Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 22, 2019

CLAIM NO. 201491253

HEATHER MORGAN PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

BLUEGRASS OAKWOOD INC. AND
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART & REMANDING

* * * * * *

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

ALVEY, Chairman. Heather Morgan ("Morgan") appeals from the August 30, 2018 Opinion on Remand and from the October 24, 2018 Order on petition for reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"). The ALJ increased Morgan's award of permanent partial disability ("PPD") benefits by the two multiplier contained in KRS 342.730(1)(c)2 and

awarded additional temporary total disability ("TTD") benefits from June 17, 2014 through July 31, 2014.

On appeal, Morgan argues the ALJ's analysis pursuant to Fawbush v. Gwinn, 102 S.W.3d 5 (Ky. 2003) is inadequate, and his findings on remand are contradicted by the evidence. Morgan asserts she is entitled to the three multiplier contained in KRS 342.730(1)(c)1 rather than the two multiplier. Morgan also argues she is entitled to additional TTD benefits from June 14, 2015, the date of her second injury, to September 30, 2015, the day before her cervical surgery. Because the ALJ followed the directives of this Board on remand and performed an adequate analysis pursuant to Fawbush v. Gwinn, we affirm in part. However, we vacate in part and remand for additional findings regarding Morgan's entitlement to TTD benefits from June 14, 2015 to September 30, 2015.

Morgan was born in April 1983 and began working for Bluegrass as a residential associate in 2007. Morgan filed a Form 101 alleging she injured her neck on February 17, 2014, when a resident of Bluegrass Oakwood ("Bluegrass") struck her neck. The claim was initially bifurcated to address Morgan's entitlement to a cervical surgery proposed by Dr. Magdy El-Kalliny. In an interlocutory opinion rendered August 24, 2015, the ALJ found the proposed C6-7 artificial disc placement surgery reasonable, necessary and causally related to the February 17, 2014 work injury. The ALJ ordered Bluegrass to pre-authorize payment for the recommended surgery and to bear responsibility for all medical expenses related to the treatment of the work-related cervical injury. The claim was placed in abeyance, and the ALJ

directed Bluegrass to pay TTD benefits from the date of surgery, October 1, 2015, until Morgan attained maximum medical improvement ("MMI").

The ALJ subsequently removed the claim from abeyance and the parties submitted additional evidence. Morgan later moved to amend her Form 101 to include additional injury dates of June 14, 2015 and April 19, 2016, both involving her cervical region.

A benefit review conference ("BRC") was held September 18, 2017. The BRC order notes the parties stipulated Morgan sustained work-related injuries on February 17, 2014, June 14, 2015 and April 19, 2016. The parties stipulated to an average weekly wage ("AWW") of $595.37 and that Morgan returned to work on August 16, 2014 and again on January 25, 2016 earning the same or greater wages. The parties identified the following contested issues: whether Morgan retains the physical capacity to return to the type of work performed at the time of injury, benefits per KRS 342.730, and additional periods of TTD benefits. At the final hearing, the parties also agreed Bluegrass voluntarily paid TTD benefits from February 18, 2014 to June 16, 2014; from October 1, 2015 to January 24, 2016; and again from April 27, 2016 to August 30, 2016 at a weekly rate of $385.93.

The ALJ rendered an Opinion and Award on November 17, 2017. Primarily relying upon Dr. Warren Bilkey's opinion, the ALJ found Morgan has a 28% impairment rating for the February 17, 2014 work injury. The ALJ also found persuasive the restrictions imposed by Dr. El-Kalliny. The ALJ found Morgan does not retain the ability to return to the same type of work based upon the opinions of Dr. Bilkey and Dr. El-Kalliny. The ALJ then found the two multiplier applicable,

noting that despite not retaining the ability to return to the same type of work, Morgan did return at the same or greater wages and then ultimately had to stop due to her work injuries.

