

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 29, 2021

CLAIM NO. 202000841

FORD MOTOR COMPANY (KTP)

PETITIONER

VS.

APPEAL FROM HON. TONYA M. CLEMONS,
ADMINISTRATIVE LAW JUDGE

JOYIA CHASE-MILES
and HON. TONYA M. CLEMONS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
REVERSING IN PART AND REMANDING

* * * * *

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

STIVERS, Member. Ford Motor Company (KTP) (“Ford”) seeks review of the February 8, 2021, Opinion, Award, and Order of Hon. Tonya M. Clemons, Administrative Law Judge (“ALJ”) finding Joyia Chase-Miles (“Miles”) suffered cumulative trauma injuries to her upper extremities including hands, wrists, and arms on December 27, 2019, while in the employ of Ford. The ALJ awarded temporary total disability (“TTD”) benefits, permanent partial disability benefits,

enhanced by the three multiplier contained in KRS 342.730(1)(c)1, and medical benefits. Ford also appeals from the March 12, 2021, Order ruling on its Petition for Reconsideration.

On appeal, Ford challenges the finding Miles sustained repetitive motion injuries to her left upper extremity as the finding is unsupported by the evidence. Ford also argues the ALJ erred in finding Miles' claim for a left upper extremity injury is not barred by the statute of limitations.

BACKGROUND

Miles' Form 101, filed June 19, 2020, alleges "as a result of repetitive job duties, condition in both arms and right shoulder became occupationally disabling requiring surgery on 12/27/19." An attachment to the Form 101 is the October 21, 2019, report of Dr. Rodrigo Moreno with Kleinert Kutz & Associates Care Center (Kleinert Kutz").

On July 9, 2015, Miles filed a workers' compensation action, Claim No. 2014-59440, against Ford alleging that on August 17, 2014, as a result of repetitive job duties she injured her right hand and wrist. She subsequently amended her claim to include a left hand and wrist injury occurring on the same date.

In the earlier claim, Ford introduced the report of Dr. Thomas Gabriel who assessed a 1% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the evaluation of Permanent Impairment, for Miles' work-related right carpal tunnel syndrome. Dr. Gabriel concluded the symptoms on the left "are not supported by electrodiagnostic changes."

Miles introduced the report of Dr. Jeffrey Fadel who assessed a 7% permanent impairment rating due to the August 17, 2014, right upper extremity work injury. He noted she had undergone surgical intervention on the right wrist and release of carpal tunnel syndrome.

A Form 110 Settlement Agreement approved by Hon. Udell Levy, Administrative Law Judge on January 21, 2016, reflects the parties settled the claim for a lump sum of \$8,500.00. The agreement provides Ford paid \$7,497.17 in medical expenses. Since Miles lost no work, TTD benefits were not paid. Regarding the specifics of the settlement, the agreement reads as follows:

This is a compromise settlement of a disputed claim wherein the parties have agreed to settle for a lump sum payment of \$8,500.00 for 1) resolution of all present indemnity including all TTD and PPD for the right hand/wrist/carpal tunnel claim, and 2) the claimant's voluntary dismissal, without prejudice, of her amended application involving the left hand/wrist/carpal tunnel syndrome. The defendant agrees that it will waive any joinder related issues should this become an issue in the future; however, there will [sic] no waiver as to statute of limitations. Of the lump sum payment of \$8,500.00, \$100 shall be in consideration for the claimant's voluntary dismissal of the left hand/wrist/carpal tunnel claim. The claimant retains all rights under the Act as it relates to the right carpal tunnel syndrome including all reasonable and necessary medical treatment. The settlement agreement is inclusive of attorney fees.

In the subject claim, Ford filed a Special Answer relying upon the "defense limitations contained in KRS 342.125, KRS 342.185, 342.270, 342.316, or other applicable statute."

