

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: December 29, 2020

CLAIM NO. 201501453

JASMINKA SUCUR

PETITIONER

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

JCIM AND  
HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING IN PART, VACATING IN PART,  
AND REMANDING

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

**ALVEY, Chairman.** Jasminka Sucur (“Sucur”) appeals from the August 25, 2020 Opinion, Award & Order by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”) finding her right carpal tunnel syndrome (“CTS”) is work-related, and awarding temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits. The ALJ found Sucur failed to prove she

sustained work-related injuries to her shoulders, elbows, forearms or left wrist. Sucur also appeals from the September 25, 2020 Order overruling her Petition for Reconsideration.

On appeal, Sucur argues the ALJ erred in dismissing her claims for injuries to her elbows, forearms, and left wrist because she failed to provide a sufficient analysis of the lay and medical evidence she relied upon, and because the opinions of the university evaluator were no longer timely. Sucur next argues the ALJ erred in determining she is not permanently totally disabled and she did not provide a sufficient analysis allowing for a meaningful review. Because substantial evidence supports the ALJ's determinations and a contrary result is not compelled, we affirm. However, we vacate in part and remand for resolution of an outstanding medical fee dispute filed by JCIM on May 7, 2018.

Sucur filed a Form 101 alleging injuries to "both upper extremities, shoulders" due to her repetitive job activities with JCIM. She provided April 15, 2014 as the date of injury. Sucur began working as an operator for JCIM in May 2011.

Sucur testified by deposition on November 12, 2015 and at a hearing held March 3, 2016. Sucur was born in March 1968. Sucur graduated from high school in Yugoslavia and moved to the United States in 1996. She has no additional specialized or vocational training. Sucur worked as a laborer at Louisville Ladder from 1996 to 2001. She then exited the workforce for ten years. Sucur returned to work as a cashier for Speedway from October 2010 to May 2011. She began working as a press operator for JCIM in May 2011.

Sucur alleged she sustained a work-related injury caused by cumulative trauma in 1997 or 1998 while working for Louisville Ladder, but insisted it involved only one shoulder. Sucur testified she saw the company physician, who informed her she was fine. After a short period of light duty, Sucur returned to her regular work with Louisville Ladder until she quit in 2001. Sucur testified her shoulder symptoms completely resolved, and denied injuring any other body part. Sucur did not experience any additional symptoms or problems in either shoulder or arm until 2014. Sucur has also been diagnosed with fibromyalgia for which she takes medication prescribed by her family physician.

Sucur began working as an operator for JCIM, a manufacturer of interior car parts, in May 2011. Sucur explained her job activities required lifting and repetitive use of both upper extremities. At the hearing, Sucur indicated she began experiencing progressively worsening symptoms in both hands in early 2014. She first sought treatment with her family physician, Dr. Reem Hamad, who referred her to Kleinert & Kutz. Her employer also sent her to Occupational Physician Services. Sucur indicated the workers' compensation insurer eventually denied coverage of her medical treatment. Sucur continued to experience symptoms in her right fingers, hand, wrist, and right elbow. She also has symptoms in her left forearm and hand, but not her left elbow or shoulder. Sucur continued to work her regular job with JCIM without restrictions.

JCIM filed Dr. Hamad's records for treatment from May 23, 2013 through August 3, 2015, primarily documenting treatment for fibromyalgia and headaches. Sucur underwent physical therapy for her cervical spine and left shoulder

in April and May 2013. On January 23, 2014, Sucur complained of right shoulder and arm pain, and numbness in her right hand. Dr. Hamad referred Sucur to a hand surgeon.