The ALJ found Morgan attained MMI on January 11, 2017 based upon Dr. El-Kalliny's opinion. Therefore, in addition to the stipulated TTD benefits, the ALJ found Morgan entitled to TTD benefits from April 20, 2016 through April 26, 2016 and from August 31, 2016 through January 11, 2017 at the rate of $396.91.

Morgan filed a petition for reconsideration asserting in relevant part that she is entitled to the three multiplier pursuant to KRS 342.730(1)(c)1. In the alternative, Morgan argued the ALJ was required to perform an analysis pursuant to Fawbush v. Gwinn, supra. Morgan also argued Bluegrass underpaid TTD benefits at the rate of $385.93. Morgan argued she is entitled to additional TTD benefits from June 17, 2014 through July 31, 2014 and June 14, 2015 through September 30, 2015, beyond those benefits already paid by Bluegrass and awarded by the ALJ in his decision.

In the January 9, 2018 Order on petition for reconsideration, the ALJ again found the two multiplier appropriate, stating as follows:

> The Plaintiff testified that she returned at the same wages but had to stop working due to the residual effects of her prior injuries. There is no credible evidence of any additional impairment suffered or of more significant restrictions issued that would constitute any change in her condition such that the "3" multiplier could be justified.

The ALJ did not address Morgan's request for additional periods of TTD benefits or the benefit rate.

Morgan appealed, and in an opinion rendered May 4, 2018, this Board vacated in part and remanded, stating as follows:

> Finding the ALJ erred in not conducting a Fawbush analysis and in failing to resolve Morgan's entitlement to the two periods of TTD benefits which she sought in her brief to the ALJ and the petition for reconsideration, we vacate the enhancement of the award by the two multiplier and the award of TTD benefits.
>
> Unquestionably, the ALJ found the three multiplier was applicable. The ALJ further found Morgan had returned to work earning the same or greater wages, thus causing the two multiplier to be applicable. Consequently, an analysis pursuant to Fawbush is mandated. In Fawbush, the Kentucky Supreme Court directed when the two multiplier and the three multiplier are found to be applicable to a claim, the ALJ "is authorized to determine which provision is more appropriate on the facts." Id. at 12. The Supreme Court further instructed if the evidence indicates, "a worker is unlikely to be able to continue earning a wage that equals or exceeds the wage at the time of the injury for the indefinite future application of paragraph (c)1 is appropriate." Id. As a result, in the case *sub judice*, the ALJ was required to determine which multiplier is more appropriate based on the facts.
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> In Adams, the Supreme Court addressed the range of factors to be considered in conducting a Fawbush analysis, stating:
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> > The court explained subsequently in *Adkins v. Pike County Board of Education,* 141 S.W.3d 387 (Ky. App. 2004), that the *Fawbush* analysis includes a broad range of factors, only one of which is the ability to perform the current job. The standard for the decision is whether the injury has permanently altered the worker's ability to earn an income. The application of KRS 342.730(1)(c)1 is appropriate if an individual returns to work at the same or a greater wage but is unlikely to be able to

> continue for the indefinite future to do work from which to earn such a wage.
> Id. at 168-169.

In the case *sub judice*, the ALJ failed to determine, pursuant to Fawbush, whether Morgan is unlikely to be able to continue earning a wage that equals the wage at the time of the injury for the indefinite future based on the factors set forth in Adams. Thus, enhancement of the award by the two multiplier must be vacated.

Similarly, the ALJ erred in not addressing in his decision and in the January 9, 2018, Order all of Morgan's claim for additional TTD benefits. In her brief to the ALJ, Morgan noted TTD benefits were paid from February 18, 2014, through June 16, 2014, and benefits were terminated based on Dr. Richard Sheridan's opinion who performed an examination on July 1, 2014. However, Morgan came under the care of Dr. El-Kalliny who saw her on July 2, 2014. Dr. El-Kalliny took her off work that day and directed she remain off work until September 2, 2014. Dr. El-Kalliny subsequently released Morgan to return to work as of July 31, 2014. Morgan sought TTD benefits from June 17, 2014, through July 31, 2014, the day before she returned to work.

