham took an accurate history of the plaintiff's description of the injury, and stated that the pain was coming from his hip, and not his low back, and referred the plaintiff to physical therapy. Dr. Chou also took an accurate history of the injury and wrote that the injury was work-related because Mr. Lollar "probably had a muscle strain in his leg at the time of the work incident". The medical record does not contain evidence of a previous problem with the right hip, or any other explanation for the findings of an acute strain on MRI. Coupled with the Plaintiff's testimony and the absence of any other cause which could have produced a hip injury, the Administrative Law Judge is convinced that the Plaintiff suffered a right hip adductor muscle strain as a result of walking at work. The Administrative Law

Judge is persuaded by these medical opinions because they are corroborated by the MRI report, and they agree with the plaintiff's description of the injury, which is credible and has remained consistent throughout the claim.

The Plaintiff's proof as to injury of the low back fails to convince the Administrative Law Judge that the injury at work aroused a dormant condition in the low back into disabling reality. The Administrative Law Judge notes that the MRI report shows that there was a chronic pars defect and grade 1 anterolisthesis, and that the Plaintiff admitted to having a history of back pain to Dr. Chou. Dr. Popham stated in his records that he did not believe Mr. Lollar's pain was coming from his back. Therefore, the Plaintiff's claim for impairment and future medical expenses for injury to his lumbar spine will be dismissed. Furthermore Dr. Ballard's opinion was consistent that no permanent injury occurred to the lumbar spine.

IDIOPATHIC INJURY ARGUMENT

The Defendant argues that this claim should be dismissed under Kentucky law addressing idiopathic injuries. The Defendant states, correctly, that the Kentucky definition of idiopathic injury is one arising from a personal or pre-existing, non-work related condition. However, the Defendant admits that it has no evidence of such a condition in this case. Therefore, by definition, the injury is unexplained, and not idiopathic. Unexplained falls at work enjoy a presumption of work-relatedness, precisely because they occur at work, in the course of employment, and the defendant cannot prove that a personal condition caused the injury. *Workman v. Wesley Manor Methodist Home*, 462 S.W.2d 898, 900 (Ky. 1971). While this injury is not a fall, but a muscle strain, the principal of unexplained injuries applies equally. Assuming for the sake of the defendant's argument that the injury is unexplained, the law would require coverage because it is unexplained and no other non-work related cause has been shown to have caused the injury. However, the Administrative Law Judge does not find that the injury is unexplained, but that a muscle strain was caused by walking at work, relying on the opinions of Drs. Chou and Popham.

IMPAIRMENT RATING PURSUANT TO AMA GUIDES

The Administrative Law Judge believes that Mr. Lollar continues to suffer pain in his right hip as a result of the injury and that it limits his activities, although he continues to work full duty. The standard for providing an impairment rating for pain under the AMA Guides is that a physician may do so if the impairment assigned for the body system does not adequately encompass the pain experienced by the individual due to his medical condition, and the pain-related impairment increases the burden of his condition slightly, the examiner may increase the body system impairment by up to 3%. Because the 0% impairment for loss of range of motion, gait derangement, or other methods of impairment, which would be assessed under the AMA Guides section for lower extremity impairment does not adequately reflect the burden of Mr. Lollar's pain related impairment, and does not adequately address the impact of the injury upon the Plaintiff's life, the Administrative Law Judge finds that Dr. Heilig correctly assessed a pain-related impairment. The ALJ relies on his report for his impairment rating of 2% to the body as a whole according to the AMA Guides to the Evaluation of Permanent Impairment, 5th edition as a result of the hip injury.

The Administrative Law Judge has considered the supplemental report of Dr. Ballard which disagrees with Dr. Heilg's impairment rating of 4%, stating that he should not have given a 2% impairment rating for pain for two different parts of the body, and states that the 2% rating for the hip was incorrect because he found normal range of motion of the hip. However, Dr. Heilig's impairment rating for the hip was not for loss of range of motion, but for pain. Therefore, the Administrative Law Judge is not persuaded by Dr. Ballard's opinion regarding impairment rating.