Miles testified at a September 3 2020, deposition and the December 16, 2020, hearing. At the time of her deposition, Miles was 30 years old and had

been employed by Ford for eight years. She began working at Ford in 2012. She had previously undergone surgery performed by Dr. Huey Tien which she characterized as carpal tunnel release of the right hand and wrist. Miles underwent a second surgery in 2019. She provided a comparison between her condition resulting from the 2014 injury and her condition due to the subject injury:

Q: So if you would explain, how is this claim, right upper extremity or right wrist and hand injury from the date of December 2019 for your surgery, how is that different from your old injury, if that is the same body part?

A: Yes, ma'am. It's different because the pain just isn't in my right hand anymore. It's traveled up to my forearm and also to my elbow to where I have – I can't think of the name of it. It's not carpal tunnel.

I had carpal tunnel surgery, but it's something that's going on with my arm. It's a pain that shoots up my arm. And I'm still having issues with my hand and fingers and tingling, and they cramp up a lot.

Q: So the difference basically is that the pain now, it travels from your hand and wrist up your forearm up to your right elbow; is that correct?

A: Yes, ma'am.

Q: Okay.

A: Cubital tunnel I believe is what it's called.

Q: Got it. When you had the surgery in 2019, was that from cubital tunnel syndrome?

A: No, ma'am. I believe that was for carpal tunnel, and I also had surgery on my forearm. They called it a pronator release, so I do believe that was for cubital tunnel as well.

Miles first started noticing pain in her right forearm and elbow in April or May 2019. Miles had transferred to the Kentucky Truck Plant just before her

symptoms surfaced. At that time, she was working at a right-hand wire loom position. She described the symptoms she first experienced:

Q: How long were you doing the right-hand wire loom position before you started to notice symptoms?

A: I had been on that job for about two, three months, but before that, I was using a heavy mallet on the door plugs job, so I would have to take a mallet and put the car parts in and hammer that in pretty hard for them to stay in. And I was on that job for about a year and a half.

Q: What was that called, the door job?

A: Honestly, I'm not sure of the exact official name, but we just call it door plugs.

Q: You did that for how many years?

A: A year and a half.

Q: And while doing the door plugs job, was that when you started first noticing the symptoms in your forearm and elbow?

A: Yes, ma'am. Also my right shoulder.

Q: And your right shoulder, okay. Are there any other body parts aside from your right wrist and hand, your left wrist and hand and your right shoulder you're claiming were injured?

A: No, ma'am.

Q: So both hands and – both upper extremities and the right shoulder, correct?

A: Yes, ma'am.

Miles testified her left hand and wrist symptoms appeared in March or April 2019. She explained:

Q: Tell me about your left hand and wrist and your left arm. When did you start noticing symptoms in your left side?

A: I would say about March, April.

Q: Of 2019, correct?

A: Yes, ma'am.

Q: And describe for me, if you would, what those symptoms were like?

A: It's like a shooting pain. It's always tingling. It's like a sticking pain where it's numb like it's falling asleep. My wrist is really sore all the time.

Q: So I want to go back a little bit and talk about the jobs you were doing when these symptoms started. You said that you did the right-hand wire loom job, but it was really – and correct me if I'm wrong, but it sounds like you really started noticing problems in your right arm and wrist and shoulder during the door job; is that correct?

A: No, ma'am. I noticed like a stiffness and problem in my shoulder doing the door job, but my right hand and – yeah, the left hand and left hand and wrist didn't start hurting until I got on the wire loom job is when I started noticing problems.

Q: So as far as you can tell, it seems like your right shoulder got hurt doing the door plug job, and your hands and arms got hurt doing the wire loom job; is that fair?

A: Yes, ma'am, I guess. Yes, ma'am.

From June to November 2019, Miles was off work on no work available status. Following the December 27, 2019, surgery, Ford had her sit at a picnic table for a two-week period. After that she moved to different sections of the plant “doing this or that” for approximately one month. Miles was then placed on no available work status. Miles has not returned to work since March 2020 as she was placed on medical leave for Covid-19.

