

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 8, 2020

CLAIM NO. 2018-92173 & 2018-00555

FORD MOTOR COMPANY (LAP)

PETITIONER

VS. **APPEAL FROM HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE**

TERRY ARTIS;
DR. ETHAN BLACKBURN;
NORTON WOMEN'S & CHILDREN'S HOSPITAL; AND
HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING**

* * * * *

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

BORDERS, Member. Ford Motor Company (LAP) (“Ford”) appeals from the December 2, 2019 Opinion, Order, and Award, and the January 8, 2020 Order on Reconsideration, rendered by the Hon. Monica Rice Smith, Administrative Law Judge (“ALJ”). The ALJ awarded Terry Artis (“Artis”) temporary benefits for an

April 30, 2016 left knee injury, and dismissed her claim for permanent partial disability (“PPD”) benefits, and future medical benefits. The ALJ also awarded temporary total disability (“TTD”) benefits and PPD benefits, based on an 11% whole person impairment, and medical benefits for her March 31, 2017 bilateral upper extremity injuries.

On appeal, Ford argues the ALJ erred in awarding TTD benefits from June 9, 2017 through November 5, 2017; in awarding 12% interest on past due benefits; in awarding PPD benefits based on an 11% impairment rating; and in failing to clarify the extent of medical benefits awarded for the upper extremity injuries. For reasons to be set forth herein, we affirm in part, vacate in part, and remand to the ALJ for a decision in conformity with this Opinion.

Artis testified she is a 53-year-old high school graduate with some college course work, who worked for Ford on the assembly line at the Louisville truck plant. Her previous work history consisted of primarily factory work. Artis allegedly suffered two work-related injuries. The first occurred on April 30, 2016 when she was crossing over the assembly line, she stepped on a grommet on the floor, causing her to fall and injure her left knee. She reported the incident and received medical care. No TTD benefits were paid and she returned to work for Ford without restrictions, earning equal or greater wages.

Artis alleged she sustained a right upper extremity injury on March 31, 2017 due to operating an air gun. She also alleged she suffered an injury to her left upper extremity due to overcompensating for the right upper extremity. As a result of her bilateral upper extremity injuries, Artis has undergone bilateral carpal tunnel

surgeries and has returned to work for Ford earning equal or greater wages. However, she continues to suffer from residual pain in both upper extremities and her left knee.

Of significance to this appeal, Artis testified she worked at Ford from June 19, 2017 through November 15, 2017. The wage records submitted by Ford reflect Artis was paid wages during this timeframe. At the time of the hearing, Artis continued to work for Ford, without restrictions, earning equal or greater wages.

Medical records of the Shea Orthopedic Group were submitted by Artis. The records reflect treatment Artis received for the left knee condition and are not relevant to this appeal, and will not be discussed.

Artis submitted medical records from Ford Medical documenting treatment of her knee and upper extremity injuries. Of significance is the May 7, 2018 statement from Dr. Ethan Blackburn opining Artis was restricted from working due to her upper extremity injuries from June 19, 2017 through April 30, 2018.

The FCE from KORT was also considered. The report revealed Artis retains the physical capacity to return to her former work.

The Independent Medical Evaluation (“IME”) report, dated May 24, 2018, of Dr. Jules Barefoot was considered by the ALJ. Dr. Barefoot received a history of the March 31, 2017 work-related incident where Artis used an air gun to install screws into a vehicle, and developed problems with her right upper extremity. Dr. Barefoot limited his evaluation to the upper extremities. He received a history of Artis’ medical treatment received to date and reviewed all medical records and diagnostic studies performed to date. Dr. Barefoot performed a detailed physical

examination. Based on the foregoing, Dr. Barefoot diagnosed Artis with right carpal tunnel syndrome/median nerve dysfunction per EMG/NCV, right ulnar neuropathy per EMG/NCV, ulnolunate abutment syndrome and tear TFCC per MRI, DeQuervain's syndrome tenosynovitis of the right thumb, history of mild triggering right thumb, and status post carpal tunnel release on the right. Dr. Barefoot assessed an 11% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), for the right upper extremity. Dr. Barefoot did not find any ratable impairment for Artis' left upper extremity.

A supplemental report of Dr. Barefoot, dated August 24, 2018, was considered. In this report, Dr. Barefoot opined Artis does not retain the physical capacity to return to her prior work as a result of her right upper extremity injuries.

