

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 23, 2022

CLAIM NO. 201590532

JANE TODD CRAWFORD HOSPITAL

PETITIONER

VS.

APPEAL FROM HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

MICHAEL BUSH and
HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Jane Todd Crawford Hospital (“JTCH”) appeals from the May 23, 2022 Opinion, Award and Order and the June 15, 2022 Order on Petition for Reconsideration rendered by Hon. Chris Davis, Administrative Law Judge (“ALJ”). The ALJ found Michael Bush (“Bush”) sustained a work-related right shoulder injury and he awarded permanent partial disability (“PPD”) benefits beginning February 23, 2015 through March 2, 2024, including the application of the

three-multiplier pursuant KRS 342.730(1)(c)1, with medical benefits pursuant to KRS 342.020. He also awarded temporary total disability (“TTD”) benefits commencing February 23, 2015 through May 10, 2018, with 6% interest on any past due amounts. He provided JTCH credit for any benefits already paid. Subsequently, in his Order on Petition for Reconsideration, the ALJ modified the commencement date of the TTD award from February 23, 2015 to March 18, 2015.

On appeal, JTCH argues the ALJ erred regarding the date Bush reached maximum medical improvement (“MMI”). It submits the ALJ’s reliance on Dr. Frank Bonnarens’ opinion regarding MMI is erroneous. It argues the ALJ found Bush reached MMI on May 10, 2018, whereas Dr. Bonnarens opined in his September 14, 2021 report Bush reached MMI on July 9, 2016. JTCH also argues the ALJ erred in finding applicable the three-multiplier contained in KRS 342.730(1)(c)1. It argues the ALJ erred in interpreting Dr. Sanjiv Mehta’s opinion regarding whether Bush could return to his pre-injury work and, therefore, his decision is not supported by substantial evidence. We disagree, and affirm.

BACKGROUND

Bush filed a Form 101 on March 30, 2020 alleging he sustained an acute right shoulder injury on February 23, 2015 while assisting a patient in the course and scope of his work as an x-ray technician at JTCH. Bush testified by deposition on September 1, 2021 and again at the hearing held April 6, 2022. Bush was born on March 2, 1954 and resides in Greensburg, Kentucky. He graduated from high school and worked for 21 years as an avionics technician in a firefighter squadron for the United States Air Force from 1973 until he retired in 1995.

Afterward, he worked briefly as a carpenter. He attended college from 2000 to 2004 and received a degree. He became employed with JTCH in July 2005 as a radiology technician, where he worked until his injury on February 23, 2015. He has not worked since the injury date.

Bush testified he worked by himself on the third shift in the x-ray technology unit at JTCH at the time of his injury. He worked with inpatient and emergency room patients, nearly all of whom needed physical assistance. He testified the job had physical requirements, specifically lifting and assisting patients into and out of beds, turning them in bed, positioning them onto and off of examination tables, into and out of wheelchairs, and holding them up for placement while taking x-rays. The patients were often immobile or unconscious during these procedures and constituted "dead weight" to lift. Additionally, the hospital equipment was heavy. There was a 1000-pound portable x-ray machine the technicians maneuvered throughout the hospital and into rooms for immobile patients. There was also an x-ray device called "the tube" located on an elevated rail which required technicians to reach up and extend fully to maneuver it around the patients.

Bush testified that while working on February 23, 2015, he had a patient weighing approximately 300 pounds on a CT examination table. After the testing was completed, the patient reached up asking for assistance. Bush grabbed the patient's hand, put his other arm under the man's back, and he attempted to lift the patient. When he did, his right shoulder popped, and he experienced severe sharp pain immediately into his right shoulder and he "couldn't use it. I just didn't

have any strength, had nothing. It was like something was disconnected. It just didn't work.”