PRE-EXISTING ACTIVE IMPAIRMENT

The parties preserved the issue of whether the Plaintiff suffered from a pre-existing active condition prior to his injury. Concerning Mr. Lollar's right hip, there no evidence to show that a pre-existing condition of the right hip was both symptomatic and impairment ratable

> prior to his injury. *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007).
>
> Concerning Mr. Lollar's low back injury, the Plaintiff has not met the threshold of proving that Mr. Lollar's lumbar spine was injured, or a pre-existing condition aggravated, by the injury sustained at work. Therefore, no pre-existing active condition would have to be deducted from an impairment caused by the injury, and Finley, supra, is not applicable.

Dillard's filed a Petition for Reconsideration asserting the same arguments it now makes on appeal.

In the November 12, 2020, Order, the ALJ entered additional findings which are set forth *verbatim*:

> The Defendant, Dillard's, petitions for reconsideration of the Administrative Law Judge's Opinion, asking for reconsideration of the finding that Mr. Lollar suffered a work-related injury while walking across Dillards' retail space floor. The Defendant also requests findings of fact concerning what traumatic event the Plaintiff suffered and how that traumatic event caused the work-related injury.
>
> The Administrative Law Judge is not permitted to change a finding of fact that a work-related injury occurred on reconsideration. KRS 342.281 provides that in considering a petition for reconsideration, "[t]he administrative law judge shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision . . . ." This language precludes an ALJ . . . from reconsidering the case on the merits and/or changing the findings of fact. Garrett Mining Co. v. Nye, 122 S.W.3d 513, 520 (Ky. 2003). In this regard the defendant's petition is overruled.
>
> However, the Defendant also requests further findings of fact concerning what traumatic event occurred and how that traumatic event caused a work-related injury. The issue of causation of a work-related injury is a medical question which must be answered by medical experts. Brown-Forman Corp. v. Upchurch, 127 S.W.3d 615, 621 (Ky. 2004). Dr. Chou answered this question by

stating, in answer to a written questionnaire sent to him by Pri-Medical: "Is this directly related to his work injury from 11/12/2018: yes probably and had muscle strain [in] his leg at time of work incident." Dr. Heilig likewise confirmed the existence of the causal relationship between the incident at work and Mr. Lollar's hip strain. Dr. Popham read the MRI report of the pelvis which showed "mild age indeterminate likely acute right adductor longus strain without tear or hematoma. No avulsion", and concluded that he had a strain of the adductor muscle in his right hip. Based on these doctors' opinions, the Administrative Law Judge found that the adductor strain found on MRI was caused by a strain incurred because of walking at work. The fact that the MRI showed an acute strain logically relates the strain to the time that Mr. Lollar experienced pain and reported an injury at work.

The Defendant's argument that a strain of a hip muscle could never happen because of walking is a medical issue. Clearly, Dr. Ballard did not believe that this could occur, but Dr. Chou, having taken an accurate history of the injury event, did relate the muscle strain to the incident at work. To delve deeper into the mechanism of exactly how walking at work strained Mr. Lollar's adductor longus would require a doctor's explanation. The Defendant chose not to take Dr. Chou's deposition, but instead relied on Dr. Ballard's report that walking cannot possibly cause an injury. The Administrative Law Judge is entitled to pick and choose between witnesses' testimony, and chose to rely on Dr. Chou's statement and Dr. Heilig's report, instead of Dr. Ballard's opinion, because Dr. Ballard's opinion did not address the acute strain which appeared on MRI.

The Defendant argues that this is an idiopathic injury case. However, the law is clear that an idiopathic injury is one which is proven to be due to a non-work-related personal condition. The Defendant has not proven any such condition caused Mr. Lollar's adductor strain, and admits as much in its brief and petition. Therefore, the argument that the injury was idiopathic does not apply. The defendant infers, by relying on its premise that walking could not possibly cause a strain, that the strain must have come from a personal condition. The ALJ does not accept that premise as true, since the realm of

medical possibility is broad, as is demonstrated by cases such as Ryan's Family Steakhouse v. Thomasson, 82 S.W.3d 889 (Ky. 2002), Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2005), and the many occupational disease, cumulative trauma, heart attack claims, and injuries incurred while lifting or bending that are found by physicians to be caused by work-related trauma.

