

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 2, 2018

CLAIM NO. 201558150

JAMES T. COMLEY

PETITIONER

VS.

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

ADVANCED PAVING & CONSTRUCTION INC;
And HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

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

* * * * *

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

RECHTER, Member. James Comley appeals from the September 25, 2017 Opinion, Award and Order and the October 30, 2017 Order rendered by Hon. Monica Rice-Smith, Administrative Law Judge (“ALJ”). The ALJ determined Comley is permanently partially disabled and determined a referral for pain

management and contested prescriptions are not compensable. On appeal, Comley argues the ALJ erred in failing to find he sustained a 13% impairment rating, failing to address improper litigation conduct of counsel for Advanced Paving and Construction (“Advanced”), improperly denying medical treatment, expenses, and travel, and failing to find him permanently totally disabled. Additionally, Comley argues the use of the DRE method in the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition (“AMA Guides”) for spinal injuries is unconstitutional. For the reasons set forth herein, we affirm in part, vacate in part and remand.

Comley, who is fifty-four years of age, graduated from high school, but stated he was in remedial reading and special education classes. While in high school, he completed vocational classes in shop and construction. Comley stated he had to have assistance with reading to complete his driver’s license examination, and he cannot write a note to someone. He has never operated a computer and has never performed administrative or clerical work.

Comley has worked as a laborer for a series of employers. He was hired as a heavy equipment operator for Advanced beginning on May 14, 2014. He operated bulldozers, high lifts, track hoes, backhoes, and other types of construction equipment. Operating the equipment over rough terrain caused him to be bounced, twisted and turned. He also helped with manual labor, lifting twenty-five to fifty pounds. On May 15, 2015, he was driving a dump truck that flipped over onto its side. Comley experienced pain in his lower back, leg, left shoulder, and neck. He returned to work the following Monday. Comley visited Dr. Chris Godfrey in June

2015 and continued to work until December 9, 2015. At that time, his pain had increased and his doctor took him off work. Since the work injury, Comley has constant back pain, neck and right shoulder pain running down to his elbow, and stiffness in his left shoulder and arm. He can sit for fifteen or twenty minutes. Most of his pain is in his lower back, and requires him to frequently change position between sitting, standing, walking and lying down to relieve his pain.

Comley testified regarding previous treatment for back and neck pain. In 2011, he was off work with back pain for a week or two. He received injections from Dr. Thad Jackson. He took Aleve or Advil from time to time, but his back did not bother him enough to keep him from working. Comley also previously treated with Dr. Godfrey from July 10, 2011 through October 20, 2014 for an acute onset of low back pain after lifting a cat, though he also gave a history of back pain for approximately one year. A lumbar MRI revealed bulging discs from L3 through S-1. He again treated with Dr. Godfrey on April 20, 2015 for complaints of arthritis in hands and elbows. Dr. Godfrey assessed lateral epicondylitis, tennis elbow in left arm, and bilateral hand osteoarthritis with probable bilateral carpal tunnel syndrome. His assessment also included low back pain, right foot plantar fasciitis, gout, and elevated cholesterol.

Following the work accident, Comley returned to Dr. Godfrey on June 16, 2015. Dr. Godfrey's office notes indicate an "acute visit" for neck and back pain sustained in a dump truck accident. He diagnosed neck, low back, and right shoulder pain. A June 23, 2015 treatment note indicates a follow-up for right shoulder, back and neck problems. Dr. Godfrey noted severe degenerative disc

disease in the neck. A June 25, 2015 treatment note indicates a follow-up for the right shoulder. The diagnoses were right shoulder pain, low back pain and degenerative joint disease.