Bush testified he knew immediately what had happened, as he had suffered a similar injury to the same shoulder in 2010, while working the same job at JTCH. He had previously undergone right shoulder surgery performed by Dr. Mehta in 2010 and he had no problems afterward. He continued working the same job for years without incident, until the 2015 accident which, Bush submits, was worse than in 2010. Bush testified he had shoulder surgery on July 9, 2015 which has helped, but he continues to have pain that wakes him up at night. He has to reposition himself in bed and is not getting enough sleep. Bush testified he “can't extend [his right] arm and lift any weight at all. It feels like it's going to fall off.” While he has “pretty good range of motion,” it is painful. He testified he cannot pull or push because it causes him a lot of pain. He stated, “But I can lift – if I keep my arm close to me, I can lift 10 pounds. I try to keep it under that. I don't want to damage it again because my next step is a total shoulder replacement if I injure it again.”

Bush testified he continues to do his home physical therapy exercises, using the exercise bands which are helpful. “It strengthens my arm as much as I can without damaging it any farther.” However, he does not believe he can return to his previous work as a radiology tech. Patient safety and an inability to maneuver the heavy hospital equipment is his primary concern. He also believes returning to his prior job may cause injury to his “good” shoulder. Bush testified,

I'm positive I would be injured again. Because I can't let a patient fall on the floor without trying to hold them back. And the patients – I feel all patients' . . . safety would be in jeopardy if I went back to work. Because I never know when it's going to get – if it would give out on me. . . .

Bush stated he would also have trouble with the x-ray machine and the tube, as well as getting patients on and off the table, out of a wheelchair or out of beds. “You can't hardly do anything with one arm. It's too heavy.”

Bush disagreed that he is “back to regular duties at home” because he now has to hire out all of his chores. He can no longer use a chain saw to cut firewood, handle his own hay, or do yard work. Bush admits he still hunts and fishes, but he can shoot a rifle and cast left-handed, which he has done all his life. He testified he could always shoot right or left-handed and did so for years in the military. Now he strictly uses his left hand.

He currently takes prescription Ibuprofen for arthritis prescribed by his rheumatologist, Dr. Steven Stern, as well as Humira twice per month, B-12, hypertension medication, and vitamins. Bush testified his original plan was to work until age 70 but, because he has not worked since 2015, he elected to receive early Social Security retirement benefits. He denied doing additional work for anyone in any capacity.

Bush stated he and his wife provide daily assistance to his 91-year-old father, who lives a mile down the road. They help him with light cleaning, medications, cooking, errands, and doctor's appointments. Bush does not do any physical labor for his father. He testified they may “go to a ball game every now and then” to see one of the grandchildren play or do grocery shopping. He also testified

his father has COPD and, for that reason, Bush was forced to miss a scheduled independent medical evaluation (“IME”) appointment during the Covid pandemic for fear he might become infected and put his father at risk.

The medical record in support of his Form 101 indicates Bush had x-rays following his shoulder injury at JTCH on February 25, 2015 which showed no acute fracture but revealed mild AC joint and minimal glenohumeral joint osteoarthritic degenerative changes. An MRI was recommended for further evaluation. Medical records that same day from Green County Primary Care (“GCPC”) note Bush had complaints of right shoulder pain and the physician (signature illegible) diagnosed him with work-related right shoulder injury.

Bush had an MRI at Taylor Regional Hospital on March 14, 2015. Dr. Julia Lee noted a rotator cuff repair and diagnosed thinning of the supraspinatus tendon consistent with tendinosis, with supraspinatus and infraspinatus mild muscular atrophy, and mild osteoarthritis of the acromioclavicular articulation. Bush followed up the next day with GCPC with complaints the Percocet was not helping and he had worsening pain. He was ordered off work until he could see his orthopedist, Dr. Mehta.