An idiopathic injury must arise from a non-work-related source, otherwise, it is unexplained. If a fall is unexplained and occurs on the job it is presumptively work-related. Jefferson County Public Schools/Jefferson County Board of Education v. Stephens, 208 S.W.3d 862 (Ky. 2006). However, the Administrative Law Judge did not find that this was an unexplained injury, but instead relied on the evidence from Dr. Chou and Dr. Heilig that the muscle strain was caused by walking at work.

Finally, the Defendant requests further findings of fact concerning whether Dr. Heilig's impairment rating regarding the left hip is in accordance with the AMA Guides. The current state of the law is that impairment ratings must be grounded in the *AMA Guides*. "To be grounded in the Guides is not to require a strict adherence to the Guides, but rather a general conformity with them." Plumley v. Kroger, Inc., 557 S.W.3d 905, 912 (Ky. 2018). The Administrative Law Judge finds that Dr. Heilig's assessment of a 2% impairment rating for pain was in conformity with the AMA Guides. Dr. Heilig gave no impairment for loss of range of motion, loss of strength, or gait derangement regarding the hip. The Plaintiff testified that he continues to have pain in his hip that affects him on a daily basis when he walks, sits,or exerts himself. In the AMA Guides' pain chapter, the Guides instruct that if the individual appears to have pain related impairment that has increased the burden of his or her condition slightly, the examiner may increase the percentage by up to 3% without making a formal pain assessment. AMA Guides to the Evaluation of Permanent Impairment, 5th Ed., p. 573.

Dr. Ballard did not agree with Dr. Heilig's impairment rating, and criticized his use of two separate pain ratings for two different parts of the body. The Administrative Law Judge has only accepted one of these impairment ratings, so that criticism would not be applicable to a

> pain impairment rating for only one body part. There was no medical evidence presented stated that Dr. Heilg's rating did not conform to the AMA Guides, only that Dr. Ballard did not agree with his impairment rating. "The proper interpretation of the *Guides* and the proper assessment of impairment are medical questions." Lanter v. Kentucky State Police, 171 S.W.3d 45, 52 (Ky. 2005). The Administrative Law Judge finds that Dr. Heilig's impairment rating conformed to the AMA Guides.
>
> The Defendant's Petition for Reconsideration is overruled, but granted to the extent that further findings of fact were made herein.

ANALYSIS

Dillard's first asserts the ALJ erred in finding Lollar sustained an "injury" as defined by the Workers' Compensation Act on November 12, 2018, because an injury cannot be caused by simply walking. We disagree and affirm on this issue.

> "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

Lollar, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including the issue of causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky.

App. 1979). Since Lollar was successful in meeting his burden, the question on appeal is whether there is substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

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). Further, 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 that would have supported a different outcome than that 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).

In addition, causation is a factual issue that must be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995). When the question of causation involves a medical relationship not apparent to a layperson, the issue is properly within the province of medical experts. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184, 186-187 (Ky. App. 1981). Medical causation must be proven by medical opinion within "reasonable medical probability." Lexington Cartage Company v. Williams, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work-related causation is insufficient. Pierce v. Kentucky Galvanizing Co., Inc., 606 S.W.2d 165 (Ky. App. 1980). While objective medical evidence must support a diagnosis of a harmful change, it is not necessary to prove causation of an injury through objective medical findings. Staples, Inc. v. Konvelski, 56 S.W.3d 412 (Ky. 2001).

As an initial matter, we note Dillard's is not contesting that the November 12, 2018, walking incident resulting in the alleged right hip injury occurred in the course of Lollar's employment at Dillard's. In its brief to the ALJ, Dillard's conceded as follows: "At the time, he was **working** in the men's building of the St. Matthews store. (*Id.*)." (Emphasis added). Dillard's reiterates this concession

in its brief to the Board. Dillard's first argument, then, seemingly hinges only upon its claim that walking cannot cause a work injury. Rather, it urges the statute mandates an injury must be caused by a "traumatic event."

