

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: November 8, 2019

CLAIM NO. 201890837

HAIER APPLIANCE SOLUTIONS

PETITIONER

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

KATHALEEN CHRAPPA AND  
HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

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

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

**ALVEY, Chairman.** Haier Appliance Electronics (“Haier”) appeals from the June 27, 2019 Opinion, Award and Order, and the July 12, 2018 and August 1, 2019 orders denying its petitions for reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”). The ALJ awarded Kathaleen Chrappa (“Chrappa”) temporary total disability (“TTD”) benefits, permanent partial disability

(“PPD”) benefits, and medical benefits for a work-related right wrist injury she sustained on February 28, 2018. The ALJ declined to attribute any portion of the 8% impairment rating assessed by Dr. Jules Barefoot to a pre-existing, active condition pursuant to Finley v. DBM Technology, 217 S.W.3d 261 (Ky. App. 2007).

On appeal, Haier argues the ALJ erred in finding the work-related injury aggravated Chrappa’s pre-existing right wrist condition, and in awarding medical benefits for the entirety of her right wrist complaints. Haier also argues the ALJ erred in enhancing Chrappa’s award of PPD benefits by the 3.2 multiplier contained in KRS 342.730(1)(c)1. Because the ALJ’s award of PPD benefits enhanced by the 3.2 multiplier is supported by substantial evidence, and a contrary result is not compelled, we affirm, in part. We vacate, in part, and remand for additional determinations regarding the award of medical benefits.

Chrappa filed a Form 101 alleging she injured her right wrist while working in an assembly position for Haier on February 28, 2018. She slipped and fell onto her right side, with her right arm outstretched. Chrappa alleged she sustained multiple injuries, and in fact lost consciousness due to the fall, but only her right wrist condition is permanent. In the Form 104 filed in support of her claim, Chrappa noted she has previously worked in forensic accounting, accounting customer service, as a customer service representative/receptionist for a tax accounting service, owned and operated an employment staffing agency, and worked in warehousing. She began working for Haier’s predecessor, General Electric, in 2016, and continued to work there after the acquisition.

Chrappa testified by deposition on January 25, 2019, and at the hearing held May 2, 2019. Chrappa was born on April 23, 1964, and is a resident of Shepherdsville, Kentucky. She has a bachelor's degree in finance, accounting, and medical office technology. She also has certifications as a pharmacy technician and as a dental assistant, although those have expired. She additionally spent two years in the Navy as an electronics technician. She also worked as the health and safety coordinator at a small college in North Carolina from 2005 to 2006.

In addition to Chrappa's claim for injuries stemming from the February 28, 2018 work accident, she had previously injured her right long finger while working for Haier in 2016. She recovered from that injury. She also broke a bone in right wrist in March 2017 when she fell in her bathtub at home. She underwent surgery by Dr. Ethan Blackburn consisting of the installation of a plate with screws. She testified she did well after that surgery, and returned to work with no ongoing problems or restrictions. Afterward, she only experienced mild discomfort when it rained. She worked with no restrictions from September 2017 until the February 28, 2018 accident. She was also involved in a motor vehicle accident in May 2017, which caused no right upper extremity problems, and she fully recovered in eight to nine weeks.

On February 28, 2018, Chrappa was putting insulation into a dishwasher while standing on a platform. When she stepped off the platform, she slipped and fell on some loose insulation, which had accumulated on the floor. She temporarily lost consciousness, and experienced an onset of pain in her right ankle, right wrist, and head. She was taken to the facility medical department on a utility

cart, and then sent to U. S. Healthworks. She was eventually sent to Dr. Thomas Gabriel for treatment. Dr. Gabriel placed her right wrist in a cast, and took her off work. He did not recommend surgery, and she has had none since the accident. She noted her right wrist injury is not in the same spot as her previous injury for which the plate and screws were inserted. Chrappa testified she continues to experience a dull ache, with occasional sharp pain in her right wrist. She wears a right wrist brace, uses a heating pad, and applies Biofreeze as well as Lidocaine patches. She has difficulty performing household chores and gardening she did prior to the accident.

Dr. Gabriel eventually allowed Chrappa to return to light duty work in April 2018, and she continued to work in that capacity until October 1, 2018 when she was advised her restrictions would no longer be accommodated. She then bid onto another job, and returned to work for Haier on October 29, 2018. She earns less than she did prior to the accident, and no longer gets a shift differential. She testified she continues to take Ibuprofen.

Chrappa testified that prior to her injury, her job required her to lift up to forty pounds repetitively. She understood the restrictions imposed by Dr. Gabriel consisted of no lifting over five to ten pounds, and to not use her right arm more than thirty percent of the time. She never returned to the job she was performing at the time of the accident, and does not believe she can perform the duties necessary for that position.

