

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 27, 2021

CLAIM NO. 201755308

DOLLAR GENERAL CORPORATION

PETITIONER

VS. **APPEAL FROM HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE**

STEPHANIE SAMUELS;
PAIN MANAGEMENT KENTUCKY;
CPA LAB PP;
JOSEPH FINIZIO, M.D.;
ANGELA SIMMONS, LCSW; AND
HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

BORDERS, Member. Dollar General Corporation (“Dollar General”) appeals from the April 12, 2021 Opinion, Award and Order and the May 14, 2021 Order on Petition for Reconsideration rendered by Hon. Stephanie L. Kinney, Administrative

Law Judge (“ALJ”). The ALJ found Stephanie Samuels (“Samuels”) is permanently totally disabled. On appeal, Dollar General argues the finding of permanent total disability is not supported by substantial evidence, as the opinions of Dr. Dennis Sprague, PhD. and Dr. Jules Barefoot do not constitute substantial evidence. Dollar General also argues the ALJ erred in finding treatment from Pain Management Kentucky is compensable. Finding no error, we affirm.

Samuels testified by deposition and at the hearing held on February 26, 2021. She is a 57-year-old high school graduate with an associate’s degree in computer science. Samuels served in the United States Navy in the 1980s. Following her discharge, she moved to Texas to be with her mother. In Texas, she worked for the post office delivering and sorting mail, and for Sears, where she changed tires. She ultimately moved to Kentucky to care for her father and began working for Humana where she performed a desk job researching claims, inputting data, and updating treatment plans. She worked at the Jefferson County Corrections Facility while attending college, where she maintained inmate records and entered judgments and court dates into the computer system. She then worked for LG&E, taking calls from customers regarding bills and taking reports of power outages. Samuels left LG&E and stopped going to school to care for her father. After a few months, she returned to the workforce with UPS where she performed a desk job from 2006 to 2013. She sustained a work injury to her lumbar spine from a fall in the parking lot. She underwent a lumbar fusion and never returned to unrestricted work. She was awarded Social Security disability benefits in 2012. She started work as a cashier/closer for Dollar General, under restrictions, on June 22, 2017. She worked

five to five and a half hours per shift, three days per week. Her responsibilities as a sales associate included operating the cash register, assisting customers, organization, and light cleaning.

Samuels was involved in an incident in February 2017 when she thought robbers were breaking into her car. Samuels shot at them from across the street and then called the police. When the police arrived, an officer slammed Samuels to the ground, resulting in injuries to her face, neck and left shoulder. She treated with Dr. Robert P. Scharff, her primary care physician, who obtained a cervical CT scan performed on February 10, 2017, that was read as negative with no acute fracture or subluxation. Vertebral body heights were maintained and there was no paravertebral soft tissue swelling. Some degenerative changes were noted. On February 23, 2017, Dr. Scharff noted Samuels was much better and her neck had improved. He indicated she should make a full recovery.

Samuels was involved in an altercation with a shoplifter on December 6, 2017. The shoplifter struck Samuels with a ceramic cup, causing a laceration to her forehead. Samuels treated at the emergency room where she was diagnosed with a cervical sprain and laceration. She continues to have constant neck pain from the base of her skull down to her shoulders and radiating to her fingertips. She experiences burning, cracking, soreness, and swelling in her neck. She stated she has loss of grip strength in her left hand and cannot lift more than five pounds. Her pain interferes with her sleep, leaving her lethargic during the day. She has to sleep sitting up in bed with her arm propped up. At the time of the Final Hearing, Dr. Joseph M. Finizio had not released her to return to work.

Samuels previously treated with Dr. Arul Verghis for pain management related to a 2012 lumbar injury. Following the work injury, Dr. Verghis saw Samuels on April 13, 2018, for reported neck, left shoulder, and low back pain. Dr. Verghis reviewed Samuels' cervical MRI, which showed mild cord compression at C3-4, C4-5, and C5-6, without cord signal abnormality. Samuels underwent physical therapy. Dr. Verghis prescribed Baclofen and Hydrocodone-Acetaminophen. A June 20, 2018 left shoulder MRI showed mild infraspinatus tendinopathy, no rotator cuff tear, and small subacromial/subdeltoid bursitis.