The ALJ relied upon the opinions of Drs. Chou and Popham, Dr. Heilig's impairment rating, the January 15, 2019, MRI report, and Lollar's testimony regarding how his right hip injury occurred as support for the finding Lollar suffered a right hip adductor muscle strain due to walking at work. The ALJ found credible Lollar's deposition and hearing testimony regarding what occurred at Dillard's on November 12, 2018. Lollar testified at both his deposition and the hearing that, on November 12, 2018, when he was responding to notification of a leaky roof within the store, he felt a pop and burning sensation down the inseam of his right leg as he was walking. As fact-finder, the ALJ has the sole authority to judge the credibility of the evidence. Square D Co. v. Tipton, supra. Also, as previously noted, there is no dispute Lollar was working at the time of this incident.

The pertinent medical evidence found probative by the ALJ in finding Lollar sustained a November 12, 2018, "injury" as defined by the Act, includes the January 15, 2019, ProScan Imaging MRI report indicating Lollar suffered from an "acute right adductor longu strain without tear or hematoma." This is buttressed by Dr. Chou's February 25, 2019, record which includes an attached questionnaire reflecting Dr. Chou opined Lollar sustained a "muscle strain in leg @ time of work incident." Further, in his March 26, 2019, medical record, Dr. Popham expressly diagnosed a right hip adductor strain. Finally, in his February 12, 2018, IME report, Dr. Heilig diagnosed "[p]ersistent right hip pain with questionable internal

derangement, such as a labral tear." He assessed a 2% impairment for Lollar's right hip injury linking the impairment rating to the November 12, 2018, work incident.

The above-cited evidence comprises substantial evidence supportive of the ALJ's finding Lollar sustained a work-related right hip injury on November 12, 2018, while walking within the course of his employment at Dillard's. Despite Dillard's assertions to the contrary, a specific type of injurious event need not occur for an injury to be deemed work-related. An injury as defined by the Act can, as concluded by the ALJ, occur from just walking as long as it generates a harmful change in the human organism. Here, the ALJ concluded Lollar sustained a harmful change in his right hip while walking in the course of his employment at Dillard's on November 12, 2018. That finding is supported by substantial evidence. Thus, we affirm.

Next, Dillard's asserts the ALJ erred in rejecting its argument Lollar's injury is idiopathic in nature. We disagree.

We first note that the extension of the law pertaining to idiopathic and unexplained *falls* to the case *sub judice* is, at best, a tenuous analogy. However, since the ALJ accepted the analogy originally set forth by Dillard's and now on appeal, we will address the ALJ's reasoning.

An idiopathic *fall* is something personal to the claimant and, therefore, non-compensable. However, unexplained *falls* are a neutral risk and give rise to a presumption of work-relatedness. The Kentucky Court of Appeals in Workman v. Wesley Manner Methodist Home, 462 S.W.2d 898 (Ky. 1971) held as follows:

> The essential problem was discussed in Coomes v. Robertson Lumber Co., Ky., 427 S.W.2d 809 (1968), in

> which this court held that an unexplained fall in the course of one's employment gives rise to a rebuttable presumption that it arose 'out of' the employment as well. Stated another way, when an employe [sic] during the course of his work suffers a fall by reason of some cause that cannot be determined, there is a natural inference that the work had something to do with it, in the sense that had he not been at work he probably would not have fallen.

Id. at 900.