Because her right arm symptoms were more prominent, Dr. Tien injected her right wrist which helped with tightness and pain but not the constant numbness and tingling. The numbness and tingling occurs in the fingertips extending to the upper arms and elbows. Her current physical problems are as follows:

Q: Is there anything you used to be able to do that you can't do now because of the right arm, the left arm or the right shoulder or both shoulders? What are some things that you used to be able to do that you can't do now?

A: I really can't open jars, anything that has to do with tightening. I have problems putting on my bra a lot of the time. I definitely can't go bowling anymore.

Anything like really to do with high energy activity or something like that I'm not able to do. And things like gripping, like just carrying a lot of heavy stuff, my arms get really tired very quickly, so I really can't hold on to things for like a long period of time.

Q: Are you able to still cook and clean?

A: Yes, but mopping is an issue for me.

Q: Is that because of your wrist, or is it because of your shoulder?

A: It's because of both.

She testified as follows regarding when she first experienced left hand or arm symptoms while working for Ford:

Q: When was the first time you ever had any symptoms in your left hand or arm while working at Ford? Would it have been back in the old claim, or would it just be for this new claim?

A: I'm not completely sure of the dates, but I pulled a muscle in my left shoulder, and it's been bothering me ever since. I want to say that was in 2015 or '16, but I'm not completely sure of that at all.

Q: Okay. For your left shoulder, was that part of your previous claim?

A: No, ma'am.

Q: What happened with your left shoulder? Did it get better, or is it still bothering you?

A: It still bothers me.

Q: Tell me what kind of symptoms you have in the left shoulder.

A: The same ones, stiffness, tightness. Sometimes I have muscle spasms in the elbow going up to my neck.

Miles provided the following regarding her post-2015 settlement symptoms in the upper extremities:

Q: Okay. After that case ended and you were released from care in 2015 or 2016, did you have any ongoing symptoms in your – in either one of your arms?

A: Yes, ma'am. My left arm will hurt – tingling a bit, but I mean, I've had some aches and pains from working at Ford. You know, Ford is a hard job. So, you know, you have problems when they move you or just you have to acclimate to the job period.

There was never a time that I actually didn't hurt, but as time went on, I noticed that this was different, that this was, you know, really starting to bother me, getting progressively worse.

Q: Got it. And your left arm continued to tingle after you were released from care in 2015 or '16.

Did you have any other symptoms that continued after you were released from care back in 2016 or 2016 to either hands, arms, or shoulders?

A: Just the main numbness and tingling. Like I drop things a lot, because I feel like my hands are asleep all the time.

Q: Was that in one or both hands?

A: Mainly my right, because the left is – and especially on that wire loom job, because I have to pick up those heavy wires. We do like well maybe 800 trucks a night.

So putting those heavy wire looms inside the door and bending my right wrist with my left wrist and having to interlock those in the doors and bend them back, you know, really far and all of that is really bothering me.

Q: About how long did you perform the wire loom job?

A: About two or three months.

Q: Before the wire loom job, were you having any symptoms in your left and right arms or wrists?

A: Not out of the normal, no, ma'am.

Q: Were you having any ongoing symptoms in your shoulders?

A: Yes, ma'am.

Q: What job were you doing when you first noticed problems with your shoulders?

A: The door plugs.

Miles described her current problems as follows:

Q: While I have been observing you giving your answers, I noticed at various times, I think a couple of times, I saw you sort of elevate and rotate your shoulders towards your ears. I think I saw you scratch your arm a few times, scratch your right arm.

I saw you kind of rub your right arm at various points. Is there a reason for that besides from just –

A: Yes, because they feel like they're kind of asleep, like numb and tingling, so I do that constantly to where I'm always shaking my hands or kind of moving my shoulders, because they feel like they're just kind of numb and tingling, and they hurt (indicating).

Q: Throughout an average day, how often would you say you experience that to where you have to kind of

engage in the rotation of the shoulders or rubbing your arms and that kind of thing?

A: Oh, that's constant.

Q: Was that something that you had to do prior to April of 2019?

A: For my shoulders, yes, but for my hands, no.

Q: With your shoulders, when did you first notice that you had to do that sort of rotation (indicating)?