Records from Norton Healthcare document Samuels' treatment on December 11, 2017. Samuels reported a work-related assault by shoplifters on December 6, 2017. On December 19, 2017, she reported improved neck pain, but her low back pain had "flared." Dr. Scharff advised her to return to her spine surgeon for an assessment of her neck and lower back. On July 3, 2018, Dr. Scharff diagnosed cervical cord compression with myelopathy, post-traumatic stress disorder ("PTSD"), and left rotator cuff tendinitis due to the December 6, 2017 work-related assault.

Dr. Barefoot performed an independent medical evaluation ("IME") on September 12, 2018. On physical examination, Samuels had significant tenderness throughout the paracervical musculature extending to the suprascapular region, greater on the left; marked diminished grip strength in the left hand; decrease/asymmetric range of motion in rotation and lateral flexion; and significant signs of radiculopathy. Dr. Barefoot diagnosed cervical disc disease with ongoing radicular symptoms, trigger finger, right long finger, PTSD secondary to assault,

history of prior 2012 lumbar fusion, history of 2-cm. forehead laceration, and left periorbital trauma secondary to assault, resolved. Dr. Barefoot stated the cause of the diagnosed conditions, except for the prior lumbar fusion, was the December 6, 2017 work-related injury. Dr. Barefoot assigned an 18% impairment rating for DRE Cervical Category III pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, (“AMA Guides”) attributable to the December 6, 2017 work injury. While Samuels might have had underlying cervical osteoarthritis/degenerative disc disease prior to December 6, 2017, Dr. Barefoot opined the traumatic event activated the condition into its current, symptomatic, disabling reality. Dr. Barefoot recommended a referral to a spine surgeon for evaluation of the cervical complaints. Additionally, Dr. Barefoot indicated Samuels might need a referral to a pain management physician for consideration of injection therapy. Dr. Barefoot felt the ongoing left shoulder pain was referred pain from the cervical condition. Therefore, he assessed no impairment rating for the shoulder. Dr. Barefoot indicated Samuels had a transient increase in low back pain which had returned to baseline. Therefore, Dr. Barefoot assessed no impairment rating for her lumbar spine.

Samuels reported ongoing symptoms consistent with persistent PTSD. Dr. Barefoot noted she underwent limited counseling. Dr. Barefoot recommended a referral to a psychiatrist/psychologist for ongoing, intensive, group and individual, therapy. Dr. Barefoot explained this was an impairment-ratable condition and recommended a referral to a psychologist for evaluation. Dr. Barefoot opined Samuels reached maximum medical improvement (“MMI”) on September 12, 2018.

Dr. Barefoot opined Samuels would not be able to return to her prior position as a cashier, given her ongoing symptomatology regarding PTSD and her limitations related to her cervical spine injury. Dr. Barefoot indicated Samuels needs to sit and rest to relieve pain and discomfort. Dr. Barefoot assigned restrictions of not operating equipment due to limited mobility present in the cervical spine. Samuels was unable to repetitively lift, grasp, carry, push and pull with her left upper extremity.

Dr. Barefoot re-evaluated Samuels on February 19, 2019. He noted treatment with Dr. Djurasovic and Dr. Finizio, cervical epidural steroid injections, and physical therapy for her neck and pain management with Dr. Verghis were reasonable and necessary for treatment of her December 6, 2017 work-related injury. Additionally, Dr. Barefoot opined a recommended cervical surgery was reasonable and necessary for treatment of the work-related injury. Dr. Barefoot reiterated his assessment of an 18% impairment rating for the cervical spine. Dr. Barefoot stated his conclusions and limitations noted in his September 12, 2018 report remained unchanged.

Records from Our Lady of Peace Hospital reflect Samuels presented for psychological treatment on December 26, 2017, after an attack by a shoplifter on December 6, 2017. She suffered head lacerations and a concussion. She reported experiencing nightmares, hyperarousal, difficulty sleeping, and extreme anxiety, especially in social settings. She had been prescribed Lexapro by her primary care doctor and did not have a current outpatient therapist or psychiatrist. She was prescribed Prazosin at bedtime for nightmares and sleep. She reported group therapy

was effective. On January 26, 2017, Samuels was discharged for maximum therapeutic benefit. Her discharge diagnosis was acute PTSD and Prazosin was prescribed. Her condition and prognosis was fair.