In support of her claim, Chrappa filed the records from Haier's medical department detailing her treatment subsequent to her injury. The initial note

from February 28, 2018 indicated Chrappa slipped and fell while working with insulation, injuring her right ankle, right knee, right wrist, and head. She also filed the February 28, 2018 note from U.S. Healthworks, where she was diagnosed with a sprain of the anterior tulofibular ligament of the right ankle, and a right wrist sprain. She was restricted from no lifting greater than ten pounds, sitting work only, and no repetitive right wrist motion.

Chrappa additionally filed Dr. Gabriel's treatment notes from March 7, 2018 to August 21, 2018. Dr. Gabriel saw her for treatment on six occasions. He initially diagnosed her with a closed fracture of the right wrist. He later noted she had a closed non-displaced fracture of the middle third of the scaphoid of the right wrist with routine healing. On July 18, 2018, he noted Chrappa's fracture had healed, but she has post-traumatic arthritis. When he saw her on August 21, 2018, Chrappa complained of right wrist throbbing, and chronic right wrist pain. He noted injections had not been helpful, and he imposed permanent restrictions of no lifting greater than five to ten pounds.

Dr. Jules Barefoot examined Chrappa on November 27, 2018. He noted the slip and fall at work on February 28, 2018, along with her previous right long finger injury, and her prior right wrist injury for which she had been released with no restrictions in September 2017. Dr. Barefoot diagnosed Chrappa with a history of a fall at work on February 28, 2018, resulting in a closed non-displaced fracture of the middle third of the scaphoid bone in the right wrist, post-traumatic arthritis due to the 2018 work injury, a history of previous open reduction/internal fixation of the right radial wrist on March 19, 2017, and previous right long finger

contusion with flexor tenosynovitis on January 16, 2017. Dr. Barefoot found the treatment Chrappa received was reasonable. He determined she has an 8% impairment rating based upon the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”), all due to the work injury, and he would not attribute any of the rating to a prior condition. He agreed with the permanent restrictions imposed by Dr. Gabriel.

Haier filed Dr. Gabriel’s October 29, 2018 report. Dr. Gabriel noted he had previously treated Chrappa for a right middle finger injury she sustained on November 21, 2016 for which she reached maximum medical improvement (“MMI”) on June 26, 2017. Regarding the February 28, 2018<sup>1</sup> injury, he first treated Chrappa on March 7, 2018. He noted she fell on her outstretched right wrist and experienced moderate tenderness over the anatomical snuffbox. X-rays were suspicious for a non-displaced wrist fracture. He determined she reached MMI for that injury on August 21, 2018. He also determined she has post-traumatic arthritis consistent with her previous unrelated intra-articular distal radius fracture. He determined that restrictions for her previous wrist injury, for which a plate and screws were inserted, consist of no lifting over five to ten pounds with the right wrist.

Haier also filed Dr. Gabriel’s office notes for seven treatment dates between March 7, 2018 and August 21, 2018. Dr. Gabriel initially diagnosed Chrappa with a closed non-displaced right wrist scaphoid fracture and recommended ice and non-steroidal analgesics for constant pain. He also prescribed a right wrist

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<sup>1</sup> We note Dr. Gabriel references March 1, 2018 as the injury date rather than February 28, 2018. However, there is no evidence of a second injury occurring on March 1, 2018.

brace. On June 18, 2018, Dr. Gabriel ordered a CT-scan, and advised Chrappa to avoid lifting greater than five to ten pounds. On July 18, 2018, Chrappa noted she experienced popping in her wrist. She also reported her wrist was painful with direct pressure or twisting motions. Dr. Gabriel administered a right wrist injection, which was not helpful. On August 21, 2018, Dr. Gabriel noted she should avoid lifting greater than five to ten pounds.

Dr. Gabriel testified by deposition on February 26, 2019. He first saw Chrappa in January 2017 for a crushing/tendinitis right middle finger injury she sustained in 2016. She returned to full duty work from that injury on January 24, 2017. He noted she treated with Dr. Blackburn for a right wrist fracture she sustained in March 2017. Haier attached Dr. Blackburn's records as an exhibit to Dr. Gabriel's deposition. Haier additionally attached physical therapy records from KORT physical therapy as an exhibit to Dr. Gabriel's deposition.