Dillard's concedes there is no evidence of a non-work-related condition which would have caused the injury. In its brief to the ALJ, it stated as follows: "**While Dillard's acknowledges that there is no evidence of a non-work-related condition causing Mr. Lollar's hip strain**, it is clear that the injury is entirely personal in nature." (Emphasis added). In its brief to this Board, Dillard's acknowledged a follows: "**Dillard's acknowledges that there is no evidence of a non-work-related condition that would cause Mr. Lollar's condition. He has not previously treated for his low back or hip.**" (Emphasis added). Despite Dillard's commentary to the contrary, the concessions made in both briefs negate any possibility of the injury being personal to Lollar. Dillard's has unequivocally conceded there is no evidence of a non-work-related condition which led to the injury. This means the injury was not caused by anything personal to Lollar and, by extension, cannot, if the analogy regarding idiopathic falls is applicable, be deemed "idiopathic."

As it is not deemed idiopathic, there are two remaining options. One, the injury is unexplained or two, the injury is explained. However, an unexplained fall that transpires within the course of one's employment is presumed to be work-

related pursuant to Workman, supra, unless the rebuttable presumption is defeated. Consistent with Dillard's analogy between idiopathic/ unexplained falls and idiopathic/unexplained injuries, an unexplained injury occurring within the course of one's employment is presumed to be work-related unless the rebuttable presumption has been defeated. However, as correctly noted by the ALJ in the October 10, 2020, Opinion, Award, and Order, "no other non-work related causes has been shown to have caused the injury." Dillard's has conceded this much in its briefs. Therefore, the rebuttable presumption of work-relatedness is not defeated. That said, the ALJ ultimately concluded Lollar's November 12, 2018, muscle strain has been explained. The muscle strain was caused by Lollar walking within the course of his employment with Dillard's, and this conclusion is supported by substantial evidence detailed herein. Consequently, the ALJ rejection of Dillard's argument regarding "idiopathic injuries" is affirmed.

Finally, Dillard's asserts the ALJ erred in finding Dr. Heilig's impairment rating complied with the AMA Guides. We again disagree.

In George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004), the Kentucky Supreme Court held that while an ALJ is not authorized to independently interpret the AMA Guides, as fact-finder he may consult them in the process of assigning weight and credibility to evidence. Although assigning a permanent impairment rating is a matter for medical experts, determining the weight and character of medical testimony and drawing reasonable inferences therefrom are solely within the ALJ's authority. The ALJ is not required to engage in a detailed analysis under the AMA Guides, nor is he required to engage in a detailed

explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

In both the October 10, 2020, Opinion, Award, and Order and the November 12, 2020, Order, the ALJ provided a detailed explanation for his conclusion Dr. Heilig's 2% impairment rating for pain is in conformity with the AMA Guides. As the ALJ stated, the standard for providing an impairment rating for pain under the AMA Guides if the impairment rating assigned to the body part does not accurately encompass the pain-related burden experienced by the individual permits the physician to increase the impairment rating by up to 3%. The ALJ explained further:

> Because the 0% impairment for loss of range of motion, gait derangement, or other methods of impairment, which would be assessed under the AMA Guides section for lower extremity impairment does not adequately reflect the burden of Mr. Lollar's pain related impairment, and does not adequately address the impact of the injury upon the Plaintiff's life, the Administrative Law Judge finds that Dr. Heilig correctly assessed a pain-related impairment.

The ALJ also addressed Dr. Ballard's criticism of Dr. Heilig's impairment rating and why he believed Dr. Heilig's impairment rating is consistent with the AMA Guides. The ALJ reiterated these findings in the November 12, 2020, Order.

The ALJ was not required to second-guess Dr. Heilig's methodology and impairment rating. In fact, doing so would have been highly irregular. In Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003), the

Supreme Court held the proper interpretation of the AMA Guides is a medical question solely within the province of the medical experts. The ALJ's function, as fact-finder, is to weigh the evidence and select the rating upon which permanent disability benefits, if any, will be awarded. Knott County Nursing Home v. Wallen, 74 S.W.3d 706 (Ky. 2002). Here, the ALJ determined Dr. Heilig's impairment rating is in harmony with the AMA Guides, and we will not disturb this conclusion. On this issue, we affirm.

Accordingly, on all issues raised on appeal by Dillard's, the October 10, 2020, Opinion, Award, and Order and the November 12, 2020, Order are **AFFIRMED**.

ALL CONCUR.

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