Dr. Sprague performed an independent neuropsychological evaluation on October 10, 2018. Dr. Sprague interviewed Samuels and completed an interview worksheet, a history of medical complaints, and a review of her present emotional symptoms. A history was taken concerning her personal, social, medical, and occupational information and a review of her overall activities of daily living. Dr. Sprague diagnosed moderate depressive disorder, generalized anxiety disorder, PTSD and somatic pain disorder with prominent pain persistent, moderate to severe. Following the December 6, 2017 work accident, Samuels developed symptoms of exacerbated anxiety, depression, chronic pain, and PTSD. Although Dr. Sprague stated Samuels was not at MMI, he assessed a 14% impairment rating with 2-3% pre-existing impairment related to a 2012 back injury with accompanying persistent chronic pain. Dr. Sprague noted the physical and mental requirements of Samuels' job as primarily cashier-type work, with some cleaning. Dr. Sprague opined Samuels presently does not have the psychological capacity to return to work.

Dr. Daniel Garst performed an IME on December 3, 2018, and testified by deposition on March 11, 2019. Dr. Garst's diagnostic impression was long-standing and pre-existing major depressive disorder, recurrent, and mild PTSD. Dr. Garst believed the anxiety component was part of Samuels' depression. Dr. Garst believed Samuels had active depression at the time of the work-related injury, but it did not warrant an impairment rating then or now. Dr. Garst explained more

aggressive medication therapy would almost certainly control that portion of her illness. Dr. Garst opined her depression should not be permanent, if properly treated. Dr. Garst noted Samuels had only tried low doses of two anti-depressant drugs. Dr. Garst opined the PTSD was probably permanent. Dr. Garst opined the PTSD was active at the time of the incident and produced a pre-existing 1% impairment rating. Dr. Garst believed the work-related accident caused the impairment rating to rise to 2%, with one half pre-existing. Dr. Garst utilized the 5th and 2nd Editions of the AMA Guides, and assigned Class I, no impairment using the appropriate tables. Dr. Garst found evidence of symptom magnification, possibly hindering attempts to assign a proper impairment rating. Dr. Garst opined Samuels was not at MMI for her psychiatric condition.

During his deposition, Dr. Garst stated he diagnosed a pre-existing, major depressive disorder, recurrent, and mild PTSD, pre-existing and active, which had worsened mildly, as a result of the December 6, 2017 encounter. Dr. Garst indicated Samuels attributed her symptoms of anxiety and depression to that incident. Dr. Garst felt Samuels had lived in a state of distress for quite some time prior to the December 2017 incident. The additional information provided to Dr. Garst did not change his opinion. Dr. Garst felt, from a psychiatric perspective, Samuels was capable of resuming her former duties, especially if allowed to change shifts.

Dr. Robert Jacob performed an IME on January 30, 2019. He also testified by deposition on April 3, 2019. Dr. Jacob diagnosed cervical spondylosis, cervical spinal stenosis, and degenerative disc disease, which were pre-existing and

not due to the December 6, 2017 altercation. Dr. Jacob explained the cervical stenosis was essentially the same structural issue in pathology and anatomy as her lumbar stenosis. While Dr. Finizio informed Samuels that a lumbar fusion would provide 70% improvement, Dr. Jacob did not know if the recommended cervical fusion would obtain the same results. Dr. Jacob did not believe Samuels would have a good outcome from the proposed cervical fusion, noting she had a successful solid lumbar fusion but considered the surgery a failure. Dr. Jacob noted Samuels continued complaining of severe low back pain and was granted Social Security disability benefits. She had not been able to work except for a part-time job with Dollar General. Dr. Jacob noted the proposed cervical surgery was a more invasive and extensive surgery than the previous L5-S1 fusion. Based on his examination, he would not proceed with a two or three level cervical fusion. Instead, he recommended physical therapy.