Comley next treated with Dr. Daniel Meece. A November 30, 2015 cervical MRI revealed degenerative disc and facet changes at multiple levels, with varying degrees of canal stenosis and neural foraminal narrowing, worse at C4-5 and C3-4 followed by C5-6. A lumbar MRI revealed degenerative changes at multiple levels, worse at L2-3, L3-4 and L4-5. On December 1, 2015, Dr. Meece noted Comley has spinal stenosis and degenerative disc disease with a pinched nerve. He restricted Comley to light duty with no lifting. Dr. Meece obtained a CT of the lumbar spine on December 16, 2015. When compared to a CT scan dated October 2011, the multilevel degenerative disc disease appeared progressed from 2011, worst at the L4-5 and L5-S1 levels. On August 25, 2016, Dr. Meece restricted Comley to no lifting over twenty-five pounds, no extended sitting longer than twenty minutes, no extended bending, and no return to work until further notice. On December 21, 2016, Dr. Meece noted Comley had seen a neurosurgeon for complete evaluation. He indicated Comley has reached his maximum level of function and is not able to return to his job.

Comley treated with Dr. Mitchell J. Campbell from December 9, 2015 through December 31, 2015. He initially presented for evaluation of low back pain and some neck pain present over the past five or six months. He also had right leg pain, numbness, and tingling. Dr. Campbell diagnosed severe degenerative changes and cervical spondylosis. He stated Comley should remain off work until January

11, 2016. A December 31, 2015 record indicates Comley presented for follow-up of increasing back pain. Dr. Campbell noted Comley has severe degenerative spondylosis throughout his spine.

Dr. James W. Jackson saw Comley on referral from Dr. Campbell on January 27, 2016. Comley initially presented with complaints of low back pain with an onset of approximately May 15, 2015 secondary to a dump truck accident. Comley had pain in the lumbar region radiating to the right anterolateral thigh, stopping at the knee. Dr. Jackson diagnosed intervertebral disc degeneration and spondylosis with myelopathy in the lumbar region. He administered epidural steroid injections beginning on February 16, 2016.

Comley returned to Dr. Jackson on April 5, 2016 for a neurosurgical evaluation at Dr. Meece's suggestion. Comley presented with complaints of back and right leg pain. Dr. Jackson diagnosed lumbago, lumbosacral radiculopathy, lumbar spondylosis, cervicalgia, and cervical spondylosis with radiculopathy. He noted Comley has failed conservative therapy for his low back pain, and planned to follow-up to discuss surgery.

Dr. John Guarnaschelli performed an independent medical evaluation on July 13, 2016. He diagnosed a muscular-skeletal/whiplash related disorder secondary to the work-related accident, a questionable acromial clavicular fracture, and degenerative disc disease of both the cervical and lumbar spine. He also noted there is evidence of a pre-existing active disease of the cervical and lumbar spine based on radiographic evidence dating back to 2011. Dr. Guarnaschelli opined Comley has had a change in condition due to the work-related event. He noted the

objective findings are secondary to a muscular-skeletal injury. Comley does not have objective or radiographic evidence of a neurologic dysfunction. Comley reached maximum medical improvement twelve months following the injury. Dr. Guarnaschelli assigned 5% ratings for the cervical and lumbar spine for a combined 10% whole person impairment with 50% apportioned to the work injury and 50% to the pre-existing active condition. He opined Comley would need continued medical monitoring for his opiate medication regime. Dr. Guarnaschelli agreed with the restrictions suggested by Dr. Meece and considers those restrictions permanent. He opined Comley could not return to his previous employment.

Dr. James Farrage, Jr. performed an independent medical evaluation on April 5, 2017. Dr. Farrage diagnosed status post cervical and lumbar myoligamentous strains with secondary myofascial pain symptoms and premorbid multilevel axial spine spondylosis. He also diagnosed possible right scapular hairline fracture, resolved and right acromioclavicular arthropathy. Comley had continued issues with pain, restricted range of motion, decreased strength, and impaired functional capacity without any interval decline in his focal neurological status. Dr. Farrage stated the injury was the cause of Comley's complaints. Dr. Farrage stated, "There is a clear temporal relationship to the work injury which exacerbated his premorbid spine condition into disabling reality. The repetitive axial loading of the spine associated with his occupation contributed to the accelerated degenerative changes." Dr. Farrage restricted Comley to light level occupations with a lifting restriction of no more than twenty pounds on an occasional basis and up to ten pounds frequently. He also noted Comley should sit/stand a maximum of thirty