Sucur began treating with Dr. Huey Tien at Kleinert & Klutz Hand Care Center on January 29, 2014. Dr. Tien noted Sucur complained of right lateral arm and elbow pain, as well as numbness and tingling in the middle fingers of her right hand and right shoulder pain. Dr. Tien's diagnoses through April 2014 included "TOC<sup>1</sup>", biceps tendinitis, right medial and lateral epicondylitis, right CTS and fibromyalgia. Sucur underwent conservative treatment, including medication, injections to the right wrist and elbow, and physical therapy. An EMG/NCV of the right upper extremity was performed on April 5, 2014. Dr. V. Iyer opined the study suggested median nerve neuropathy at the wrist, consistent with moderately severe right CTS. A right elbow MRI was performed on April 18, 2014, and demonstrated moderate lateral epicondylitis with a partial tear of the common extensor origin. Dr. Tien assessed no formal restrictions.

Sucur treated at Occupational Physician Services on February 13, 2015 and February 23, 2015. Sucur reported worsening right elbow pain due to the press she had been working on. Sucur was diagnosed with right lateral epicondylitis and cubital tunnel syndrome. She was placed on light duty restrictions and referred back to Kleinert & Kutz Hand Care Center.

Sucur treated with Dr. Tuna Ozyurekoglu on April 22, 2015. He noted Sucur had a two-year history of right upper extremity pain located at the

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<sup>1</sup> It is presumed that "TOC" stands for thoracic outlet compression.

elbow, forearm, and three middle fingers. He also noted the April 2014 EMG/NCV demonstrated median nerve compression. Dr. Ozyyurekoglu diagnosed the following:

R TOC; R medial and lateral epicondylitis and biceps tendinitis; R CTS; fibromyalgia  
R CTS, RT ECRB tendon origin tear, mild medial epicondylitis (Overuse syndrome-Work related)

Dr. Ozyyurekoglu recommended an injection and EMG/NCV testing for the CTS, as well as an injection and a repeat MRI for the epicondylitis. He assigned restrictions and opined Sucur was not a maximum medical improvement (“MMI”). Sucur was returned to regular duty on May 27, 2015.

Sucur filed Dr. Warren Bilkey’s October 14, 2015 report. He noted Sucur reportedly developed pain in her right palm and the middle three fingers of the right hand extending through her wrist, forearm, and elbow over a two-month period. Dr. Bilkey noted Sucur reported lesser symptoms on her left hand. He stated she sustained a “4/1/14 work injury with right carpal tunnel syndrome, right cubital tunnel syndrome, right lateral and medial epicondylitis, and right thoracic outlet compression. Findings were present on the left, but much less severe.” Dr. Bilkey opined his diagnoses are due to the April 1, 2014 work injury. He determined Sucur had not attained MMI, recommended additional treatment, and assigned temporary work restrictions.

JCIM filed Dr. Thomas Gabriel’s January 22, 2016 report. Sucur reported work-related repetitive motion injuries to both upper extremities, right worse than left. A nerve conduction study, performed on both upper extremities on the day of the examination, noted both the left and right wrists median nerves were

within normal limits. He also noted an abnormal ulnar motor nerve conduction across the left wrist and right proximal ulnar neuropathy possibly at the elbow. Dr. Gabriel diagnosed chronic musculoskeletal pain and history of fibromyalgia; history of right carpal tunnel syndrome; normalization of median nerve conduction studies following carpal tunnel cortisone injection in the past; and chronic right elbow lateral epicondylitis. He opined Sucur's right and left upper extremity pain are due to non-work-related fibromyalgia, not her work activities at JCIM. He also noted the diagnostic studies found no evidence of CTS involving either wrist. He opined Sucur requires no further treatment for her right CTS. He assessed a 0% impairment rating and opined Sucur is able to return to her pre-injury work without restriction.

JCIM filed the records stemming from Sucur's previous workers' compensation claim, Claim Number 2000-01378, alleging injuries on January 23, 1997 to both shoulders, arms, and hands while working for Louisville Ladder allegedly caused by cumulative trauma. The claim was ultimately dismissed on January 28, 2003 due to Sucur's failure to appear.