The first report of injury submitted to the Department of Workers' Claims ("DWC") was considered. The report indicates a right thumb injury was reported to the DWC, by Ford, as occurring on March 31, 2017.

Pre and post injury wage records, consisting of a Form AWW-1 were considered. Of significance, the records indicate Artis received wages for work performed at Ford from June 19, 2017 through November 15, 2017.

Medical records from Dr. Patrick Bauer were considered by the ALJ. The records concern treatment Artis received for her left knee injury and are not germane to the issues on appeal, and will not be discussed.

Medical records from Dr. Ethan Blackburn were considered. The records filed on June 11, 2018 indicate Artis received treatment and surgery from Dr.

Blackburn for right carpal tunnel syndrome. Dr. Blackburn assessed Artis a 0% functional impairment rating per the AMA Guides, but imposed restrictions of no forceful gripping/grasping, no use of vibratory tools with the right hand, no use of impact tools with the right hand, no repetitive pinching with right hand, and no lifting over 20 pounds with the right hand. Also considered was a report dated July 2019 indicating Artis felt much better and was released to return to work without restrictions.

The vocational report of Dr. Ralph Crystal was considered. Dr. Crystal performed a vocational evaluation and opined Artis retains the ability to work from a vocational standpoint.

The IME reports of Dr. Stacie Grossfeld were considered. Dr. Grossfeld initially saw Artis on August 31, 2018 for evaluation of her alleged left knee injury of April 30, 2016. She received a history of Artis stepping on a grommet at work causing her to fall, and strike her left knee and hip. She was also aware of the upper extremity injuries of March 31, 2017, but did not evaluate Artis for those injuries at that time. Dr. Grossfeld received a treatment history, and reviewed all medical records and diagnostic studies. Dr. Grossfeld performed a detailed physical examination of the left lower extremity. Dr. Grossfeld diagnosed Artis with left knee and left thigh contusions caused by the work accident of April 30, 2016 that had fully resolved, and for which she retained a 0% impairment pursuant to the AMA Guides. Dr. Grossfeld opined Artis' condition should have resolved by February 20, 2017, when she reached maximum medical improvement ("MMI"). Dr. Grossfeld felt she

needed no additional medical treatment for the left knee condition, and could return to work without restrictions.

Dr. Grossfeld saw Artis for a second IME on September 19, 2018 for her right upper extremity injuries. Dr. Grossfeld received an updated history from Artis regarding her right upper extremity injury of March 31, 2017, and reviewed all medical records and diagnostic studies regarding treatment she had received. Dr. Grossfeld also performed a detailed physical examination of the upper extremities. Dr. Grossfeld opined Artis had a right cubital tunnel syndrome and mild right carpal tunnel syndrome causally related to the March 31, 2017 work injury. Dr. Grossfeld opined Artis retains a 0% impairment rating pursuant to the AMA Guides for her right upper extremity condition, had reached MMI, required no further medical care, and could return to work without restrictions. Dr. Grossfeld disagreed with Dr. Barefoot's opinions regarding impairment.

Dr. Grossfeld saw Artis for a third IME on July 22, 2019. This evaluation covered the upper extremities and the left knee. Dr. Grossfeld received an updated history, reviewed all medical records, as well as all diagnostic studies. She also performed a detailed physical examination. Dr. Grossfeld diagnosed Artis with bilateral carpal tunnel syndrome causally related to the March 31, 2017 work injury, as well as a left knee and thigh contusion from the April 30, 2016 work injury. She opined Artis retains a 0% impairment rating for all three conditions, needs no additional medical treatment for either the upper extremities or left knee, and can return to work without restrictions.

A final hearing was held with the issues identified as benefits per KRS 342.730, work-relatedness/causation, injury as defined by the Act, ability to return to work, medical fee dispute concerning laboratory testing, TTD rate and duration, and the proper use of the AMA Guides. In an Opinion, Order, and Award, the ALJ provided, in relevant part, the following findings of facts and conclusions of law which are set forth *verbatim*:

After careful review of the evidence, the ALJ finds Artis has satisfied her burden of proving she sustained work related injuries on April 30, 2016 and March 31, 2017. The ALJ finds Artis' testimony credible in all aspects.