Dr. Jacob indicated Samuels described dysesthesia or paresthesia in the fingers of her right hand. He did not consider these symptoms to be radiculopathy. Dr. Jacob explained the symptoms mostly were confined to her hand. Dr. Jacob did not find the problems were verifiable or non-verifiable radiculopathy, indicating they are more of a peripheral neurologic problem. Dr. Jacob noted Samuels had a positive Tinel's maneuver over her left carpal tunnel, which could explain some of her left hand numbness and tingling. He believed the records indicated Samuels had bipolar disease and suffered from anxiety and depression. Dr. Jacob did not think those were good prognosticators for a good surgical outcome. He acknowledged that, after the initial follow-up for the February

2017 incident, Samuels did not present for any additional treatment of her neck nor is there any diagnosis related to her neck for the next ten months leading up to the December 2017 work injury. She was unrestricted regarding to her neck prior to the December 6, 2017 work accident. Dr. Jacob agreed the medical record did not establish extensive treatment following the February 2017 incident and it appeared Samuels was much better within two weeks. Dr. Jacob acknowledged no doctor had recommended surgery for her neck prior to the December 6, 2017 accident. She consistently reported pain and symptoms in her neck from December 6, 2017 through the present.

The ALJ issued an Interlocutory Opinion, Award and Order on **July 31**, 2019 finding Samuels did not have a pre-existing active neck condition and that she suffered a compensable work-related neck injury. The ALJ resolved a medical dispute regarding the recommended cervical fusion in Samuels' favor.

On November 19, 2019, Dr. Finizio performed a C4-5 and C5-6 cervical fusion. Samuels was discharged on November 23, 2019. On March 16, 2020, Dr. Finizio noted Samuels was doing well post-operatively and restricted her from working until July 15, 2020. On July 13, 2020, Dr. Finizio continued the off work status. On November 9, 2020, Dr. Finizio noted Samuels had been off work since her surgery. She was to remain off work through May 11, 2021 at which time her status would be evaluated.

In a June 5, 2020 report, LCSW Angela Simmons confirmed she provided mental health counseling for Samuels for PTSD. LCSW Simmons indicated her diagnosis and treatment were reasonable and related to Samuels' work

injury. Samuels attended mental health counseling visits from September 2019, through August 2020, with LCSW Simmons. During those visits, she discussed struggles with managing her recovery and loss of independence. Those visits addressed her emotional distress connected to the work-related injury. She also discussed her grief following the death of her brother in approximately April 2019, and the deaths of her cousin, neighbor, and friend. She expressed anger and frustration with managing care for her brother.

Dr. Robert Sexton evaluated Samuels on June 23, 2020, and diagnosed resolved left supraorbital laceration, probable left carpal tunnel syndrome, and cervical spondylosis without any myelopathy or radiculopathy. Dr. Sexton characterized the cervical fusion as a total failure. He noted Samuels' chronic cervical pain complaints have been exacerbated following surgery. Dr. Sexton indicated Samuels reached MMI no later than May 1, 2020. Dr. Sexton opined she did not require additional medical treatment or work restrictions as a result of the December 6, 2017 work incident. Samuels has an 8% impairment rating as a result of the cervical surgery. However, he indicated she would have a 5% impairment rating prior to the surgery. He concluded Samuels had the physical capacity to return to her pre-injury job. Dr. Sexton noted Samuels demonstrated multiple areas of symptom magnification and exaggeration that warranted a diagnosis of malingering based on the DSM-IV and DSM-V.

On September 1, 2020, Dr. Barefoot evaluated Samuels and diagnosed a workplace injury secondary to assault, post-operative C4-5 and C5-6 fusion, anxiety, depression, and PTSD. He attributed the diagnoses to the December 6,

2017 work incident. Dr. Barefoot felt Samuels' diagnoses were supported by objective medical evidence. Since her cervical fusion, Samuels complained of intermittent numbness and tingling diffusely in both hands. He noted Samuels developed significant PTSD following the injury and required counseling. Dr. Barefoot opined the medical treatment had been reasonable and necessary. He placed Samuels at MMI on September 1, 2020. He assessed a 30% impairment rating related to the work injury. Dr. Barefoot indicated Samuels retained permanent impairment due to PTSD, which should be addressed by a psychiatrist/psychologist. He recommended work restrictions, indicating Samuels must be allowed to sit or lie and rest intermittently for relief of neck pain and discomfort. Additionally, she could not operate equipment due to the limited cervical mobility. She could not work on ladders, scaffolding, or at unprotected heights. Lastly, he indicated she was unable to lift or carry more than five pounds on an infrequent basis.