Dr. Mehta saw Bush on March 25, 2015 and noted his complaints of sharp, stabbing pain radiating down from his cervical spine into the scapular planes bilaterally, with severe pain into his right shoulder joint. He noted Bush was unable to abduct his arm. Dr. Mehta diagnosed ruptured discs at C4-5, C5-6 with right upper extremity radiculopathy and a right shoulder rotator cuff tear with a possible glenoid labrum tear. He ordered Bush to remain off work, and to continue taking

pain medication. He scheduled an MR arthrogram of the right shoulder and an MRI of the cervical spine to rule out a ruptured disc.

Bush underwent the testing on April 17, 2015, which showed full thickness frayed irregular recurrent cuff tear involving the mid to distal supraspinatus. The testing indicated debrided superior labrum/chronic tearing was contributory. He diagnosed Bush with a right shoulder rotator cuff tear with some muscle atrophy along with tears to the bicep tendon and labrum. Dr. Mehta performed right shoulder surgery on July 9, 2015. His post-operative notes indicate he performed a debridement of the anterior glenoid labrum tear, a rotator cuff repair, and a patch augmentation of the weakened tendon.

Bush continued treating with Dr. Mehta following surgery and he remained off work. He underwent physical therapy with continued weakness and struggled with range of motion. Dr. Mehta's office note dated December 8, 2015 indicated he kept Bush off work "because he is still too weak to return back to work with a full, unrestricted fashion and because the risk of reinjury is very significantly high." Dr. Mehta ordered Bush to continue aggressive strengthening, stretching exercises, and a hardening PT protocol.

Bush followed up with Dr. Mehta on January 9, 2016. Dr. Mehta noted he still did not have an "adequate amount of strength in upper extremity function, especially in forward flexion and abduction, and his external rotation is quite limited as well. . . ." Dr. Mehta's plan was to continue range of motion stretching and strengthening exercises through a home-based exercise program. He stated, "The patient does not feel comfortable and confident that he can go back to

work at this point. He is concerned about a reinjury especially with having to move heavy patients. . . . I agree with that I certainly do not want him to get reinjured.”

Bush continued treating with Dr. Mehta through January 2020 and remained off work. Dr. Mehta’s record of April 12, 2016 stated Bush may be looking at a “disability situation” if he is unable to return safely to work as an x-ray technician. On August 29, 2016, Dr. Mehta completed the KESA Worker’s Compensation Form, indicating Bush had not reached MMI, he did not know when MMI was expected, and he noted no IME had yet been performed. He indicated Bush had restrictions of lifting no more than 25 pounds, no overhead lifting, and he should avoid repetitive lifting with his right shoulder. On November 10, 2016, Dr. Mehta stated Bush was to “continue to be off work at this point because of risk of sustaining another injury if and when he does go back to work in this condition certainly exists and both he and I don’t want to take the chance on this eventuality.”

On June 21, 2018, Dr. Mehta recommended Bush undergo a functional capacity evaluation (“FCE”), which was eventually performed. Bush fell two days prior to his September 27, 2018 appointment with Dr. Mehta but did not reinjure his shoulder. Bush was concerned about reinjuring his shoulder if he returned to work and Dr. Mehta again ordered him off work.

Dr. Mehta issued a total of 12 specific letters stating it was his “medical opinion” Bush should remain off work between the dates of April 12, 2016 through January 3, 2019, and he continued to keep Bush off work following appointments on July 11, 2019 and January 9, 2020.

Bush introduced the FCE report from Results Physiotherapy taken July 12, 2018. Lauren Knabel (“Ms. Knabel”), DPT, prepared the report and noted Bush complained of difficulty pulling doors, pushing a lawnmower, reaching overhead, and lifting objects from the floor with his arms extended. Bush reported his pain level that day was a four out of 10 during normal standing and sitting, elevated to a six out of 10 with overhead reaching, and seven to eight out of 10 on activities involving carrying or lifting anything above his waist. Ms. Knabel’s report indicated Bush demonstrated the ability to perform light work as defined in the Dictionary of Occupational Titles for lifting from waist to shoulder and waist to overhead.