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The ALJ finds Artis sustained work related injuries to both upper extremities on March 31, 2017. Artis testified her job at Ford required her to perform repetitive and forceful work with her hands and wrists. She developed pain and numbness in her right hand while working. While on one hand duty because of her right hand condition, she developed symptoms in her left hand. Further, the EMG/NCV reveals sensory changes consistent with the diagnosis of carpal tunnel syndrome and cubital tunnel syndrome. Artis had no prior symptoms in her upper extremities until she experienced the symptoms in right hand on March 31, 2017. Despite having carpal tunnel release surgeries, Artis continues to have pain and numbness in her hands and arms with prolonged use. She continues to have to use her TENS unit despite no longer performing repetitive forceful activities with her hands and arms. The ALJ is persuaded by the opinion of Dr. Barefoot regarding the upper extremities.

Dr. Barefoot diagnosed right carpal tunnel syndrome/median nerve dysfunction; right ulnar nerve neuropathy; ulnolunate abutment syndrome; DeQuervain's tenosynovitis of the right thumb; and history of triggering of index and small fingers of right

hand. Dr. Barefoot opined the work injury brought Artis' condition into disabling reality. Dr. Barefoot assigned an 11% WPI for the right upper extremity. He advised there is no ratable impairment for the left upper extremity. Even Dr. Grossfeld diagnosed bilateral carpal tunnel syndrome and right cubital tunnel syndrome directly work related.

Based on the foregoing, the ALJ finds Artis sustained work related injuries to her left knee on April 30, 2016 and her bilateral upper extremities on March 31, 2017.

4. Benefits per KRS 342.730 – Ability to return to work

To qualify for an award of permanent partial benefits under KRS 342.730, the claimant is required to prove not only the existence of a harmful change as a result of the work-related traumatic event, he is also required to prove the harmful change resulted in a permanent disability as measured by an AMA impairment. KRS 342.0011(11), (35), and (36).

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With regard to the upper extremity injuries of March 31, 2017, the ALJ finds Artis sustained an 11% impairment. The ALJ is persuaded by the opinion of Dr. Barefoot. Dr. Barefoot assigned an 11% WPI for the right upper extremity. He explained his calculations of the impairment based on his examination and Artis' residual symptoms.

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5. TTD

The ALJ finds Artis is entitled to TTD benefits from June 19, 2017 through April 30, 2018 at a rate of \$575.75. KRS 342.0011 defines temporary total disability as the condition of an employee who has not reached a level of improvement that would permit a return to employment. Pursuant to *Central Kentucky Steel v. Wise*, 19 S.W.3d 657 (KY 2000), a worker is entitled to TTD until he attains MMI or is able to return to his

“customary” work duties. *Trane Commercial Systems v. Tipton*, 481 S.W.3d 800, (KY 2016), held that when an injured work has not reached MMI, but has reached a level of improvement sufficient to permit a return to his “customary employment,” it is inappropriate to award TTD benefits, absent extraordinary circumstances.

On May 3, 2018, Dr. Blackburn opined Artis had been totally disabled from work since June 19, 2017 due to his right hand condition. Dr. Blackburn advised Artis could return to work with permanent restrictions on April 30, 2018.

Based on the foregoing, the ALJ finds that Artis is entitled to TTD benefits from June 19, 2017 through April 30, 2018.

6. Unpaid or Contested Medical Expenses

Under KRS 342.020, the employer shall pay for the cure and relief from the effects of an injury the medical, surgical, and hospital treatment, including nursing, medical and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability. The obligation shall continue so long as the employee is disabled regardless of the duration of income benefits. The legislature’s use of the conjunctive “and”, which appears in subsection 1 of KRS 342.020 “cure and relief” was intended to be construed as “cure and/or relief.” *National Pizza Company v. Curry*, 802 S.W.2d 949 (Ky.App. 1991). Unproductive treatment or treatment outside the type of treatment generally accepted by the medical profession is unreasonable and non-compensable. That is a finding made by the administrative law judge based upon the facts and circumstances surrounding each case. *Square D Co. v. Tipton*, 862 S.W.2d 308 (Ky. 1993).

Based on finding of work injuries on April 30, 2016 and March 31, 2017, the ALJ finds Artis is entitled to medical expenses for the injuries. Having found Artis sustained a temporary left knee injury on April 30, 2016, which produced no permanent impairment Artis is entitled to temporary medical expenses until she attained MMI. Having found Artis sustained permanent

work related injuries on March 31, 2017, she is entitled to medical benefits pursuant to KRS 342.020. Dr. Barefoot opined all the treatment procedures for the March 31, 2017 upper extremities injuries have been reasonable, medically necessary and work related. Further, even Dr. Grossfeld opined all treatment up through the MMI dates (May 7, 2018 and May 30, 2018) for the upper extremities would be appropriate.