Dr. Gabriel noted that Dr. Blackburn's records reflect Chrappa underwent the installation of a plate and screws to treat a fracture at the distal end of the right radius. Dr. Blackburn noted Chrappa had some loss of range of motion when she was last seen on September 28, 2017. Dr. Gabriel indicated that loss of range of motion would have qualified Chrappa for an impairment rating prior to the fall at Haier. Dr. Gabriel additionally noted the June 27, 2017 records from KORT indicate Chrappa had a full range of motion. Dr. Gabriel last saw Chrappa on August 21, 2018. Dr. Gabriel opined Chrappa's arthritic changes were caused by the previous fracture she sustained in 2017, for which Dr. Blackburn performed surgery. He determined that based upon her loss of range of motion, Chrappa has a 4%

impairment rating pursuant to the AMA Guides, of which a portion would be related to her 2017 non-work injury. He disagreed with the impairment rating assessed by Dr. Barefoot, but he does not know her current range of motion. Dr. Gabriel reiterated Chrappa has no restrictions due to the work injury. He acknowledged the KORT record reflects Chrappa had normal range of motion prior to the fall at Haier, and she was working without restrictions.

As noted above, Dr. Blackburn's treatment notes from March 20, 2017 through September 28, 2017 were attached to Dr. Gabriel's deposition. Dr. Blackburn initially diagnosed Chrappa with a right closed intra-articular fracture of the distal end of the right radius. Dr. Blackburn allowed Chrappa to return to regular duty work on June 29, 2017. On September 28, 2017, he noted Chrappa still complained of mild right arm pain, worsened with repetitive use of the right hand and with lifting. He noted she had an acceptable range of motion. The September 26, 2017 KORT record, also attached to Dr. Gabriel's deposition, noted Chrappa had achieved her range of motion goal, and that she had good grip strength.

A Benefit Review Conference was held on April 10, 2019. At that time, the parties stipulated that Chrappa is earning less than she did prior to the February 28, 2018 incident. The issues preserved for determination included whether Chrappa sustained an injury as defined by the Act (causation), permanent income benefits per KRS 342.730, TTD benefits (rate and duration), ability to return to pre-injury work, unpaid or contested medical expenses (future medical), proper use of the AMA Guides, and whether Chrappa retains the physical capacity to return to the type of work performed at the time of her injury. At the hearing, the list of

contested issues was amended to include whether Chrappa had an excludable pre-existing active impairment/condition.

The ALJ rendered an Opinion, Award, and Order on June 27, 2019. The ALJ acknowledged Chrappa's previous right long-finger injury, which had resolved, has no bearing on her current claim. The ALJ determined Chrappa sustained a right wrist injury on February 28, 2018, when she slipped on insulation at work, and landed on her right side. She noted Chrappa was off work from the time of the injury, until she returned to light duty in mid-April 2018. Chrappa continued to work light duty until October 1, 2018 when Haier no longer accommodated her restrictions. Chrappa secured a new job at Haier, and returned to work on October 29, 2018, earning less than she did prior to her injury. The ALJ noted Chrappa continues to complain of a dull right wrist ache, and is unable to return to her pre-injury work.

The ALJ noted that neither Dr. Barefoot nor Dr. Gabriel specifically assessed a pre-existing active impairment rating. The ALJ awarded Chrappa TTD benefits from March 1, 2018 to April 15, 2018. She additionally awarded PPD benefits based upon the 8% impairment rating assessed by Dr. Barefoot, enhanced by the 3.2 multiplier contained in KRS 342.730(1)(c)1.

Haier filed a petition for reconsideration on July 1, 2019, arguing the ALJ indicated TTD was overpaid as to duration, but it was actually based upon being paid at an inappropriate rate. Haier also asked the ALJ to reconsider her finding that Chrappa sustained a permanent right wrist injury on February 28, 2018. Haier requested a determination that it is not responsible for any medical treatment

or bills related to Chrappa's previous right wrist injury, or the pre-existing radial fracture ORIF, or the plate and screws remaining in place for that procedure. Haier also requested the ALJ revisit the application of the 3.2 multiplier, arguing this enhancement was based upon restrictions not attributable to Chrappa's work injury.

In an order issued July 12, 2019, the ALJ acknowledged a typographical error, and amended the TTD benefit award. The ALJ determined all of Chrappa's current complaints are due to the February 28, 2018 injury. The ALJ again determined Chrappa is entitled to enhancement of her award of PPD benefits by the 3.2 multiplier contained in KRS 342.730(1)(c)1.

Haier filed a second petition for reconsideration on July 17, 2019. Haier again argued for the ALJ to find it not liable for Chrappa's pre-existing fracture and hardware implantation. In her order issued August 1, 2019, the ALJ found as follows:

This matter comes before this Administrative Law Judge ("ALJ") upon Defendant's petition addressing this ALJ's July 12, 2019 order. Defendant contends no physician opined the February 28, 2018 work injury aggravated Plaintiff's pre-existing wrist condition.

Plaintiff alleged a right wrist/arm injury on February 28, 2018. In this ALJ's opinion, she concluded Defendant did not meet its burden of proving a preexisting, active condition. Additionally, this ALJ concluded Plaintiff's treatment records indicated the work injury aggravated/worsened Plaintiff's right wrist symptoms. This ALJ found Plaintiff sustained a right wrist injury, relying on Dr. Barefoot's opinions. Thereafter, Defendant petitioned requesting a clarification of the extent of medical benefits awarded for Plaintiff's work injury.