A: I would say when I was on the sealer job or the door plug job.

Much of Miles' hearing testimony is a reiteration of her deposition testimony. However, she elaborated further concerning the requirements of her door plug job. She also provided a more in-depth description of the wire loom job and she detailed the activities of that position which she believed impaired her upper extremities.

The only work restriction imposed by Dr. Tien after the first surgery was no hard trigger pulling. She believed the 2015 surgery "definitely allowed [her] to – to get through all the – the --- tingling and tightness in [her] hands." She explained that December 27, 2019, is listed as the date of injury in the current litigation because that is when she underwent surgery for carpal tunnel in the right wrist as well as pronator release in her upper right arm. Miles compared her 2019 symptoms to the symptoms arising from the 2015 injury:

Q: My question really is – is, do you feel that the symptoms that you experience in connection with the injury we're here for today, do those differ from the symptoms that you were having that led to that 2015 injury?

A: Yes, sir.

Q: How so?

A: It's just more of a – a tingling and a sharp pain of my arms. When before, I didn't have that. It's tingling in these fingers. I'm not sure of the correct doctoral name, but it's just a different feeling. It's a different pain.

Q: When you pointed to these fingers, which ones are you talking about?

A: The pinky and the – the ring finger –

Mr. Mayhorn: (Interrupting) Okay.

A: -- and it's like a shoot – shooting pain up my arm.

Q: Okay. And it looked like you – to me, you were holding up your right arm and pointing towards the interior part, closest to your – your chest there –

A: (Interrupting) Yes.

Q: -- about the shoulder?

A: Yes, sir.

Q: Is there any difference in terms of severity?

A: Yes, sir. Yes, sir. Absolutely. Sometimes it feels like I just can't, like, get my hands together. There's a – like I said, a sharp pain, so it just kind of makes me – it's hard to describe even. It's just really painful.

Miles furnished the daily symptoms in her right and left hand.

Q: ... If you would, describe for the judge what kind of symptoms you're having on a daily basis in your right hand, wrist and arm?

A: Okay. I'm still having a lot of tingling and tightness. A lot of times I have to put my hands in hot water just so they'll loosen up a lot of times. But as far as my wrist is – if I'm, like, lifting groceries or something, I get a tight pain across here (Indicating), but, like, as far at the wrist motion. And it's just hard for me to like chop things. And, also, open jars, I still can't do that.

Q: And when you pointed and said right here, it looked like you were pointing just right at the wrist line there where it bends?

A: Uh- huh (affirmative).

...

Q: ... Now, let's get into the physical symptoms for your left hand, wrist and left upper extremity, your left arm. What symptoms are you having there on a day-to-day basis?

A: It's a lot of tightness in my arm, basically. As far as my shoulder, I can't really bend it all the way. It's very tight a lot of the times. It's just a lot of pain as well. I'm constantly moving my hands. I know you guys have probably seen me do that. I'm constantly trying to shake off that – that tingling and numbness feeling. And it's just really – they're just really tight all the time. It's, really, like a lot of pain.

Miles also recounted the activities in which she was able to engage prior to the December 27, 2019, injury, which now cause her problems. She believed she is unable to return to work in the wire loom position but is capable of returning to the door plug position or working in the paint department.

Miles did not agree with her deposition testimony given in the previous claim that the 2015 right carpal tunnel release surgery did not help.

Ford submitted Dr. Jerry Magone's September 25, 2020, Independent Medical Examination ("IME") report and subsequent addendums and the treatment records of Kleinert Kutz relating to the treatment of the 2015 work injury and the subject work injury. Ford also introduced many of the pleadings in Claim No. 2014-59440 including the reports of Drs. Gabriel and Fadel.

Miles introduced the October 7, 2020, IME report of Dr. Jules Barefoot and a supplement.