On September 8, 2020, Dr. Sprague evaluated Samuels by phone and issued an addendum to his October 10, 2018 report. He felt Samuels continued to suffer from anxiety, depression, PTSD, and somatic pain disorder with moderate symptoms. Dr. Sprague assessed 10% whole person impairment rating with 3% attributable to pre-existing impairment.

Dr. Walter Butler evaluated Samuels on January 28, 2021. He noted a myriad of traumas in her life from early childhood. Dr. Butler indicated Samuels' complex PTSD was active and causing impairment at the time of the December 6, 2017 work incident. He opined it would have been virtually impossible for a mental

health professional not to have diagnosed PTSD had Samuels sought mental health treatment earlier in her life. Dr. Butler noted Samuels' current complaints indicated very high symptom conversion and somatization. Psychological testing performed by Dr. Wayne Harper showed Samuels had elevations along several scales and symptom clusters in the Personal Assessment Inventory. In addition, scales suggested compromise along the obsessive-compulsive and borderline pathways. Further, scales for somatization were highly elevated. Overall, the psychological testing showed elevations for somatization, symptom exaggeration, traumatic distress and secondary moderate elevations for anxiety and depression. Dr. Butler opined Samuels was at MMI from a psychological standpoint. He did not recommend any permanent psychiatric restrictions. He found no clinical evidence to suggest Samuels has any psychiatric impairment due to the work injury and assessed 0% permanent impairment rating. In addition, he found no clinical indications for any medications, psychotherapy, or psychiatric work restrictions. He concluded Samuels' mood-related issues and anxiety pre-existed the work accident. Dr. Butler opined Dr. Sprague's October 2018 report was obsolete. His most recent contact with Samuels did not appear to be an evaluation, but rather a brief phone conversation and administration of two short surveys for depression and anxiety. Dr. Butler noted Dr. Sprague did not attempt to quantify or measure the severity of her PTSD. He felt Dr. Sprague's 10% whole person impairment rating was woefully out of proportion and appeared to be rendered with minimal consideration of the long history of clearly present but undiagnosed pre-existing mental illness.

The ALJ's findings relevant to this appeal are as follows, *verbatim*:

Samuels argues she suffers from a psychological condition as a result of the work injury. She relies on Dr. Sprague's reports and reports/records from LCSW Simmons. Conversely, DGS argues Samuels does not suffer from a work-related psychological condition.

Dr. Sprague issued two reports in this claim. Initially, he examined Samuels on October 10, 2018 and performed psychological testing. She produced a valid profile on the MMPI II and exhibited moderate depression and anxiety with the Beck Depression and Anxiety Inventory. Thus, Dr. Sprague's evaluation and testing supports the assertion that Samuels suffers from a psychological condition. Likewise, Dr. Daniel Garst diagnosed PTSD and depression, which he felt was at least partially related to the work injury.

Dr. Harper's psychological testing produced a valid profile on the Personality Assessment Inventory. However, he indicated the profile should be interpreted with caution due to high somatization and symptom magnification and negative distortion. Dr. Butler ultimately concluded that Samuels' mood-related issues and anxiety pre-existed the work injury and she does not suffer from a work-related psychological condition. This ALJ thoroughly considered Dr. Butler's opinion but ultimately found cause to reject it.