Hon. Douglas W. Gott, now Chief Administrative Law Judge ("CALJ Gott") relied upon Dr. Bilkey, Dr. Ozyurekoglu, and Sucur's testimony regarding the nature of her job, "to find she suffered a right upper extremity 'injury' from work related repetitive trauma." CALJ Gott determined the date of manifestation was April 22, 2015, and Sucur had not attained MMI. CALJ Gott determined he would benefit from the opinions of a university evaluator. CALJ Gott ordered Sucur is entitled to reasonable and necessary medical benefits. In a separate Order, CALJ Gott directed Sucur to attend a university evaluation, who would issue a report

addressing diagnoses, work-relatedness, the need for future medical treatment, MMI, and impairment and restrictions, if applicable.

Dr. Gregory Gleis performed a university evaluation on May 3, 2016 and prepared a Form 107-I on June 6, 2016. He also testified by deposition on August 2, 2016, which is consistent with the June 2016 report. Dr. Gleis reviewed the medical records, as well as the March 24, 2016 interlocutory opinion, Sucur's deposition, and hearing testimony. He noted Sucur complained of pain and symptoms in the right lateral epicondyle, right thumb, index, and long digits, right palm, wrist, and forearm, and right antecubital fossa. She also complained of left wrist pain and digit numbness. He also noted Sucur received four to five injections two weeks prior to his examination.

Dr. Gleis diagnosed right lateral epicondylar pain; right thumb, index, and long digits, as well as right palm pain extending into the wrist and forearm symptoms; and right antecubital fossa deep pain lateral to the biceps tendon extending to the medial epicondyle and olecranon. Dr. Gleis reviewed the April 2014 right elbow MRI and noted the April 2014 EMG/NCV demonstrated moderate to severe right CTS. Dr. Gleis stated that if the most recent carpal tunnel injection does not provide long-term relief, then surgery would be an option. Dr. Gleis determined lateral epicondyle/extensor tendon surgery is unlikely to improve her antecubital and medial elbow pain.

Dr. Gleis also noted Sucur complained of similar, but less severe, left hand symptoms, but no reported complaints of left elbow or shoulder pain. His exam of left upper extremity was essentially normal. He noted she had not

undergone diagnostic testing of the left upper extremity. Dr. Gleis recommended electrodiagnostic testing if her left hand symptoms reoccur.

Dr. Gleis opined Sucur's right lateral epicondylitis is not work-related, but rather is a pre-existing actively symptomatic condition based upon the previous workers' compensation claim. Dr. Gleis opined that Sucur's right carpal tunnel symptoms, objective findings, and diagnostic studies were consistent with CTS. Dr. Gleis was unable to render an opinion as to causation based upon his lack of familiarity with her work activities at JCIM.

Dr. Gleis assessed a 2% impairment rating pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), for the right CTS. Dr. Gleis determined the right lateral epicondylitis and left CTS warranted no impairment rating. He also noted there were no findings suggestive of either right or left cubital tunnel syndrome. Dr. Gleis was unable to determine whether Sucur had reached MMI, noting this would depend on the results of the most recent cortisone injections after a six-month waiting period. Dr. Gleis noted Sucur had chosen to continue to work her regular job because JCIM did not recognize her recommended restrictions. He opined Sucur would benefit from a non-repetitive job using both upper extremities. Dr. Gleis declined to assign specific permanent restrictions.

Dr. Bilkey prepared an addendum dated July 8, 2016 after reviewing Dr. Gleis' report and stated his previous opinions remain unchanged.

JCIM also filed Dr. Ozyurekoglu's February 24, 2016 treatment record. He noted Sucur complained of pain, numbness, and tingling in both hands,

in addition to right elbow pain. He administered injections to the right and left carpal tunnel, right “ME” and right biceps tendon. He diagnosed, “Overuse syndrome: B/L CTS, Rt Medial Epicondylitis > Lateral Epicondylitis, RT Biceps Tendinitis, Rt CubTS.” He restricted Sucur from repetitive duty and from overhead activities.