Morgan also argued she continued to work until her second injury on June 14, 2015, at which time she was again taken off work with no payment of TTD benefits. Morgan noted the ALJ issued an interlocutory opinion awarding TTD benefits from the date of surgery on October 1, 2015, until she attained MMI. Morgan submitted there was a gap during which TTD benefits were not paid following the second injury from June 14, 2015, through September 30, 2015, and she was entitled to benefits during this period.

Morgan further asserted there was a gap in the payment of TTD benefits from April 20, 2016, through April 26, 2016, and from April 31, 2016, through January 11, 2017. In the decision, the ALJ awarded TTD benefits for the last two periods Morgan sought TTD benefits but failed to address the first two periods for which Morgan claimed she was entitled to TTD benefits. Morgan timely raised this issue in her petition for

> reconsideration, and the ALJ failed to resolve it. The ALJ also failed to address the weekly TTD benefit rate as requested by Morgan. Therefore, the award of TTD benefits must be vacated. On remand, the ALJ must address Morgan's entitlement to TTD benefits during the periods in question, which includes the weekly TTD benefit rate.
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> Accordingly, the award of income benefits enhancing Morgan's benefits by the two multiplier is **VACATED**. The award of TTD benefits is also **VACATED**. This claim is **REMANDED** to the ALJ to conduct a Fawbush analysis and a determination as to whether it is more appropriate to enhance the award of PPD benefits by the two multiplier or three multiplier. The ALJ shall also enter an amended decision resolving Morgan's claim of entitlement to TTD benefits from June 17, 2014, through July 30, 2014, and from June 14, 2015, through September 30, 2015. This includes resolution of the weekly TTD benefit rate to which Morgan is entitled.

The ALJ rendered an Opinion on Remand on August 30, 2018. In paragraphs ten through fifteen, the ALJ reiterated Morgan sustained a 28% impairment rating due to the February 17, 2014, work injury. The ALJ found Morgan does not retain the physical capacity to return to the same type of work based upon the opinions of Dr. Bilkey and Dr. El-Kalliny, as well as her testimony. The ALJ also found that Morgan did in fact return to the same type of work earning the same or greater wages. The ALJ performed the following Fawbush analysis:

> 17. When KRS 342.730(1)(c)(1) and KRS 342.730 (1)(c)(2) both may be applicable, *Fawbush v. Gwinn* , 107 S.W.3d 5 (2003), and its progeny require an ALJ to make three essential findings of fact, even if not specifically requested to do so by the parties. First, the ALJ must determine whether a claimant can return to the type of work performed at the time of injury. Second, the ALJ must also determine whether the claimant has returned to work at an AWW equal to or greater than her pre-injury wage. Third, the ALJ must

> determine whether the claimant can continue to earn that level of wages for the indefinite future.
>
> 18. The ALJ finds that the Plaintiff was ultimately able to return to work in the same job for a significant amount of time and that she stopped working with no increased impairment, restrictions, or disability. The Plaintiff said that she felt uneasy about returning due to the nature of the work in that particular location.
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> 19. The ALJ finds that the Plaintiff did not return due to her fear of the working conditions in that particular location but that she is not prevented from working and earning that same level of income. The ALJ finds that she could provide those same services to another employer or in another location for the same employer. The ALJ therefore finds that the "2" multiplier is applicable because the Plaintiff's ability to earn an income at the same level has not been impaired.