First, LCSW Simmons' treatment notes consistently illustrate an individual that is struggling with the work-related attack, medical treatment, and ongoing limitations. This ALJ fully notes Samuels' depression following the death of her father and the use of Lexapro. However, she was capable of performing her pre-injury job duties at the time of the work accident from a psychological standpoint. Thus, it appears any prior psychological symptoms were effectively managed prior to the work injury. However, this changed following the work injury as documented by LCSW Simmons' records. Furthermore, Dr. Robert Scharff diagnosed PTSD due to the work injury. Moreover, LCSW Simmons attributed her diagnosis and treatment to the work injury. Thus, treatment records support Dr. Sprague's opinions. Consequently, this ALJ finds Samuels sustained a psychological injury. In making this

finding, she relies on Dr. Sprague's opinions and LCSW Simmons' treatment records.

This ALJ notes DGS's argument that Dr. Sprague did not fully appreciate Samuels' prior psychological condition. However, Dr. Sprague clearly factored a pre-existing condition into his final opinions because he apportioned 3% of his overall impairment to Samuels' pre-existing condition. Thus, this ALJ is unable to conclude that Dr. Sprague's causation opinion is wholly insufficient under Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004).

Dollar General filed a Petition for Reconsideration making the same arguments it raises on appeal. The ALJ overruled Dollar General's petition finding in relevant part as follows, *verbatim*:

This ALJ notes the Plaintiff's prior history of cervical symptoms. However, she sustained a traumatic event to her cervical spine as a result of the work-related assault. Furthermore, this ALJ noted post-work-injury cervical diagnostic testing showed myelopathy, which warranted a cervical fusion that was awarded in this ALJ's interlocutory opinion. Additionally, Dr. Barefoot noted the Plaintiff had cervical osteoarthritis and degenerative disc disease, but ultimately concluded the work accident aggravated her cervical symptoms into a symptomatic, disabling reality. Again, this ALJ finds this opinion to be persuasive and substantial evidence because:

- the Plaintiff was capable of performing her pre-injury work and did not have any cervical limitations or disability;
- the Plaintiff sustained a traumatic work injury following an assault that caused trauma to her cervical spine; and
- the Plaintiff's post-work-injury cervical diagnostic study showed cord compression.

The Defendant also argues Dr. Sprague's causation opinion is not substantial evidence because he failed to note prior significant events or ongoing events that impact the Plaintiff's current psychological state. However, this ALJ does not find this argument to be

persuasive because Dr. Sprague considered non-work-related psychological factors and apportioned his impairment rating. Furthermore, the Plaintiff pursued mental health counseling following the work accident and these treatment records reflect an individual struggling to cope with the work-related attack, medical treatment, and ongoing limitations. Thus, this ALJ is not convinced that Dr. Sprague's opinion does not constitute substantial evidence.

This ALJ argues that Dr. Finizio's current work restrictions are only temporary. The Plaintiff underwent a cervical fusion on November 19, 2019 and reached maximum medical improvement on May 1, 2020 for her cervical injury. Thus, the Plaintiff reached maximum medical improvement long ago, but remains restricted from working. This ALJ considered several factors including the Plaintiff's age, education level, vocational skills, medical restrictions, and the likelihood that she can resume some type of "work" under normal employment conditions. Ira A. Watson Department Store v. Hamilton, Ky., 34 SW3d 48 (2000); and Ashland v. Stumbo, 461 SW 3d 392 (Ky. 2015). After doing so, this ALJ found the Plaintiff to be permanently and totally disabled.

Lastly, the Defendant argues this ALJ erred in finding pain management treatment compensable because the Plaintiff was undergoing pain management for a lumbar condition at the time of the work injury. However, this ALJ addressed this issue in her opinion. The ALJ noted the Plaintiff underwent prior pain management that was ongoing at the time of the work injury. The ALJ concluded Dr. Verghis attempted to treat the Plaintiff's cervical treatments conservatively prior to pursuing surgical intervention. Unfortunately, pain management did not quell her symptoms. However, that did not negate the compensability of the treatment. Furthermore, the Plaintiff saw Dr. Verghis on January 12, 2018 and he noted a new onset of left radicular pain following the work-related altercation. He continued to note cervical pain on April 13, 2018. Consequently, pre-operative pain management following the work injury appears reasonable and necessary in light of Samuels' diagnostic findings that showed cord compression. Thus, this ALJ found, and continues to find that pain

management treatment for the Plaintiff's work-related neck injury was reasonable and necessary treatment prior to pursuing cervical surgery. However, this ALJ stresses that she only found pain management treatment following the work injury to be reasonable and necessary in light of the Plaintiff's diagnostic findings that showed cord compression. (emphasis original)