Ms. Dana Ward (“Ms. Ward”), MRC, CRC, CCM, CLCP, CBIS performed a vocational records review since Bush was unable to appear personally for the assessment due to Covid-19 restrictions. Ms. Ward issued a report dated May 29, 2020. She advised she reviewed the following records: Form 101; Job Description for Radiology Technician; Dr. Mehta’s medical records from March 25, 2015 to January 9, 2020; Green County Primary Care medical records from February 24, 2015 to March 17, 2015; Flaget Memorial medical records from June 17, 2015 to July 9, 2015; Dr. Bonnarens’ reports dated May 10, 2018 and August 17, 2018; and the FCE dated July 12, 2018.

Ms. Ward indicated Bush’s job duties at the time of injury would be classified as Light; however, the job description states he was required to lift 100 pounds, therefore moving it to the Heavy physical demand classification. She opined, “Mr. Bush does not retain the physical capacities to return to work as

described in the job description per the lifting limits the employer required” but stated he could return to lighter duty work. She opined Bush’s college education qualifies him for many other types of jobs and he is a good candidate for retraining. Ms. Ward further opined Bush is not permanently totally disabled and the restrictions he was given align closely with light work restrictions.

Dr. Jules Barefoot evaluated Bush at his counsel’s request on September 22, 2021. Dr. Barefoot noted Bush’s prior right and left knee surgeries, as well as his prior February 22, 2010 right shoulder arthroscopic surgery with acromioplasty, Mumford procedure, rotator cuff repair, and anterior glenoid labrum debridement with complete recovery. He also noted Bush’s July 9, 2015 right shoulder arthroscopic surgery with the rotator cuff repair, patch augmentation, and debridement of anterior glenoid labral tear.

Dr. Barefoot noted Bush reported working as an x-ray technician with JTCH when he sustained a right shoulder injury while moving a patient and continued having complaints of ongoing persistent shoulder pain. Bush obtained an x-ray of his right shoulder on February 25, 2015 which showed no acute fracture or dislocation, mild AC joint and minimal glenohumeral joint osteoarthritic degenerative changes, suture anchors in the humeral head. He noted an MRI of the right shoulder dated March 17, 2015 showed evidence of prior rotator cuff tear, with thinning of the supraspinatus tendon as well as muscular atrophy. There was mild osteoarthritis in the AC joint. Dr. Barefoot further noted an MRI arthrogram of the right shoulder dated April 17, 2015 showed a full thickness tear of the distal supraspinatus tendon as well as a possible chronic tear of the superior labrum. He

noted Bush was evaluated by Dr. Mehta, who recommended and performed surgery on July 9, 2015. He noted Bush attended physical therapy and continued treating with Dr. Mehta on a regular basis. He noted Dr. Mehta recommended ongoing physical therapy and rehabilitation.

Dr. Barefoot noted Dr. Mehta's April 12, 2016 office note, stating "he still feels he is unable to return back to work safely and confidently" recommending a home exercise program. He noted during spring 2017 Bush had a lot of weakness. Dr. Mehta recommended an FCE following continued signs of weakness in abduction. Dr. Barefoot reviewed the July 12, 2018 FCE report and noted Bush was able to lift floor to waist 65 pounds occasionally and 23 pounds constantly, with loss of motion with both flexion and abduction and with external rotation.

Dr. Barefoot reviewed Dr. Bonnarens' August 17, 2018 report. He noted Dr. Bonnarens felt Bush would be unable to meet the requirements of moving patients to and from the x-ray/CT table. He noted Dr. Mehta had reviewed Dr. Bonnarens' report. He further noted, "a report by Dr. Mehta on April 11, 2019. . . that he cannot return to his regular job" and another report by Dr. Mehta dated July 11, 2019 which stated, "there is no doubt in my mind that this gentleman is going to need a reverse total shoulder arthroplasty based on the progression of his symptoms."