minutes at a time with frequent changes in position. He should avoid repetitive bending, stooping or twisting. He can negotiate two flights of stairs occasionally. He should avoid ladder climbing or working from unprotected heights. Dr. Farrage assigned no driving restrictions. Dr. Farrage stated, “the patient satisfies the criteria for DRE lumbar category II resulting in an 8% whole person impairment with a value which is apportioned by 25% due to pre-existing condition resulting in a 6% whole person impairment rating.” He assigned a 5% impairment rating for the cervical spine. Thus, Dr. Farrage assigned an 11% combined impairment rating pursuant to the AMA Guides. He stated Comley did not have an active impairment prior to this injury. Dr. Farrage felt Comley reached maximum medical improvement on May 15, 2016, and does not have the physical capacity to return to his previous job.

In a June 11, 2017 supplemental report, Dr. Guarnaschelli indicated he reviewed additional treatment records and Dr. Farrage’s report. Dr. Guarnaschelli’s opinion did not change. He noted Comley had documentation of a pre-existing and active condition of the spine, which by radiographic studies was interpreted as severe by consulting physicians. The work-related injury would be best described as aggravation of pre-existing degenerative spinal disorders. He agreed with Dr. Meece’s prescriptions and restrictions.

Dr. Michael Chunn performed a utilization review on February 7, 2017. He stated the continued use of Prednisone, Oxycodone, Meloxicam and Diazepam is not medically reasonable or necessary for the cure and relief of the work injury. He felt Comley sustained an exacerbation of his prior back condition because

of the work injury and that the active effects of the work injury have long since subsided. He stated there is no indication Comley suffers anxiety as a result of the work injury.

Stephen B. Schnacke Ed.D. performed a vocational assessment on April 5, 2017. He concluded Comley had no active vocational disability prior to the work injury. His pre-existing issues did not prevent him from performing all of the prescribed duties of his usual job. Comley is an advanced age worker, which adversely affects his competitiveness in the work place. Comley's acquired vocational skills are specific to the type of work he normally performed. He does not appear to be functioning at a level consistent with a typical high school graduate, and he does not possess transferable work skills to occupations different from his customary form of employment. Results of cognitive testing suggested memory problems and weaknesses based upon his academic issues. Comley's current cognitive functioning is below average. Dr. Schnacke felt Comley would be limited to sedentary jobs and a few light jobs. At a minimum, he has a 75% loss of occupational access. If the limitations from Drs. Farrage and Campbell are accepted, Comley would not be able to perform sedentary work on a regular and sustained basis.

The ALJ concluded Comley sustained a work-related injury to his low back and neck. She noted both Dr. Farrage and Dr. Guarnaschelli found Comley had a change in his condition because of the work-related event. Relying on Dr. Farrage's opinion and Comley's testimony, the ALJ determined Comley sustained an 11% whole person impairment. Based on the lack of proof that the prior back

problems caused any impediment to his employment, and the opinions of Drs. Farrage and Schnacke, the ALJ was persuaded that Comley did not have a pre-existing active impairment or disability. She further determined Comley cannot return to the work he was performing at the time of his injury and is entitled to a 3.2 multiplier based on the lack of physical capacity and his age. The ALJ noted Drs. Farrage, Guarnaschelli, and Meece agree that Comley cannot return to the work he was doing at the time of his injury. The ALJ entered the following findings regarding the extent of Comley's disability:

The ALJ finds Comley is not entitled to permanent total disability (PTD). Pursuant to *Osborne v. Johnson*, 432 S.W.2d 800 (KY 1968), the ALJ must evaluate the post-injury physical, emotional, intellectual, and vocational status when determining entitlement to PTD. When determining entitlement PTD or total occupational disability, restrictions due to non-work related conditions cannot be considered. *City of Ashland v. Stumbo*, 461.S.W.3d 392 (KY 2015).