On appeal, Dollar General argues substantial evidence does not support the ALJ's finding of permanent total disability. Dollar General argues the ALJ based that determination on a temporary physical restriction. It notes the ALJ relied on Dr. Finizio's temporary restriction from work. Dr. Finizio's last treatment note only stated he would keep her off work through May 11, 2021, at which time her status would be evaluated. Dollar General notes that Dr. Finizio did not place Samuels at MMI.

Dollar General argues the ALJ erred in finding Dr. Sprague's report constitutes substantial evidence. It contends the ALJ disregarded its argument pursuant to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004) in finding that Dr. Sprague's report apportioned impairment to a pre-existing psychological condition. However, Dollar General's argument was not that the report failed to apportion impairment to her pre-existing condition. Rather, Dollar General explained the only event documented in Samuels' psychological history in the report is her 2009 work injury at UPS. Dr. Sprague attributed a 3% pre-existing impairment for this incident. Dollar General asserts Dr. Sprague's report is incomplete and inaccurate as a result of its exclusion of Samuels' psychological history that included the loss of her sister at age 5, her difficult relationship with her father, a sexual assault while serving in the United States Navy, or other traumatic

physical and psychological experiences. Dollar General asserts the ALJ's reliance on Dr. Sprague's cursory opinion that did not consider the substance of Samuels' history and recent trauma is misplaced and has nothing to do with the Cepero argument. Without knowledge or consideration of her entire psychological history, Dr. Sprague was unable to determine the cause of her current psychological complaints. As such, his opinions on causation are not reasonably probable. It argues that pursuant to Cepero, his report cannot constitute substantial evidence regarding to any opinion on the issue of causation.

Similarly, Dollar General argues the ALJ erred in relying on Dr. Barefoot's report despite evidence that his report cannot constitute substantial evidence pursuant to Cepero. Dollar General notes the February 9, 2017 incident involving the police officer, injured her face, neck, and left shoulder and her subsequent cervical treatment is not mentioned in Dr. Barefoot's report. Dr. Sexton was critical of Dr. Barefoot's causation analysis, explaining his "opinion is nonsense neurologically, since her C3-C6 disc osteophyte complex preceded the 12-6-17 event." Dr. Barefoot's recitation of past medical history is inaccurate as it excludes an injury sustained to the same body part that occurred just months before the work incident. As a result, his report fails to consider the consequences of that injury, if any.

Finally, Dollar General argues the ALJ erred in finding the treatment from Pain Management Kentucky is compensable. It notes Samuels submitted a bill dated October 20, 2017, which cannot be deemed work-related, as the alleged work injury was not sustained until December 6, 2017.

As the claimant in a workers' compensation proceeding, Samuels had the burden of proving each of the essential elements of her cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because she was successful in that burden, the question on appeal is whether there was 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). 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).

The ALJ was faced with conflicting medical evidence regarding the extent of Samuels' disability. We begin by noting that even if the opinions of Dr. Barefoot and Dr. Sprague do not constitute substantial evidence, the record contained substantial evidence that Samuels had impairment ratings for the physical injury to her cervical spine and for the psychological injury. Substantial evidence supports the ALJ's determination that Samuels reached MMI from the cervical injury on May 1, 2020. In the Glossary of the AMA Guides, p. 601, MMI is defined as a "condition or state that is well stabilized and unlikely to change substantially in the next year, with or without medical treatment. Over time, there may be some change; however, further recovery or deterioration is not anticipated." Here, Dr. Finizio opined Samuels must remain off work through May 11, 2021, more than one year after the date Samuels had reached MMI as determined by the ALJ. While Dollar General characterizes Dr. Finizio's statement as a temporary restriction, Dr. Finizio only stated Samuels' condition would be evaluated at that time. He did not state he anticipated her condition would improve by that time. Dr. Finizio's opinion is certainly substantial evidence that Samuels remained incapable of performing any work more than one year after she reached MMI.