This ALJ notes Plaintiff underwent an open reduction and internal fixation of a distal radial fracture on March 22, 2017. Thereafter, Plaintiff returned to full-duty work

until the February 29, 2018 work injury. Dr. Barefoot opined Plaintiff suffered from traumatically induced right wrist arthritis. Thus, Dr. Barefoot's opinion stands for the proposition that Plaintiff's work-related injury induced (i.e. brought about or gave rise to) Plaintiff's wrist degenerative symptoms. Put another way, Dr. Barefoot felt Plaintiff's work injury aggravated Plaintiff's right wrist degenerative symptoms. Based upon a review of the treatment records, this ALJ concluded Dr. Barefoot's opinion made the most sense[sic] considering Plaintiff's return to full duty work following her prior surgery and the necessity of permanent work restrictions following the work injury.

After reviewing this matter, and the ALJ being in all ways sufficiently advised, it is hereby ordered as follows:

1. Defendant's petition for reconsideration is sustained.
2. Additional findings are provided above.

On appeal, Haier argues the ALJ erred in finding the work-related injury aggravated Chrappa's pre-existing right wrist condition, and in finding medical benefits are owed for the entirety of her right wrist. Haier also argues the ALJ erred in enhancing the award of PPD benefits by the 3.2 multiplier contained in KRS 342.730(1)(c)1.

We initially note, as fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v.

Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting 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). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). As long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

A pre-existing condition is deemed active, and therefore not compensable, if it is "symptomatic and impairment ratable pursuant to the AMA Guidelines immediately prior to the occurrence of the work-related injury." Moreover, as an affirmative defense, the burden to prove the existence of a pre-existing active condition falls on the employer. Finley v. DBM Technologies, 217 S.W.3d at 265. Since Haier was unsuccessful in its burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, *supra*.

Clearly, Chrappa sustained a work-related injury when she fell on her right side at work on February 28, 2018. Despite the fact she had previously sustained a right upper extremity injury, it appears that a different bone was fractured on February 28, 2018. Chrappa previously achieved MMI from her 2017 injury, and returned to work, performing her regular job without restrictions. She testified she had no problems performed her job, and had no ongoing complaints with her right wrist after returning to work, except for occasional discomfort with changes in the weather. She continued to perform unrestricted work until her February 28, 2018 accident.

Dr. Gabriel testified he disagreed with the impairment rating assessed by Dr. Barefoot, and although he indicated a portion of the 4% impairment rating he assessed was due to Chrappa's previous injury, he did not specifically address apportionment. The issue is whether Chrappa's pre-existing condition was impairment ratable pursuant to the AMA Guides immediately prior to the work injury. The ALJ explained why she found Dr. Barefoot's opinion most persuasive. The ALJ found Haier failed to satisfy its burden of proving Chrappa's condition was pre-existing and active prior to February 28, 2018. The ALJ performed the appropriate analysis, and then rendered a decision based upon the evidence, and a contrary result is not compelled. We find no error in the ALJ's exercise of discretion, and her decision regarding the award of PPD benefits is affirmed. Likewise, the evidence supports the ALJ's enhancement of the award of PPD benefits by the 3.2 multiplier contained in KRS 342.730(1)(c)1.

That said, we must vacate the ALJ's award of medical benefits. Although Chrappa sustained a work injury on February 28, 2018 resulting in compensable medical treatment, she had clearly previously sustained a separate injury to her right wrist in 2017 necessitating surgery, and the implantation of a plate and screws. Haier requested the ALJ to determine it is not responsible for future treatment stemming from the previous injury. The ALJ found the February 28, 2018 injury aggravated or exacerbated the previous condition.

Chrappa clearly sustained distinct injuries to separate bones in her right wrist/arm in 2017 and 2018. The 2017 unrelated injury resulted in the implantation of a plate and screws. A review of the medical evidence does not appear to establish that Chrappa sustained an aggravation of her prior injury when she fell at work, but rather fractured a different bone. We therefore must vacate the ALJ's award of medical benefits. On remand, the ALJ is directed to review the medical evidence and point to that which supports her determination. Haier is only responsible for treatment related to the work injury. If the evidence does not support the ALJ's determination regarding compensability of Chrappa's previous right wrist injury for which surgery was performed, then Haier cannot be found liable for additional treatment related to that condition.

Accordingly, the June 27, 2019 Opinion, Award and Order, and the July 12, 2018 and August 1, 2019 orders denying Haier's petitions for reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED IN PART**. We **VACATE** the ALJ's award of medical

expenses, and **REMAND** for a determination regarding the compensability of medical treatment based upon the evidence of record.

ALL CONCUR.

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