The ALJ finds the work restrictions of Dr. Meece the most credible. Dr. Meece has treated Comley and is in the best position to evaluate his physical abilities. Dr. Meece restricted Comley to no lifting over 25 pounds ever, no extended sitting longer than 20 minutes and no extended bending. Although Dr. Schnacke opined Comley is 100% disabled, his opinion is based on Comley being restricted to sedentary work. The ALJ is persuaded by the restrictions of Dr. Meece, which do not limit Comley to sedentary work. Dr. Meece's restrictions do not limit Comley's ability to stand and walk. Comley is only fifty-three years old. He has a high school education. Although he testified he is illiterate, the testing of Dr. Schnacke did not reveal Comley was illiterate only below average.

Based on the foregoing, Comley is not totally occupationally disabled and is not entitled to PTD benefits.

The ALJ found as follows regarding the medical disputes:

In a pre-award medical fee dispute, the burden of proof regarding reasonableness and necessity is on the employee. *Addington Resources, Inc. v. Perkins*, 947 S.W.2d 421 (KY 1997).

The ALJ finds that Comley has failed to satisfy his burden of proving the contested referral to pain management and the contested prescriptions for Prednisone, Oxycodone, Meloxicam and Diazepam are not [sic] compensable. The Defendant/Employer filed 112 medical fee disputes regarding the contested referral to pain management and the contested prescriptions. Comley presented no specific evidence regarding the reasonableness and necessity of the contested medical treatment. Although Dr. Godfrey's treatment record describe his treatment plan, he gives no specific opinion regarding any of the contested medical treatment. Dr. Godfrey explained his treatment plan was for pain control, therapy evaluation, and neurosurgical evaluation and would continue his regimen with some IV Decadron. Further, Dr. Meece whose treatment is contested gave no opinion with regard to what his treatment plan was or whether it was reasonable and necessary.

Comley filed a petition for reconsideration raising essentially the same arguments he raises on appeal. By order dated October 30, 2017, the ALJ sustained Comley's petition to the extent any unreimbursed medical and travel expenses that comply with KRS 342.020, KRS 342.035, and 803 KAR 25:096 should be reimbursed. The ALJ overruled the remainder of Comley's Petition for Reconsideration, providing the following explanation:

The ALJ analyzed the entire record required by *Ira A. Watson v. Hamilton*, 34 S.W.3d 48 (KY 2000) and *Osborne v. Johnson*, 432 S.W.2d 800 (KY 1968). The ALJ summarized the testimony of Comley regarding his abilities and considered same. The ALJ

chose to rely on the restrictions of Dr. Meece as the most credible evidence of Comley's physical abilities. Further, in light of Comley's age and his cognitive testing by Dr. Schnacke the ALJ believed he could find work within his abilities as described by Dr. Meece. Further, the ALJ relied on the impairment rating of 11% as assessed by Dr. Farrage. The ALJ explained the lack of evidence to establish the compensability of the contested medical treatment. The ALJ analyzed all the evidence in this case and explained the evidence relied on in rendering her decision. The Plaintiff's Petition for reconsideration is simply a rearguing of the Plaintiff's case and therefore inappropriate for a Petition for Reconsideration.

On appeal, Comley first argues he is entitled to an award based upon a 13% impairment rating. According to Comley, the ALJ allowed an exclusion for pre-existing impairment despite determining there was no prior impairment. Comley argues Dr. Farrage made an error of law in apportioning the 8% impairment rating for the lumbar spine. Pursuant to Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. 2007), to be characterized as a pre-existing active impairment, the condition must be symptomatic and impairment ratable immediately prior to the injury. Dr. Farrage indicated there was no prior active impairment and opined the work injury exacerbated Comley's premorbid spine condition into disabling reality.