Regarding to the two additional periods of TTD benefits, the ALJ first found Morgan is entitled to benefits from June 17, 2014 through July 31, 2014, when Dr. El-Kalliny released her to return to regular duty. The ALJ found Morgan is not entitled to TTD benefits from June 14, 2015 through September 30, 2015, stating as follows:

> 22. The Plaintiff has also asserted entitlement to additional temporary total disability benefits for the period from June 14, 2015, through September 30, 2015. The Plaintiff however testified at least once that she continued working up until the October 1, 2015, surgery after which the receipt of TTD benefits is well-documented and stipulated. The ALJ is therefore unable to award benefits for this period as the Plaintiff has not credibly established entitlement thereto.

The ALJ next established $396.91 as the weekly TTD rate and found Bluegrass underpaid Morgan for the stipulated periods of TTD benefits. The ALJ

ordered Morgan to recover from Bluegrass, "additional [TTD] benefits in the weekly amount of $396.91, for the stipulated periods of temporary total disability and from June 17, 2014, through July 31, 2014; from April 20, 2016, through April 26, 2016; and from August 31, 2016, through January 11, 2017. . . ."

Bluegrass filed a petition for reconsideration requesting the ALJ clarify the award of the two multiplier, specifically adding language limiting the enhancement to only periods of cessation of employment earning a lesser AWW. Morgan filed a petition for reconsideration essentially making the same arguments she now raises on appeal concerning the ALJ's Fawbush analysis and entitlement to TTD benefits from June 14, 2015 to September 30, 2015. She additionally requested additional findings of fact on both of these issues.

In the October 24, 2018 Order, the ALJ found, based upon Morgan's testimony, "she is only unable to return to work in the particular location in which she was injured due to the specific residents that caused her injury and corresponding fear." The ALJ further amended the award of PPD benefits to reflect entitlement of the two multiplier for time periods where Morgan ceases making an AWW of at least $595.37.

On appeal, Morgan essentially argues the ALJ's Fawbush analysis is inadequate and that his findings contradict the evidence. Morgan argues the ALJ incorrectly stated in the remand opinion that she was able to return to the same job for a significant amount of time and stopped working with no increased impairment, restrictions or disability. Morgan points out she returned to work without restrictions after the October 1, 2015 surgery. She subsequently sustained her third

injury on April 19, 2016. As a result, Dr. El-Kalliny restricted her from work until January 11, 2017, and assigned permanent restrictions of no lifting over twenty pounds and to alternate between sitting and standing every thirty minutes. Dr. Bilkey agreed with those permanent restrictions. Morgan challenges the ALJ's finding she did not return to work due to her fear of the conditions at Bluegrass, but that she is not prevented from working and earning the same level of income. She cites to portions of her testimony where she testified she is unable to return to Bluegrass due to her neck and left arm symptoms, and that she was unable to perform her normal duties during the time she was released to regular duty. She also asserts this statement is inconsistent with his finding she does not retain the ability to return to the same type of work.

Morgan asserts the ALJ did not support his conclusion that she is not prevented from working and earning that same level of income, with evidence or set forth factors that he considered. Morgan also argues the ALJ failed to explain what "same services" and "other locations" he believed Morgan could provide within the limitations he adopted.

Morgan argues the ALJ's findings that she has permanent restrictions as assigned by Dr. El-Kalliny and is unable to return to her job for Bluegrass contradicts the ALJ's finding on remand that, "she is only unable to return to work in the particular location in which she was injured due to the specific residents that caused her injury and corresponding fear." Morgan further argues the ALJ did not cite to the specific testimony he relied upon, and in fact, testified she was unable to return to her job at Bluegrass or any other job due to her physical limitations.

Morgan argues the ALJ failed to provide additional findings of fact, despite requesting them in her petition for reconsideration. She also argues the ALJ did not provide the basic facts and evidence upon which he relied in determining the two multiplier was applicable. Morgan additionally argues the ALJ erred in failing to award TTD benefits from June 14, 2015 through September 30, 2016, the day before her surgery. She argues she continued to work for Bluegrass until her second injury on June 14, 2015. At that time, she was taken off work by Urgent Care and did not return until she recuperated from her surgery in February 2016. Morgan asserts her deposition testimony indicating she returned to work in August 2015 was erroneous, and she corrected this error at the final hearing. Morgan argues the logical conclusion is she did not work from her second injury until her surgery, and this testimony is uncontradicted.