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ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED AND ADJUDGED:**

1. Plaintiff, Terri Artis, shall recover from Ford Motor Co. and/or its insurance carrier temporary total disability benefits at the rate of \$ 575.75 per week from June 19, 2017 through April 30, 2018, together with interest at the rate of 12% per annum on all due and unpaid installments of such compensation through June 28, 2017, and 6% per annum on all due and unpaid installments of such compensation on or after June 29, 2017. The defendant/employer shall take credit for any payment of such compensation heretofore made.

2. Plaintiff, Terri Artis, shall recover from Ford Motor Co. and/or its insurance carrier, permanent partial disability benefits at the rate of \$63.33 per week commencing on March 31, 2017 and continuing for 425 weeks, thereafter together with interest at the rate of 6% per annum on all due and unpaid installments of such compensation, provided, however, that the period of payment of permanent partial disability benefits shall be suspended during any intervening period of temporary total disability. The defendant/employer shall take credit for any payment of such compensation heretofore made.

3. The Plaintiff shall recover medical expenses from Ford Motor Co, including but not limited

to provider's fees, hospital treatment, surgical care, nursing, supplies, appliances, prescriptions, and mileage reimbursements as may be reasonably required under KRS 342.020 for the cure and relief from the effects of the April 30, 2016 work injury up through June 11, 2016. The Defendant's obligation shall be commensurate with the limits set by the Kentucky Medical Fee Schedule.

4. The Plaintiff shall recover medical expenses from Ford Motor Co, including but not limited to provider's fees, hospital treatment, surgical care, nursing, supplies, appliances, prescriptions, and mileage reimbursements as may be reasonably required under KRS 342.020 for the cure and relief from the effects of the March 31, 2017 work injury. The Defendant's obligation shall be commensurate with the limits set by the Kentucky Medical Fee Schedule.

Ford filed a Petition for Reconsideration arguing the ALJ erred in relying on the opinions of Dr. Barefoot awarding PPD benefits based upon an 11% impairment rating. It argued the ALJ should have based her opinion on the testimony of Dr. Grossfeld and Dr. Blackburn who assessed Artis a 0% functional impairment rating, and requested additional findings. Ford also argued the ALJ erred in finding the left upper extremity injury work-related and awarding future medical benefits for that condition. Artis filed a Petition for Reconsideration arguing the ALJ should have awarded future medical benefits for treatment of the left knee. In an Order dated January 8, 2020, the ALJ ruled as follows:

“This matter comes before the undersigned Administrative Law Judge pursuant to the Petition for Reconsideration filed by Terri Artis and Ford Motor Company. After reviewing the Petitions for Reconsideration, the Opinion and Award, the

Responses to the Petitions, and being otherwise sufficiently advised,

IT IS HEREBY ORDERED Ford's Petition for Reconsideration with regard to the medical fee dispute for the November 9, 2017 lab work is **SUSTAINED**. The specific charges for lab work on November 9, 2017 appear to be non-work related. The lab testing was from Norton Women's & Children's Clinic. The test appears to be for general labs. There is no evidence this testing is related to any work injury. The December 2, 2019 Opinion, Award and Order shall be corrected to state the November 9, 2017 lab work bill for \$930.00 is not compensable. The remainder of Ford's Petition is **OVERRULED**. As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (KY 1993). The ALJ had the right to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the same adversary party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (KY 1977). Ford's Petition is a rearguing of the facts and request to reweigh the evidence. The ALJ found the opinion of Dr. Barefoot most persuasive with regard to impairment. The ALJ explained her reliance on Dr. Barefoot, which was consistent with Artis' continued complaints. Further, the ALJ used "even" with regard to Dr. Grossfeld's diagnoses to indicate she also found Artis to have injuries including **bilateral** carpal tunnel syndrome and right cubital tunnel syndrome, which she found work related. With regard to the interest rate, Parton Bros. Contracting Inc. v. Lawson, et. Al. No.: 2018-CA-000804-WC(11/15/2019, not to be published), is on appeal to the Supreme Court and not final at this time. The ALJ finds no error on the face of the Opinion, Order and Award.