Because we are unable to discern whether the ALJ considered the entirety of Dr. Farrage's opinions regarding the lumbar impairment rating, we vacate the ALJ's finding regarding the impairment rating. The ALJ's summary of Dr. Farrage's rating refers to the 11% rating and his opinion that there is no pre-existing active impairment. However, it does not address the components of the rating. Our concern is that Dr. Farrage assigned an 8% impairment rating for the current lumbar

condition. He then apportioned 2% to a “pre-existing condition.” Significantly, Dr. Farrage stated there was no active impairment prior to the injury, and the ALJ accepted that opinion. Dr. Farrage noted the injury exacerbated Comley’s premorbid spine condition into disabling reality. One reasonable and permissible reading of the entire Form 107 would be that Dr. Farrage believed the work injury itself directly produced a 6% impairment rating and a 2% impairment rating for arousal of a pre-existing dormant condition. Of course, arousal of a pre-existing dormant condition is compensable. McNutt Construction/First General Services v. Scott, 40 S.W.3d 854 (Ky. 2001). While Dr. Farrage ultimately stated there is an 11% impairment related to the injury, it is permissible for the ALJ to find a 13% impairment based upon the entirety of Dr. Farrage’s Form 107 and reasonable inferences drawn therefrom.

In Finley, the Court of Appeals stated 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." Id. at 265. Moreover, as an affirmative defense, the burden to prove the existence of a pre-existing active condition falls on the employer. Id. While Dr. Guarnaschelli and Dr. Farrage attempted to apportion causation of the impairment, neither directly stated the condition was impairment ratable immediately prior to the work injury. The ALJ specifically found Comley did not have a pre-existing active impairment or disability. On remand, the ALJ must clarify her interpretation of Dr. Farrage’s opinion and determine whether Comley is entitled to a 6% or 8% impairment rating for his lumbar condition.

Next, Comley contends Advanced's counsel engaged in improper litigation conduct by contacting Comley's expert medical witness, and used improperly obtained information to discredit his witness. Further, Comley contends Advanced's counsel improperly testified and expressed her opinion of the credibility of Drs. Guarnaschelli and Farrage in violation of SCR 3.130(3.7) which provides that "a lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness...."

Comley did not object at the hearing or in his brief to the ALJ regarding these issues. Comley did not preserve the issues concerning the conduct of counsel as contested issues at the benefit review conference. 803 KAR 25:010 § 13(12) provides only those issues preserved at the benefit review conference for determination by the ALJ "shall be the subject of further proceedings." Therefore, this allegation of error on appeal is not preserved and we decline to address it.

Comley argues the ALJ improperly denied medical treatment, expenses and travel, noting Advanced failed to comply with the statutory and regulatory requirement to file a motion to allow it to select a treating physician. Comley contends Advanced's failure to submit an affidavit establishing one of the grounds in KRS 342.020(7), precludes it from denying payment for medical care he has received or will require in the future. Comley contends the ALJ is without jurisdiction to take any action interfering with his medical care. He further contends the failure to file a motion to join Dr. James Jackson and Dr. Meece pursuant to 803 KAR 25:012 §1(5) prevents the ALJ from ruling on referral for pain management. Comley asserts the utilization reviews were ineffective because no Form 112 was

filed, nor did Advanced file a motion to join providers. Additionally, Comley argues Advanced incorrectly blames him for its failure to notify KEMI in a timely manner of the occurrence of the injury.

We first note KRS 342.020(7) is a permissive provision allowing the employer to file a motion to select a treating physician under certain specified conditions. It is not a mandatory provision, and such a motion is not a prerequisite to pursuing a medical fee dispute concerning the reasonableness and necessity of proposed medical treatment. The remainder of Comley's objections are raised for the first time on appeal and are not properly preserved. The issues regarding failure to comply with 803 KAR 25:010 § 12 were not preserved in the BRC order. Additionally, we note 803 KAR 25:012 Section 1 (6)(b) requires that a Form 112 "shall be served ... upon the medical providers. If appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party." The regulatory language with respect to notification is mandatory. Here, Dr. Meece and Dr. James Jackson received notice via the Form 112 on March 22, 2017. However, they made no attempt at any time to address the medical fee dispute. The regulatory language requires joinder "only if appropriate." The crucial question is whether the medical provider is an aggrieved person to the extent that an adverse ruling in the dispute would provide an independent basis for appeal. We believe that the provider in this instance is not so aggrieved that any failure to join it as a party is in error. The medical dispute involved a proposed referral for pain management and continued use of prescription medication. On reconsideration, the ALJ ordered reimbursement for any unreimbursed medical and travel expenses that comply with the statutes and

regulations. Because the providers have no vested interest in prospective treatment, their inclusion was not necessary.