As noted by the ALJ, Samuels was capable of performing her pre-injury job duties at the time of the work accident from a psychological standpoint and it appears any prior psychological symptoms were managed effectively prior to the work injury. However, following the work injury, as documented by LCSW Simmons' records, her condition had changed. Dr. Robert Scharff diagnosed PTSD due to the work injury and LCSW Simmons attributed her diagnosis and treatment to the work injury. Dr. Garst also found a worsening of Samuels' PTSD caused by the work incident and stated there was a 1% increase in the impairment rating related to the work injury. Thus, substantial evidence in the record supports the ALJ's determinations.

The ALJ considered Dollar General's Cepero argument regarding Dr. Sprague's opinion. Cepero was a unique case involving a deliberate attempt by the employee to conceal a significant non-work-related injury to the left knee sustained only two-and-a-half years prior to the alleged work-related injury to the same knee. The prior, non-work-related left knee injury caused Cepero to be confined to a wheelchair for more than a month. The physician upon whom the ALJ relied in awarding benefits was not informed of this prior injury by the employee and had no other apparent means of becoming informed. In contrast, every physician who was adequately informed of this prior injury opined Cepero's left knee impairment was not work-related but, instead, attributable to the prior non-work-related injury.

Dollar General is correct in noting Dr. Sprague did not discuss the prior history in detail. He concluded that pain related to the 2012 injury to Samuels' lumbar spine was responsible for a portion of her psychological impairment.

However, Dr. Sprague noted a personal, social, and medical history were taken. Dollar General believes the only inference to be drawn from Dr. Sprague's failure to specifically address the prior history is that he did not receive such a history. However, an equally plausible explanation is that he only discussed the prior history that he believed contributed to her present psychological impairment. Dollar General could have deposed Dr. Sprague to determine whether he was aware of the specific incidents from Samuels' history that it contends are the cause of her psychological impairment but did not. The ALJ noted LCSW Simmons' treatment notes consistently illustrate an individual that is struggling with the work-related attack, medical treatment, and ongoing limitations resulting from that incident. Those notes are substantial evidence that the work-related injury caused at least some portion of the current psychological impairment. Because substantial evidence establishes the work-related injury caused psychological impairment and Dr. Sprague considered pre-existing history and impairment, it cannot be said his opinion is based upon such an inaccurate or incomplete history as to be rendered completely lacking in probative value as a matter of law. Based upon the evidence presented, it was incumbent upon the ALJ to determine the appropriate weight to be given the evidence. The ALJ considered Dollar General's Cepero argument and determined she was unable to conclude that Dr. Sprague's causation opinion is wholly insufficient under Cepero. Based upon the record, we cannot conclude otherwise.

Regarding Dr. Barefoot's opinion, we find Cepero, supra, is inapplicable. There is nothing akin to Cepero in the case *sub judice*. The evidence does not compel a finding that the February 2017 incident produced any significant

ongoing effects. Dr. Jacob acknowledged the medical record did not establish extensive treatment following the February 2017 incident, and that it appeared Samuels was much better within two weeks. Dr. Jacob further acknowledged no doctor had recommended surgery for her neck prior to the December 6, 2017 accident. Any failure by Dr. Barefoot to address the February 2017 incident does not rise to such a level as to render his opinion lacking in probative value. The ALJ was free to assign whatever weight she deemed appropriate to Dr. Barefoot's opinion.

While Dollar General has identified evidence supporting a different conclusion, there was substantial evidence presented to the contrary. As such, the ALJ acted within her discretion to determine which evidence to rely upon, and it cannot be said her conclusions are so unreasonable as to compel a different result. Ira A. Watson Department Store v. Hamilton, supra.

Finally, no additional findings are required regarding the award of medical benefits. In the May 14, 2021 Order overruling Dollar General's Petition for Reconsideration, the ALJ stressed she found pain management treatment following the work injury is reasonable and necessary in light of the diagnostic findings that showed cord compression. This finding clearly does not include pain management billings for services that predate December 6, 2017.

Accordingly, the April 12, 2021 Opinion, Award and Order and the May 14, 2021 Order rendered by Hon. Stephanie Kinney, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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