As the claimant in a workers' compensation proceeding, Morgan had the burden of proving each of the essential elements of her claim, including entitlement to the three multiplier and TTD benefits. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Morgan was unsuccessful in her burden on these issues, 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 they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

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 sole authority to judge 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). An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). 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); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp an 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 could otherwise have been drawn from the record. Whittaker v. Rowland, supra. 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, supra.

The ALJ complied with the directive of this Board when, on remand, he performed a Fawbush analysis to determine the two multiplier is more appropriate. There appears to be no dispute that Morgan is unable to return to her former job as a residential associate with Bluegrass (as found by the ALJ) or that she returned to work earning the same or greater wages for periods of time after the initial February 17, 2014 work injury. In Fawbush v. Gwinn, the Kentucky Supreme Court directed when the two multiplier and the three multiplier are found to be applicable to a claim, the ALJ "is authorized to determine which provision is more appropriate on the facts." 102 S.W.3d at 12. The Supreme Court further instructed if the evidence indicates "a worker is unlikely to be able to continue earning a wage that equals or exceeds the wage at the time of the injury for the indefinite future application of paragraph (c)1 is appropriate." Id. In Adams v. NHC Healthcare, 199 S.W.3d 163, 168-169 (Ky. 2006), the Supreme Court addressed the range of factors to be considered in conducting a Fawbush analysis, stating:

> The court explained subsequently in *Adkins v. Pike County Board of Education,* 141 S.W.3d 387 (Ky. App. 2004), that the *Fawbush* analysis includes a broad range of factors, only one of which is the ability to perform the current job. The standard for the decision is whether the injury has permanently altered the worker's ability to earn an income. The application of KRS 342.730(1)(c)1 is appropriate if an individual returns to work at the same or a greater wage but is unlikely to be able to continue for the indefinite future to do work from which to earn such a wage.

Here, the parties filed the treatment records from Urgent Medical Care, Dr. Yasser Nadim, and Dr. El-Kalliny. Morgan initially treated at Urgent Medical Care on February 17, 2014 for neck pain radiating into her shoulders after a

resident had struck her in the neck, and then with Dr. Nadim on several occasions. Morgan began treating with Dr. El-Kalliny in July 2014 when her symptoms did not improve. A MRI revealed a C6-7 disc herniation. Dr. El-Kalliny performed an anterior cervical discectomy at C6-7 with placement of artificial cervical disc on October 1, 2015, and released her to return to work without restrictions on January 25, 2016.

On April 20, 2016, Morgan returned to the Urgent Medical Care and reported the third neck injury on April 19, 2016. Morgan was restricted to light duty and prescribed medication through May 2016. Morgan returned to Dr. El-Kalliny on June 29, 2016, who ordered new diagnostic studies and restricted her from work. On July 20, 2016, Dr. El-Kalliny diagnosed cervicalgia, cervical disc degeneration and cervical radiculopathy. He found Morgan is not a surgical candidate and recommended epidural steroid injections. Dr. El-Kalliny allowed Morgan to return to work on July 25, 2016, with restrictions of no lifting, pushing or pulling more than twenty pounds and to sit and stand every thirty minutes.

In a January 24, 2017 letter, Dr. El-Kalliny opined Morgan attained MMI following the April 19, 2016 work incident on January 11, 2017. He assessed a 25% impairment rating pursuant to the American Medical Association, Guides to the Evaluation for Permanent Impairment, for the February 17, 2014 work injury and surgery. Dr. El-Kalliny stated the restrictions he assigned in July 2016 are permanent. Dr. El-Kalliny opined the February 17, 2014 work injury caused Morgan's cervical condition and resulting impairment and restrictions.