The November 4, 2020, Benefit Review Conference Order & Memorandum (“BRC Order”) reflects the parties disputed whether Miles sustained work-related alleged injury or injuries on December 27, 2019. No TTD benefits were paid but medical benefits were paid totaling \$9,481.01. The contested issues were work-related injury/causation, statute of limitations and/or repose, permanent income benefits per KRS 342.730 with multipliers, average weekly wage, TTD benefits, exclusion for pre-existing impairment, credit for unemployment benefits, and unpaid or contested medical expenses. Under “Other contested issues” is “1) Entitlement to future medical benefits; 2) Injury, as defined by the Act; 3) New injury vs Continuation of prior injury.”

In a November 25, 2020, Order the ALJ amended the BRC Order to identify the following additional contested issues:

The BRC Order and Memorandum is amended to identify the following additional contested issues: 1) Whether Plaintiff should have reopened an 8/17/14 claim; 2) Failure to join an indispensable party; 3) Proper use of the AMA Guides; and 4) Pending motion to dismiss. The issue of TTD benefits was previously preserved on the BRC Order for adjudication.

After summarizing the evidence, the ALJ found Miles’ claims were not barred by the statute of limitations:

A. Statute of Limitations:

Defendant has raised the issue of statute of limitations as a bar to Plaintiff’s claim with respect to her left wrist/hand. It argues that the same injury was alleged in 2014 with medical evidence that she was aware she had symptoms that were attributable to her work with Defendant. Thus, it argues Plaintiff missed the two-year statute of limitations. Plaintiff argues that her claim was submitted within the applicable statute of

limitations as it was submitted within two years of her symptoms in her right shoulder and bilateral upper extremities starting, which was approximately February and April 2019, respectively; the condition became occupationally disabling when she had surgery in December 2019; and the claim was filed in June 2020.

Issues of statute of limitations are controlled by the Act, which requires that an application for adjustment of claims for compensation in a cumulative trauma claim be filed within two years after the employee is told by a physician that the cumulative trauma is work-related. KRS 342.185(3).

Unlike an acute injury, cumulative trauma claims involve a series of mini-traumas. Randall v. Pendland, 770 S.W.2d 687 (Ky. App. 1988). The date symptoms arise may differ from the date of manifestation for notice and statute of limitations purposes. American Printing House for the Blind v. Brown, 142 S.W. 3d 145 (Ky. 2004). The date of the accident has been interpreted as the date of discovery. Alcan Foil Products v. Huff, 2 S.W.3d 96 (Ky. 1999). However, “for cumulative trauma injuries, the obligation to provide notice arises and the statute of limitations does not begin to run until a claimant is advised by a physician that he has a work-related condition.” Consol of Kentucky, Inc. v. Goodgame, 478 S.W.3d 78, 82 (Ky. 2015); Hill v. Sextet Mining Corp., 65 S.W.3d 503 (Ky. 2001).

As applied in this matter, Plaintiff testified that she continued working for Defendant after 2016 and would experience problems when moved to a new job position and she had to acclimate to the different position. She began to experience pain in her bilateral upper extremities in April or May 2019 approximately two to three months after she began work in a new position at the right-hand wire loom that was different from any prior symptoms.

Dr. Tien’s records reflect diagnoses that include pronator teres syndrome on the right greater than the left and notes “WC” after the diagnoses in June 2020. The Form 101 for conditions of the bilateral upper extremities was filed on June 19, 2020.

Having reviewed the facts and evidence, the ALJ finds the records of Dr. Tien to be the most credible and persuasive on this issue. Accordingly, the ALJ relies upon the records of Dr. Tien as well as Plaintiff's testimony in finding that Plaintiff has met her burden of proof that the claim for bilateral upper extremity injury was filed within the applicable two-year statute of limitations.

In finding Miles sustained bilateral upper extremity work injuries due to cumulative trauma, but not a right shoulder cumulative trauma work injury, the ALJ provided the following:

Having reviewed all the evidence on this issue, the ALJ finds the opinions of Dr. Barefoot to be the most credible and persuasive. Accordingly, the ALJ relies upon the testimony from Dr. Barefoot and Dr. Tien in finding that Plaintiff suffered on-going work-related cumulative trauma to her bilateral upper extremities due to her work activities with symptoms became disabling on December 27, 2019.