Dr. Barefoot diagnosed Bush with traumatically induced osteoarthritis of the right shoulder with ongoing persistent loss of motion and strength. He opined Bush's right shoulder injury on February 23, 2015 is work-related and he had completely recovered from the 2010 right shoulder surgery with no pre-existing

conditions. He placed Bush at MMI on January 9, 2020, at the time of his last evaluation with Dr. Mehta. He opined all treatment had been reasonable and necessary. Dr. Barefoot assessed Bush with a 5% whole person impairment pursuant to the 5th Edition of the American Medical Association, Guidelines to the Evaluation of Permanent Impairment (“AMA Guides”). He agreed with the results of the FCE limitations as reported, stating, “It does not appear he would be able to return to this prior position as an x-ray tech/CT tech due to his right shoulder limitations/restrictions.”

Dr. Bonnarens evaluated Bush twice for JTCH and issued three separate reports. His first evaluation occurred on May 10, 2018. On that date, Dr. Bonnarens noted Bush’s account of his right shoulder injuries and surgical history. Bush described having shoulder pain of 6/10, he was attempting physical therapy, and he is unable to return to work because “his treating physician feels with the combination of the two previous surgeries, the difficulty of the repair with this surgery and the combination of osteo, rheumatoid and psoriatic arthritis patient has, he would be at high risk for re-tearing.” Bush reported doing some hunting and fishing using mostly his wrist and reported pain upon extending his arms. Dr. Bonnarens conducted a physical exam and took x-rays that day consisting of four views, AP, internal and external rotation views, supraspinatus outlet view, and axillary view which showed a slightly high-riding humeral head with an inferior osteophyte noted, basically Hamada type II pattern.

Dr. Bonnarens diagnosed Bush as status-post rotator cuff repair x 2 with a thinned remnant of the rotator cuff requiring augmentation patch and muscle atrophy. Dr. Bonnarens opined Bush:

... does not require future treatment, however, he has a high probability for needing treatment in the future particularly with the high-riding humeral head and the degenerative changes noted. He became a candidate for either a superior capsular reconstruction or reverse total shoulder. As far as work status and restrictions, he is high risk for re-injury of the shoulder particularly if he is going back to the same sort of work.

He recommended an FCE to determine work restrictions. Dr. Bonnarens opined Bush was at MMI, but gave no specific date stating, “We do not anticipate any further changes. His activity level is high and his pain is within the functional limits that we would expect at this point.” Dr. Bonnarens assessed a 3% whole person impairment pursuant to the AMA Guides.

Dr. Bonnarens evaluated Bush a second time on September 14, 2021. Bush reported no intervening injury, no recent testing, and reiterated his surgical history. Bush stated he experiences weakness if he lifts weight out to the side. However, if he keeps his elbow close in by his side it is not as bad. Bush reported Dr. Mehta “has kept him off work with the idea of preventing possible future injury to the shoulder” and they discussed his high risk of reinjury due to the requirement of moving patients. Dr. Bonnarens noted there was no discussion of additional surgery at that point. Dr. Bonnarens conducted a physical exam and noted good abduction and external rotation strength. X-rays taken that day consisted of four views suggesting some mild AC joint arthropathy and showing the prior surgical anchors.

Dr. Bonnarens indicated he had reviewed “the records provided” from Dr. Mehta but did not particularly specify which records or any dates he had reviewed.

Dr. Bonnarens diagnosed Bush as status-post right shoulder rotator cuff tear with no ratable, pre-existing condition. He stated,

. . . [Bush] had considerable muscle thinning at the time of the surgery from the 2015 injury and weakness. The MRI taken three weeks post-injury showed muscle atrophy of the supraspinatus tendon and infraspinatus tendon consistent with chronic tear. However, this is not a ratable condition. [Bush] had good range of motion of the shoulder, and by history, he did. As such, no impairment would be calculated for this.