Comley argues he is entitled to an award of permanent total disability benefits. Comley cites his own testimony that he is not capable of performing his prior work and does not know of any work he can perform. He emphasizes Advanced failed to present evidence of jobs he is capable of performing. Instead, Comley believes the ALJ erroneously relied on Social Security work classifications rather than specific job requirements, and failed to properly weigh the facts. According to Comley, the established facts compel a finding of total disability. Moreover, Comley argues the ALJ failed to perform a complete analysis as required by Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As the claimant in a workers' compensation proceeding, Comley bore the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because he was unsuccessful in proving he sustained a permanent total disability, 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).

Permanent total disability is defined in KRS 342.0011(11)(c) as the condition of an employee who, due to an injury, has a permanent disability rating

and has a complete and permanent inability to perform any type of work as a result of the injury. KRS 342.0011(11)(c). In determining whether a worker is totally disabled, the ALJ must consider several factors including the workers' age, educational level, vocational skills, medical restrictions, and the likelihood he can resume some type of work under normal employment conditions.

An ALJ enjoys wide ranging discretion in granting or denying an award of permanent total disability benefits. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976). Comley's arguments on appeal regarding the extent of his disability are essentially an attempt to have the Board reweigh the evidence and substitute its opinion for that of the ALJ. We may not do so. The evidence falls short of compelling a finding Comley sustained a permanent total disability. Indeed, it is rare that it can be said the evidence compels a greater or lesser degree of occupational disability. Millers Lane Concrete Co., Inc. v. Dennis, 599 S.W.2d 464, 465 (Ky. App. 1980). We further note that while the claimant's testimony may constitute substantial evidence to support an award, that testimony does not compel any particular result. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979).

It is clear from the ALJ's Opinion and the Order on reconsideration that she understood and applied the correct standard in determining the extent of Comley's disability. After a thorough review of the evidence, the ALJ simply was not convinced Comley sustained a permanent total disability. The ALJ accepted the restrictions of Dr. Meece, which do not preclude sedentary and some light work as acknowledged by Dr. Schnacke. The ALJ considered Comley's age and his below average intellectual ability. While Comley has identified evidence supporting a

different conclusion, there was substantial evidence presented to the contrary. As such, the ALJ acted within her discretion to determine which evidence to rely upon, and it cannot be said the ALJ's conclusions are so unreasonable as to compel a different result. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Finally, Comley argues the use of the AMA Guides for ratings of spinal injuries is unconstitutional. Comley asserts the use of the DRE method is improper because the table is based upon a diagnosis rather than functional limitations.

The issue of the constitutionality of using the DRE method in the AMA Guides for spinal injury was only raised on appeal and is not properly preserved. Constitutionality of the statute was not listed as a contested issue in the Benefit Review Conference Order. At the hearing, neither party noted additional issues. Comley's brief before the ALJ did not address the issue. Finally, we note KRS 418.075 requires that notice be provided to the Attorney General in any proceeding which involves the constitutionality of a statute. After reviewing the record, we can find no indication notice was given to the Attorney General.

Most importantly, as an administrative tribunal, this Board has no jurisdiction to determine the constitutionality of a statute enacted by the Kentucky General Assembly. Blue Diamond Coal Co. v. Cornett, 189 S.W.2d 963 (Ky. 1945). Likewise, an ALJ lacks the power and jurisdiction to review and determine the constitutionality of the statute.

Accordingly, the September 25, 2017 Opinion, Award and Order and the October 30, 2017 Order rendered by Hon. Monica Rice-Smith, Administrative Law Judge, are hereby **AFFIRMED IN PART and VACATED IN PART**. This claim is **REMANDED** for further findings regarding the impairment rating related to the lumbar condition and entry of an amended award, if appropriate.

ALL CONCUR.

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