Finally, the ALJ finds that Plaintiff has not met her burden to establish that she suffered any permanent or ongoing work-related injury or condition affecting her right shoulder due to cumulative trauma from her work activities with Defendant. Accordingly, Plaintiff claim for a right shoulder cumulative trauma or injury as a result of her work activities is dismissed. This finding is based upon the medical opinions of Dr. Barefoot and Dr. Magone.

The ALJ found Miles retains an 8% impairment rating resulting from the 2019 right upper extremity injury:

Dr. Barefoot assessed Plaintiff with 11% AMA whole person impairment for the right upper extremity. He then split the prior impairments of 7% from Dr. Fadel and 1% from Dr. Gabriel offered in connection with the prior 2014 claim to apportion 3% to pre-existing impairment. Thus, he found 8% AMA impairment was related to the April 2019 cumulative trauma. Dr. Magone, on the other hand, assessed 0% impairment attributable to the work injuries.

Ford filed an extensive Petition for Reconsideration raising, in part, the same arguments it makes on appeal.¹ In the March 12, 2021, Order, the ALJ amended the amount of TTD benefits awarded and granted Ford an offset for wages paid from December 27, 2019, through January 9, 2020. The ALJ also clarified that Ford's previous motion to dismiss the claim based on the statute of limitations was overruled. Concerning her finding of work-related bilateral upper extremity injuries, the ALJ overruled the Petition for Reconsideration reasoning as follows:

As noted in the Opinion, the records of Dr. Tien as well as the opinions of Dr. Barefoot were relied upon in finding compensable work-related cumulative trauma to the bilateral upper extremities. Plaintiff was diagnosed with pronator teres syndrome on the right in October 2019 and with pronator teres syndrome on the right greater than the left in June 2020. Plaintiff testified to her continued work with Defendant, how her symptoms differed, and when she began to experience those new symptoms. The claim was filed in June 2020.

To the extent that the Opinion does not clearly identify the bilateral upper extremity diagnoses, the Opinion is clarified to reflect that Plaintiff suffered cumulative trauma in the form of bilateral pronator teres syndrome due to her work with Defendant. These diagnoses differ from the bilateral carpal tunnel diagnoses upon which Defendant relies in connection with this matter.

Therefore, the ALJ declines to disturb the finding that Plaintiff suffered compensable cumulative trauma injuries to her bilateral upper extremities due to her work activities that were timely filed. Accordingly, as the remaining patent errors alleged by Defendant in its Petition are a re-argument of the merits of the claim, Defendant's Petition on those issues is **OVERRULED**.

On appeal, Ford asserts the finding of a left upper extremity injury is not supported by medial evidence. Ford directs us to Dr. Barefoot's diagnostic

¹ Ford also raised other issues which are not subject to this appeal and will not be addressed.

impression and impairment rating set forth in his November 7, 2020, IME report. It asserts Dr. Barefoot did not provide a causation opinion regarding the left upper extremity or left shoulder. Thus, Ford argues Miles failed to prove a work-related left upper extremity injury.

In a related argument, Ford asserts the ALJ erroneously found Miles' claim for a left upper extremity injury is not barred by the statute of limitations. It references the settlement agreement in Claim No. 2014-59440 stating Miles' claim for left wrist/left hand carpal tunnel syndrome was dismissed. It also notes that pursuant to the agreement, Miles retained the right to medical treatment of right carpal tunnel syndrome. Thus, in Ford's view, there is no new repetitive trauma to the left upper extremity, and Miles' claim is a continuation of her prior claim. It emphasizes as follows:

Respondent has not met her burden of proving the occurrence of a new Injury to her left upper extremity. She has not met her burden of proving work-relatedness/ causation for any new injury to her bilateral upper extremities or her elbow.

...

Dr. Barefoot's reports nor any other evidence in the instant case provided any causation opinion to any body part other than the right wrist/arm. (Emphasis not ours).