He opined Bush had reached MMI on July 9, 2016. He again assessed a 3% whole person impairment based on the AMA Guides. Dr. Bonnarens agreed with Dr. Mehta that Bush:

. . . had a tear of the rotator cuff and it is healed. [Bush] is at risk for re-tearing his rotator cuff; however, fear of re-tearing the rotator cuff is not sufficient to limit his activities of daily living or restrictions in any way. As such, I disagree with Dr. Mehta’s statement that he is on disability for this. [Bush] is capable of returning to regular duty work. It is up to [Bush] to decide whether he wants to do that or not.

Dr. Bonnarens declined to assess any permanent restrictions and opined Bush is physically capable of returning to his pre-injury work, and there is no further reasonable and necessary medical treatment required.

Finally, Dr. Bonnarens issued a rebuttal report on November 22, 2021 following Bush’s evaluation by Dr. Barefoot. Dr. Bonnarens discussed his interpretation of Dr. Mehta’s medical record dated January 9, 2020 regarding Bush’s shoulder recovery status and his ability to return to work. Dr. Bonnarens stated,

“There was no evidence of arthritis or rotator cuff tear described in these notes. It appears that the cuff tear arthropathy discussion was predicated on the possibility of the consequences associated with a re-tear of the rotator cuff.”

Dr. Bonnarens disagreed with Dr. Barefoot’s opinion assessing a 5% impairment due solely to the February 23, 2015 work injury, apparently changing his opinion from his September 14, 2021 report. He stated,

“[Bush] had an impairment associated with the Mumford done in 2010. While [Bush] might not have documented limitations prior to 2/23/15 that is not the same as having no active disability. . . . The statement that the tendon was not avulsed combined with the description of thinned, atrophied, and of poor quality clearly ties the operative findings back to the 2010 surgery not a new injury from 2015.”

Dr. Bonnarens stated he believed Dr. Barefoot’s opinion regarding Bush’s need for future orthopedic treatment was conjecture and not based on medical facts present in the case. He further disagreed with Dr. Barefoot’s opinion that Bush is unable to return to his pre-injury work. He reiterated his belief that Bush had not returned to work based on fear, not actual injury. He stated Bush could “. . . return to work if the reasonable accommodation of having someone help him move large people was made. This lifting accommodation for lifting heavy loads is made in every industry, including health care.”

A Benefit Review Conference and hearing were held on April 6, 2022. The issues preserved for determination included entitlement to TTD benefits, benefits pursuant to KRS 342.730, unpaid or contested medical expenses, and no-show costs for a missed IME.

The ALJ rendered his Opinion, Award and Order on May 23, 2022. He determined Bush sustained an injury to his right shoulder caused by his work at JTCH on February 23, 2015. The ALJ awarded TTD benefits at the rate of \$586.11 from February 23, 2015 through May 10, 2018. He awarded PPD benefits of \$65.87 beginning February 23, 2015 through March 2, 2024 based upon the 5% impairment rating Dr. Barefoot assessed, excluding any period of TTD, and he found the award should be enhanced by the three-multiplier contained in KRS 342.730(1)(c)1. The ALJ also awarded medical benefits pursuant to KRS 342.020. The ALJ denied JTCH's request for an evaluation cancellation fee and its medical fee dispute.

JTCH filed a Petition for Reconsideration arguing the ALJ erred in determining Bush's TTD benefits should have started on February 25, 2015, claiming instead his first "off-work slip" was dated March 18, 2015. It also argued the ALJ erred in finding Bush reached MMI on May 10, 2018 in reliance on Dr. Bonnarens' report and, instead, should have used July 9, 2016 as provided in Dr. Bonnarens' report dated September 14, 2021. Additionally, JTCH contended the ALJ erred in his interpretation that Dr. Mehta opined Bush does not retain the physical capacity to return to work and, thus, the application of the three-multiplier pursuant to KRS 342.730(1)(c)1 is not supported by substantial evidence.