On appeal, Ford argues the ALJ erred in awarding TTD benefits from June 19, 2017 through April 30, 2018, as the evidence indicated Artis was receiving pay for work performed at Ford from June 19, 2017 through November 15, 2017.

Ford argues the ALJ erred in awarding interest on benefits at 12%, as the law mandates interest payable at 6%. Ford argues the ALJ erred in determining Artis retained an 11% impairment rating as a result of her upper extremity injuries, and in awarding future medical benefits for injuries to both upper extremities. Ford also argues Dr. Barefoot's assessment of an 11% functional impairment rating is not substantial evidence and the ALJ should have relied upon the opinions of Dr. Grossfeld and Dr. Blackburn who assessed 0% functional impairment ratings. Ford argues this matter should be remanded to the ALJ with instructions to reduce the amount of TTD awarded and to dismiss Artis' claim for PPD and medical benefits resulting for her bilateral upper extremity conditions.

As the claimant in a workers' compensation proceeding, Artis had the burden of proving each of the essential elements of her claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because she was successful in proving entitlement to benefits, the question on appeal is whether the substantial evidence supports 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 supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The 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 reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). If the ALJ's rulings are reasonable under the evidence, they may not be disturbed on appeal.

Ford argues the ALJ erred in awarding TTD benefits from June 14, 2017 through April 30, 2018. It points to the pre and post injury wage records indicating Artis was paid by Ford for work performed from June 19, 2017 through November 5, 2017. Artis' testimony regarding her work during this timeframe was confusing. It does not appear the ALJ considered the wage records and awarded TTD benefits based entirely on the statement of Dr. Blackburn, opining Artis was restricted from work from June 19, 2017 through April 30, 2018. We do not believe the ALJ properly analyzed the conflicting evidence on this issue. Therefore, we vacate the award of TTD benefits during that period and remand this matter to the ALJ for the proper analysis and decision. We do not express an opinion on the

outcome but believe a more thorough analysis is required to allow for proper appellate review.

Ford next argues the ALJ erred in awarding interest on past due benefits at 12%. Ford argues the ALJ should have adopted the recent amendments to KRS 342.040, limiting the interest rate on unpaid benefits to 6%.

As an initial matter, we observe this Board is faced with five decisions from the Court of Appeals, three which hold that the amendment to KRS 342.040(1) (contained in House Bill 223) does not have retroactive application and two which hold the amendment has retroactive application when an award is rendered on or after June 29, 2017. In Excel Mining, LLC v. Maynard, 2018-CA-000511-WC, rendered September 14, 2018, Designated Not To Be Published, and Slater Fore Consulting, Inc. v. Rife, 2018-CA-000647-WC, rendered June 21, 2019, Designated Not To Be Published, the Court of Appeals held the 6% rate of interest was not applicable to unpaid income benefits due prior to June 29, 2017. In Parton Bros. Contracting, Inc. v. Lawson, 2018-CA-000804-WC, rendered November 15, 2019, Designated Not To Be Published, and Warrior Coal, LLC v. Martin, 2018-CA-001430-WC, rendered January 10, 2020, Designated Not To Be Published, the Court of Appeals held all income benefits awarded on or after June 29, 2017, bear 6% interest. Consequently, the Board was reversed in upholding the awards of 12% interest on income benefits due on or before June 28, 2017. Most recently, in Excel Mining, LLC v. Sowards, 2018-CA-001316-WC, rendered March 20, 2020, Designated Not To Be Published, the Court of Appeals reaffirmed its holding in Excel Mining, LLC v. Maynard, *supra*, declaring 12% interest is payable on all

unpaid installments of income benefits due on or before June 28, 2017, and 6% interest is payable on all unpaid installments of income benefits due on or after June 29, 2017.

We choose to rely upon the first, second, and fifth decisions of the Court of Appeals holding the 6% interest rate only applies to unpaid installments of income benefits due on or after June 29, 2017, and not prior to that date. Thus, we affirm the ALJ's award of 12% interest on all due and unpaid installments of income benefits due on or before June 28, 2017, and vacate that portion of her Opinion awarding 12% interest on all benefits due after June 29, 2017. The ALJ is directed to enter an award on remand assessing 6% interest on all unpaid installments of income benefits due on or after June 29, 2017. In Lawnco, LLC v. White, Claim No. 2014-69882, rendered January 12, 2018, we held as follows:

We previously addressed this issue in Limb Walker Tree Service v. Ovens, Claim No. 201578695, Opinion rendered December 22, 2017, holding as follows:

In Stovall v. Couch, *supra*, the Court of Appeals resolved the very issue raised by Limb Walker on appeal. Couch was determined to be totally occupationally disabled due to coal workers' pneumoconiosis ("CWP"). The issue on appeal was whether the Board erred in awarding interest at the rate of 12% on all past due benefits. On the date of last injurious exposure to CWP the statute allowed 6% interest on unpaid benefits. However, the statute was subsequently amended effective July 15, 1982, increasing the interest rate to 12% per annum on each installment from the time it is due until paid. In determining the employer owed 6% interest on all past due installments through July 14, 1982, and 12% on all unpaid installments thereafter, the Court of Appeals concluded as follows:

On this appeal, appellants contend that KRS 342.040, governing the rate of interest on past due installments, was misapplied. On the date of last injurious exposure, that statute allowed 6% interest on such benefits. However, the provision was amended, effective July 15, 1982, increasing the rate of interest to 12% per annum on each installment *from the time it is due* until paid. To uphold the Board's award would amount to retroactive application of the amendment, appellants contend.

As this particular application of KRS 342.040 has yet to be the topic of an appellate decision, both sides in this controversy look for analogy to the case of *Ridge v. Ridge*, Ky., 572 S.W.2d 859 (1978). *Ridge* dealt with the application of an amendment to the statute governing the legal rate of interest on judgments. The Kentucky Supreme Court decided:

... to adopt the position that the rate of interest on judgments is a statutory rather than a contractual matter. We therefore hold that the increase of the legal interest rate applies prospectively to prior unsatisfied judgments, the new rate beginning with the effective date of the amendment. *Id.* at 861.

Appellants assert that, employing the logic of *Ridge*, the 12% rate of interest should begin on the effective date of the statutory amendment, July 15, 1982, and that prior to that date, interest should be 6% as per the old statute. Appellee Couch looks to the language in *Ridge*, namely that the new rate of interest “applies prospectively to prior unsatisfied judgments,” thus concluding that the rate of interest is controlled by the date of judgment and not the date of accrual of the cause of

action, and that the 12% rate in effect upon the date of judgment is applicable.

In *Campbell v. Young*, Ky., 478 S.W.2d 712, 713 (1972), the then Court of Appeals discussed the question of when interest was to begin accruing on unpaid compensation benefits. That court held that interest was due from the date *the claim for compensation was filed*. In the instant case, when Couch filed his claim, the interest rate in effect was 6% per annum. In our opinion, the plain wording of KRS 342.040 dictates that appellants may only be assessed interest on unpaid benefits at 6% prior to July 15, 1982, and at 12% thereafter. Consequently, the Board's award to the contrary and the lower court's affirmation thereof was in error.

Id. at 437-438.

The same logic applies in the case *sub judice*. Onen's entitlement to PPD benefits vested at the time of the injury. Thus, as of the date of injury and up through June 28, 2017, Ovens is entitled to 12% interest on all past due benefits. Ovens is entitled to 6% interest on income benefits accrued from and after June 29, 2017.

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The language contained in Section 5 of HB 223 does not provide any support for the premise that unpaid benefits due prior to June 29, 2017, bear interest at the rate of 6%. Rather, we conclude Section 5 of HB 223 denotes that any awards entered on or after June 29, 2017, shall contain a provision that any unpaid benefits generated on or after June 29, 2017, bear interest at the rate of 6% per annum. There is nothing in Section of HB 223 which mandates that income benefits due prior to June 29, 2017, bear interest at the rate of 6% per annum. More importantly, Section 5 is not contained in the actual amendment of KRS 342.020. As directed by KRS 446.080(3), no statute shall be construed to be retroactive unless expressly so declared. There is no

language in the amended statute containing an express provision that the applicable interest has retroactive application.

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Contrary to Lawnco's assertion, Stovall, supra, resolves the issue before us. In our view, the language contained in Section 5 of HB 223 does not compel the result Lawnco seeks, especially since the language is not in the present version of KRS 342.040. Consequently, we find no distinction between the facts in Stovall, supra, and the case *sub judice*.

Contrary to Artis' assertion, the recently enacted House Bill 2, which became effective July 14, 2018, provides no support for its position. Section 3 of House Bill 2 contains the following amendment of KRS 342.040(1):

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of six percent (6%) per annum on each installment from the time is due until paid, except that if the administrative law judge determines that **the delay was caused by the employee, then no interest shall be due, or determines that** a denial, delay, or termination in the payment of income benefits was without reasonable foundation, **then** the rate of interest shall be twelve percent (12%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make

payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter. (emphasis in original).