Ford requests the Board to "render an appropriate Opinion, reversing the ALJ's award with direction to dismiss the left upper extremity claimed injury and a finding that a Statute of Limitations precludes the left upper extremity award as discussed above."

Significantly, Ford does not attack the findings of a work-related right upper extremity work injury, the finding of an 8% impairment rating attributable to the right upper extremity work injury, and the award of income benefits.

ANALYSIS

Miles, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of her cause of action including causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Miles 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). 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 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).

Because the medical evidence does not support a finding Miles sustained an injury to her left upper extremity including her hand, wrist, and arm, we reverse the finding she sustained work-related cumulative trauma injury to her bilateral upper extremities on December 27, 2019, the date upon which her symptoms became disabling. In finding Miles sustained a left upper extremity injury, the ALJ relied upon the opinions of Drs. Barefoot and Tien. Relying upon Dr. Barefoot, the ALJ determined Miles had an 11% impairment rating for the right upper extremity. She then found 3% of the impairment rating was due to a pre-existing condition of the right upper extremity leaving an impairment rating of 8% attributable to the subject work injury. The ALJ specifically acknowledged the 11% impairment rating and the resulting 8% impairment rating was an impairment of the

right upper extremity. The ALJ made no finding of an impairment rating attributable to the left upper extremity. In the subsequent Order ruling on the Petition for Reconsideration, the ALJ referenced Dr. Moreno's October 21, 2019, medical record. Although Dr. Moreno diagnosed "Carpal Tunnel Syndrome, bilateral upper lesions," the record does not reveal he rendered any further treatment supporting a finding Miles sustained a permanent injury to the left upper extremity.

Similarly, Dr. Tien's records also do not support a finding of a permanent left upper extremity injury. In his June 17, 2020, medical record, Dr. Tien listed the chief complaint as right arm pain. He indicated the procedure performed on December 27, 2019, was "redo right carpal tunnel release, right pronator teres release, and right carpal tunnel release." Although he diagnosed bilateral carpal tunnel syndrome, Dr. Tien did not discuss the severity and permanency of the left carpal tunnel syndrome in this record. Dr. Tien's recommendation was "right hand N/T, recurrent CTS with new ulnar sided symptoms, awaiting EMG/NCS, return after test." In the August 28, 2020, record, Dr. Tien noted "Shooting pain in forearm, Ulnar three digits." He stated the December 27, 2019, procedure related solely to the right upper extremity. Although he provided a diagnosis of bilateral carpal tunnel syndrome, Dr. Tien offered no opinion regarding the nature of the carpal tunnel syndrome in the left upper extremity nor did he provide an opinion regarding the severity and permanency of the condition. In all of the Kleinert Kutz records, there is no information elaborating on the severity or permanency of the carpal tunnel syndrome of the left upper extremity. Consequently, the ALJ could not rely upon the

records of Drs. Moreno and Tien in finding Miles sustained a work-related left carpal tunnel syndrome injury justifying an award of income and medical benefits.

Further, Dr. Barefoot's October 7, 2020, IME report does not support the finding of left upper extremity injury. Dr. Barefoot's diagnostic impression is:

1. History of cumulative traumatic workplace injury to the right upper extremity manifesting itself on April 26, 2019 when evaluated by Dr. Tien.
2. December 27, 2019: Right carpal tunnel release and right pronator teres release.
3. Right ulnar nerve neuropathy with a persistent mild right median nerve dysesthesia.
4. May 14, 2015: History of a prior right carpal tunnel release.

Notably, the diagnostic impression does not indicate Miles sustained a left upper extremity injury. Consistent with his diagnosis, Dr. Barefoot calculated the following impairment:

In regards to her right ulnar nerve neuropathy, refer to Page 492 of the Guides, Table 16-15, ulnar nerve, above mid forearm, motor and sensory equals 50%.

From Page 482 of the Guides, Table 16-10 and Page 484 of the Guides, Table 16-11 she would be placed in a Grade 4 impairment and assigned 25%.

Multiplying 50% by 25% equals a 13% impairment.