In his Order on Petition for Reconsideration rendered June 15, 2022, the ALJ sustained JTCH's argument regarding the commencement date of TTD benefits and he amended that award to begin March 18, 2015 and end May 10, 2018. In denying the remainder of JTCH's Petition for Reconsideration, the ALJ stated:

The evidence and medical records support an end date of TTD of May 10, 2018. Specifically, that date is the date Dr. Bonnarens placed the Plaintiff at MMI. I understand that Dr. Bonnarens may have amended that opinion but nothing prevents me from selecting that date. . . .

Clearly the treating surgeon, Dr. Mehta, has assigned restrictions that when taken with the Plaintiff's probative and relied upon testimony prevent a return to the type of work done on the date of injury. KRS 342.730(1)(c)1 applies and that part of the Petition is **OVERRULED**.

On appeal, JTCH reiterates the same arguments it made in its Petition for Reconsideration.

ANALYSIS

As the claimant in a workers' compensation proceeding, Bush had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Bush was successful in that burden, the question on appeal is whether 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).

The ALJ was presented with conflicting medical opinions regarding the date Bush reached MMI, his level of impairment, and whether he retains the physical capacity to return to work. Specifically, JTCH argues Dr. Mehta never opined Bush was physically incapable of returning to his pre-injury work. It argues Bush is not working due to his fear of reinjury if he returns to his job as an x-ray technician.

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). Additionally, where there is conflicting medical evidence, the question of which evidence to believe is the exclusive province of the ALJ. Pruitt v. Bugg Bros., 547 S.W.2d 123 (Ky. 1977); Square D Co. v. Tipton, *supra*. Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

We find the ALJ reviewed all the evidence thoroughly and clearly provided the basis for his determinations. The ALJ expressed his basis for relying on Dr. Bonnarens' original opinion regarding MMI, which he believed was most consistent with the totality of the evidence, and not the amended opinion assigning an earlier MMI date.

We additionally find substantial evidence supports the ALJ's determination that Bush is unable to return to his pre-injury work. Dr. Mehta opined on numerous occasions it was his medical opinion Bush cannot return to work and this, coupled with the opinion of Dr. Barefoot, constitute substantial evidence upon which the ALJ could rely. The ALJ also found the FCE, which was not undertaken for litigation, persuasive evidence of Bush's inability to return to work.

The ALJ expressly found Bush's testimony regarding his pain and physical limitations credible, as well as the difficulties both would present lifting and moving patients. Kentucky courts have consistently held when the issue is the claimant's ability to labor and the application of the three-multiplier, it is within the province of the ALJ to rely on the claimant's self-assessment of his ability to perform his prior work. Ira A. Watson Department Store v. Hamilton, *supra*; Carte v. Loretto Motherhouse Infirmery, 19 S.W.3d 122 (Ky. App. 2000). The ALJ's decision to apply the three-multiplier pursuant to KRS 342.730(1)(c)1 was based in part on Bush's testimony he cannot physically perform the type of work he did at the time of injury, which is sufficient under Kentucky law to support that determination. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979).

We find the ALJ correctly analyzed the evidence and the applicable law, and he properly exercised his discretion in determining Bush is entitled to the application of the three-multiplier. He enumerated the reasons why he believed Bush's testimony regarding his physical limitations and inability to return to his pre-injury work, as well as his basis for relying on the opinions of Drs. Mehta and Barefoot. Because we determine the ALJ properly exercised his discretion, and his decision is supported by substantial evidence, we affirm.

Accordingly, the Opinion, Award and Order rendered on May 23, 2022, and the Order denying JTCH's Petition for Reconsideration issued June 15, 2022 by Hon. Chris Davis, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON MARCEL SMITH
300 EAST MAIN STREET, SUITE 400
LEXINGTON, KY 40507

COUNSEL FOR RESPONDENT:

LMS

HON TAMARA TODD COTTON
640 SOUTH 4TH STREET
LOUISVILLE, KY 40202

ADMINISTRATIVE LAW JUDGE:

LMS

HON CHRIS DAVIS
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601