Notably, Section 20 of House Bill 2 directs that the amendment of KRS 342.040(1) contained in Section 3 of the bill “shall apply to any claim arising from an injury or occupational disease or last exposure to the hazards of an occupational disease or cumulative trauma **occurring on or after the effective date of this Act.**” (emphasis added). The remainder of Section 20 delineates those portions of House Bill 2 which have retroactive application:

(2) Sections 2, 4, and 5 and subsection (7) of Section 13 of this Act are remedial and shall apply to all claims irrespective of the date of injury or last exposure, provided that, as applied to any fully and finally adjudicated claim, the amount of indemnity ordered or awarded shall not be reduced and the duration of medical benefits shall not be limited in any way.

(3) Subsection (4) of Section 13 of this Act shall apply prospectively and retroactively to all claims:

(a) For which the date of injury or date of last exposure occurred on or after December 12, 1996; and

(b) That have not been fully and finally adjudicated, or are in the appellate process, for which time to file an appeal has not lapsed, as of the effective date of this Act.

Conversely, House Bill 223 enacted in 2017 amending KRS 342.040(1), which is set forth in Section 2 of the Act, contains no statement or provision directing the change in interest rate has retroactive application. Subsection 5 of House Bill 223 states Section 2 of the Act amending KRS 342.040(1) applies to all workers’ compensation orders entered or settlements approved on or after the effective date of the Act. We interpret this to mean that, in all awards rendered or

settlements approved on or after June 29, 2017, the interest rate on all unpaid income benefits due on or after June 29, 2017, changed to 6%.

The assertion that House Bill 2 supports the conclusion the 2017 amendment has retroactive application to unpaid income benefits due on or before July 28, 2017, has no merit as House Bill 2 is devoid of language suggesting the 2017 change in interest rate to 6% applied to unpaid income benefits due on or before July 28, 2017. The 2017 legislature drew a line of demarcation by decreeing the change in the interest rate applied prospectively to all awards rendered or settlements approved on or after June 29, 2017, since it inserted no language in House Bill 223 referencing retroactive application. The legislature did not decree the 2017 amendment to KRS 342.040(1) had retroactive application as it did in portions of the 2018 amendment to Chapter 342. Consequently, Section 5 of House Bill 223 cannot be construed as requiring a change to 6% interest on unpaid income benefits due on or before June 28, 2017, since unlike House Bill 2, it contains no retroactive verbiage. If the 2017 legislature intended House Bill 223 to have retroactive effects, it would have so decreed as it did in Section 20 of House Bill 2.

Therefore, the ALJ's determination of the applicable interest rate to the entire award of PPD benefits herein shall be paid at 6% was in error. Therefore, that portion of the ALJ's Opinion is vacated and remanded to the ALJ for the entry of an opinion consistent with this opinion.

Regarding Ford's argument the ALJ erred in determining Artis was entitled to an award of PPD benefits based on an 11% impairment rating and in awarding future medical benefits for treatment of Artis' bilateral upper extremity

conditions, we find no error. Ford argues the ALJ should have relied on the opinions of Dr. Grossfeld and Dr. Blackburn.

The ALJ was faced with conflicting medical evidence. The ALJ properly weighed the evidence, including what she deemed to be the credible evidence from Artis, concerning her pain and physical residuals from her upper extremity injuries, and determined she had met her burden of proving she suffered from bilateral upper extremity injuries as defined by the Act. The ALJ thereafter found Dr. Barefoot's opinions, regarding permanency of the bilateral upper extremity conditions, more persuasive and awarded benefits accordingly. Ford argues the ALJ should have relied on the more credible evidence from Dr. Grossfeld and Dr. Blackburn. The ALJ disagreed, which is her prerogative. We believe the ALJ properly exercised her discretion and therefore her findings will not be disturbed on appeal.

Accordingly, the December 2, 2019 Opinion, Order, and Award, and the January 8, 2020 Order rendered by Hon. Monica Rice Smith, Administrative Law Judge, are hereby **AFFIRMED IN PART and VACATED IN PART**. This claim is hereby **REMANDED** for entry of an Opinion in conformity with this Opinion.

ALL CONCUR.

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