Morgan filed Dr. Bilkey's October 11, 2016 report. He diagnosed, "2/17/14 work injury, cervical strain, cervical disc herniation with C7 radiculopathy. Ms. Morgan has undergone anterior cervical discectomy at the C6-7 level with artificial disc placement. She had chronic headache." He also diagnosed an additional cervical strain injury on April 19, 2016, with aggravation of chronic neck pain. Dr. Bilkey opined the diagnoses are due to the February 17, 2014 work injury, and found Morgan is at MMI. Dr. Bilkey assessed a 28% impairment rating, but noted it was impossible to apportion the impairment between the February 17, 2014 and the April 19, 2016 work injuries. Dr. Bilkey agreed with the permanent restrictions assigned by Dr. El-Kalliny. He opined Morgan is unable to return to the full scope of her usual work duties due to the February 17, 2014 work injury, and aggravation of her condition due to the April 19, 2016 work injury.

Morgan testified that after her October 1, 2015 surgery, she returned to her normal job at Bluegrass as a residential associate on February 1, 2016, without restrictions earning the same wages. Morgan continued to provide direct care to the residents of the home she was assigned. Although Morgan returned to unrestricted work, she testified activities of lifting, tugging, pulling, transferring residents and pushing wheelchairs caused neck pain. She was unable to stand for long periods and had to take frequent breaks. Morgan stated her co-workers assisted her, particularly with lifting and transferring residents. Morgan testified she was not taking any medication during this time and missed no work for nearly two months until the third injury on April 19, 2016.

On April 19, 2016, a resident grabbed and pulled Morgan's hair, throwing her neck backwards. She experienced increased neck and left arm pain, and reported the incident to Bluegrass. Morgan initially treated with Urgent Medical Care, and then with Dr. El-Kalliny. Morgan has not returned to any work since her last work incident. She currently experiences neck pain radiating into her left shoulder and arm, numbness in her left middle and ring fingers, headaches, and limited mobility in her neck, and now has restrictions due to the third work incident.

Morgan testified she is unable to return to her job as a residential associate due to her continuing neck and left arm symptoms, and her inability to sit or stand for long periods. She also indicated the job required her to lift over twenty pounds, which she can no longer do. At the deposition, Morgan testified she is also concerned with further injuring herself because her job required her to interact with residents who have combative behaviors, such as hitting, kicking, punching, and biting. At the hearing, Morgan testified as follows in explaining why she is unable to return to her former job:

> A: Because I hurt. We lift the clients there, push wheelchairs, transfer them from the bed to the wheelchair, vice versa, real physical behaviors. I'll just probably get hurt again.
>
> Q: When you say behaviors, tell the Judge what you mean.
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> A: They'll kick you, hit you, headbutt you, bite you, smack you, spit on you, punch you.

At the deposition, Morgan testified her goal was to "try getting a job doing something different other than taking care physical - - you know, the physical part" but that she had not applied for any jobs. At the hearing, Morgan expressed

doubt of her ability to return to any employment, including jobs she has held in the past, due to her pain and headaches. Morgan testified she is not actively treating with anyone and is not taking any medication for her symptoms.

On remand, the ALJ followed the directives of this Board and performed an adequate Fawbush analysis. In the opinion on remand, the ALJ found the following in support of the application of the two multiplier: 1) Morgan was ultimately able to return to work in the same job for a significant amount of time; 2) she stopped working with no increased impairment, restrictions, or disability; 3) she said that she felt uneasy about returning due to the nature of the work in that particular location; 4) Morgan did not return to Bluegrass due to her fear of the working conditions in that particular location but that she is not prevented from working and earning that same level of income; and 5) she could provide those same services to another employer or in another location for the same employer. In addition, in the Order on petition for reconsideration, the ALJ found, based upon Morgan's testimony, "she is only unable to return to work in the particular location in which she was injured due to the specific residents that caused her injury and corresponding fear."