In regards to her ongoing persistent median nerve dysfunction, refer to Page 492 of the Guides, Table 16-15, median nerve below mid forearm, motor and sensory, equals a 45% impairment.

From Page 482 of the Guides, Table 16-10 and Page 484 of the Guides, Table 16-11, she would be placed in a Grade 4 impairment and assigned 15%.

Multiplying 45% by 15% equals a 7% impairment.

Referring to page 604, Combined Values Chart, combining a 13% impairment with a 7% impairment equals a 19% upper extremity impairment.

Referring to Page 439 of the Guides, Table 16-3, a 19% upper extremity impairment equals a 11% Whole Person Impairment.

Therefore, I would rate her current Whole Person Impairment in regards to her right upper extremity at 11%. (Emphasis added).

Dr. Barefoot determined Miles had a 3% pre-existing impairment due to the May 14, 2015, workplace injury which notably was an injury of the right upper extremity and not the left upper extremity. He apportioned all of the 8% impairment rating to Miles' repetitive workplace activities which were brought into symptomatically painful and disabling reality for which she sought treatment with Dr. Tien on April 26, 2019. Consistent with his impairment rating of the right upper extremity, Dr. Barefoot noted Miles would have difficulty with repetitive lifting, grasping, and carrying with her right upper extremity. In addition, she should not operate vibratory equipment with her right hand or arm and not repetitively push and pull with her right upper extremity. Dr. Barefoot offers no opinion regarding whether Miles sustained a left upper extremity injury. His entire report relates to the right upper extremity injury and the impairment rating attributable to this injury after considering the pre-existing impairment rating for the previous right upper extremity injury. Dr. Barefoot's November 7, 2020, addendum to his IME report reads in relevant part:

In his report, Dr. Magone assigned a 0% impairment for her right upper extremity cumulative trauma injury.

I must respectfully disagree with this assessment.

As noted by Dr. Tien, she had evidence of an ulnar nerve neuropathy. He did recommend nerve conduction studies, which apparently were not done.

He did note evidence of a right median nerve neuropathy, for which he performed surgery on December 27, 2019, for a right carpal tunnel release and right pronator teres release.

On her examination in my office on the above noted date, she did have physical findings consistent with a right ulnar nerve neuropathy, with abnormal two-point discrimination in the ulnar digits of her right hand, as noted in the examination on that date.

She continued to have consistent complaints of diminished grip strength in her right hand, and once again this was demonstrated on the Jamar dynamometer grip strength measurements that were done on that date.

Therefore, I continue to stand by my assessment of an 11% whole person impairment of her right upper extremity.

Finally, in his August 28, 2020, report, Dr. Tien did not impose any restrictions regarding Mile's use of the left upper extremity. To the contrary, Dr. Tien allowed Miles to return to work using her left hand. He noted Miles could return to work performing strictly one-handed work and she was not to use the right arm.

Since substantial evidence does not support the finding Miles sustained a left upper extremity work injury, the finding of a left upper extremity injury must be reversed and the claim remanded with directions to enter an amended opinion, award, and order finding Miles did not sustain a left upper extremity work injury meriting an award of future income benefits and medical benefits. Although Drs. Moreno and Tien diagnosed left upper extremity carpal tunnel syndrome, nothing in their records support a finding of a permanent injury as neither doctor offered medical opinions regarding the severity and permanency of the left upper extremity

injury. As previously noted, Dr. Tien allowed Miles to return to work using only her left upper extremity. Our ruling concerning Ford's first argument renders moot its second argument relating to the statute of limitations.

Accordingly, that portion of the February 8, 2021, Opinion, Award, and Order finding Miles sustained a left upper extremity work injury and any award of medical benefits is **REVERSED**. We specifically note Dr. Barefoot did not assess an impairment rating for the left upper extremity. Further, since Ford does not challenge the impairment rating attributable to the right upper extremity injury and the award for the right upper extremity injury, on remand, the ALJ shall not alter the award of income and medical benefits for the right upper extremity injury.

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