The ALJ considered several factors other than Morgan's physical inability to return to her former job at Bluegrass in concluding her ability to earn an income at the same level has not been impaired, as directed by Fawbush v. Gwinn, supra, and Adams v. NHC Healthcare, supra. The ALJ performed an analysis pursuant to Fawbush, and outlined his reasoning in support of his determination. The ALJ's findings are more than sufficient to apprise the parties of the basis for his

decision. While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, she is not required to recount the record with line by line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). Based upon the foregoing, the ALJ's determination regarding the application of the two multiplier will not be disturbed.

With that said, we are compelled to vacate the ALJ's determination regarding Morgan's entitlement to TTD benefits from June 14, 2015 to September 30, 2015. It is undisputed Morgan sustained a cervical injury on February 17, 2014, when a resident at Bluegrass hit her in the neck. It is also undisputed Morgan was off work until August 16, 2014, when she returned to her normal job without restrictions. The second work incident occurred on June 14, 2015 when a resident struck Morgan in the back of her neck with his fist. She subsequently sought treatment at Urgent Care and then with Dr. El-Kalliny.

Morgan's work status following the second injury until the October 1, 2015 surgery is disputed. Following the interlocutory opinion, Morgan testified by deposition on April 27, 2017, and again at the hearing held September 18, 2017. At her deposition, Morgan testified a physician at Urgent Medical Care restricted her from work following the June 14, 2015 work incident. Morgan stated she returned to regular work in August 2015 and continued to work until her October 1, 2015 surgery. However, at the hearing, Morgan asserted this testimony was incorrect and

stated she was off work from June 14, 2015 through February 2016, when she was released by Dr. El-Kalliny without restrictions following her surgery.

The records from Urgent Medical Care following the second incident are handwritten and largely illegible. On June 14, 2015, Morgan reported neck and shoulder pain after she was hit by a client. Dr. Dennis Anciro diagnosed cervical strain and prescribed medication. Dr. Anciro completed a "medical status report," indicating Morgan is unable to return to work and will be re-evaluated on June 21, 2015. Morgan returned to Urgent Medical Care on June 21, 2015, June 28, 2015, July 5, 2015, July 12, 2015 and July 20, 2015. She was prescribed medication and physical therapy. The record does not contain any subsequent "medical status reports" from these visits. The record contains one note from Dr. El-Kalliny indicating Morgan visited him after the second work accident and prior to the surgery. Morgan treated with Dr. El-Kalliny's physician's assistant on September 29, 2015. After noting worsening neck and left arm symptoms, the physician's assistant stated Morgan reported, "she has been working full duty, but that she was actually hit by a client this week and is concerned that work is exacerbating her symptoms" and that "she has continued to work at Oakwood."

The ALJ found Morgan did not establish entitlement to TTD benefits from June 14, 2015 through September 30, 2015, since she testified at least once that she continued working until the October 1, 2015 surgery after which the receipt of TTD benefits is well-documented and stipulated. We find this to be an inaccurate summary of Morgan's testimony. As noted above, Morgan's testimony was inconsistent, but she did not testify she continued working until the October 1, 2015

surgery. In one instance, Morgan indicated she was initially restricted from work after the June 14, 2015 incident by Urgent Medical Care, but then returned to regular work from August 2015 until the October 1, 2015 surgery. She subsequently testified at the final hearing she did not work at all during the period in question. In light of the ALJ's inaccurate summary of Morgan's conflicting testimony, and of the medical records on this issue, we vacate the determination that Morgan is not entitled to TTD benefits from June 14, 2015 through September 30, 2015, and remand for additional findings on this issue.

Accordingly, the August 30, 2018 Opinion on Remand and the October 24, 2018 Order on petition for reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **VACATED IN PART** and **REMANDED** for additional findings and entry of an amended opinion and award in conformity with the views expressed herein.

ALL CONCUR.

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