In a second interlocutory opinion dated October 3, 2016, CALJ Gott reviewed the university evaluation, Dr. Bilkey’s addendum, and the updated treatment note. CALJ Gott found *verbatim* as follows:

3. The opinions of Dr. Gleis are afforded presumptive weight pursuant to KRS 342.315(2). The ALJ relies on Dr. Gleis to find Sucur has not proven work related injuries to her elbows, forearms or the left wrist (carpal tunnel syndrome). Those claims shall be dismissed. The Form 101 also alleged shoulder injuries, but no evidence was offered in support of those claims so they will also be dismissed. . . .

4. The ALJ sought a university evaluation, in part, to receive evidence “on the nature of the injury suffered.” (Interlocutory Opinion, p.11) Regardless of causation, Dr. Gleis has only identified one injury – right sided carpal tunnel syndrome. This was the only condition for which he assigned impairment (2%), but he said he did not feel comfortable stating an opinion on causation . . . . Dr. Bilkey said Sucur was not at [MMI], but alternatively assigned work related impairment of 13% for right sided carpal tunnel syndrome.

The ALJ reiterates the finding in his Interlocutory Opinion that he relies on Dr. Bilkey, Dr. Ozyurekoglu and Sucur’s testimony to find the right sided carpal tunnel condition to be work related. There has not been any new evidence that causes the ALJ to change his mind about that. *Bowerman v. Black Equipment Co.*, 297 S.W.3d 858, 867 (Ky. App. 2009). The ALJ does not believe he is disregarding the opinion of the university evaluator – since Dr. Gleis did not say either way – but if it is judged that he is, he is only

required to state the reason therefore since the presumption does not raise the bar with regard to the claimant's burden of proof. *Magic Coal Co. v. Fox*, 19 S.W.3d 88 (Ky. 2000). In this case, Dr. Gleis' causation opinion was equivocal, while Dr. Bilkey's and Dr. Ozyurekoglul's were not. The latter were persuasive, and therefore adopted.

Since neither Dr. Bilkey nor Dr. Gleis determined Sucur had reached MMI, CALJ Gott provided time to submit additional evidence.

Subsequent to the second interlocutory order, Dr. Ozyurekoglul performed a right carpal tunnel release, a right elbow tenotomy, corticotomy, and debridement and reinsertion of common extensor origin on May 9, 2017. JCIM voluntarily paid a period of TTD benefits after the surgery. The claim was re-assigned to the ALJ on May 25, 2020.

Sucur again testified by deposition on April 10, 2017 and at the final hearing held June 29, 2020. Sucur testified she began working for JCIM in May 2011 and again described her work duties. Sucur confirmed she underwent surgery in May 2017. Sucur acknowledged she continued to work full time at a regular job as an operator for JCIM until her May 2017 surgery. Thereafter, she was off work for approximately sixteen weeks and received TTD benefits. Dr. Ozyurekoglul released her to return to work without restrictions on September 18, 2017. Sucur returned to her regular job at that time and continued to work until her employer terminated her on July 9, 2018. Sucur has not returned to any work since.

Sucur last treated with Dr. Ozyurekoglul in 2018. She has not pursued additional treatment due to financial difficulty. Dr. Ozyurekoglul assigned permanent restrictions in January 2018. Sucur indicated she continues to experience

pain and numbness in both hands, drops objects, and is unable to do “anything with my hands.” Based upon her restrictions and limitations, Sucur does not believe she is able to return to any of her previous jobs, including her operator position with JCIM.

JCIM filed a medical fee dispute on May 7, 2018, challenging the request for authorization of continued treatment by a hand specialty orthopedic surgeon and continued right upper extremity treatment including, but not limited to, physical therapy. In support of the dispute, JCIM filed multiple reports by Dr. Michael Nicoson. Dr. Ozyurekoglu was subsequently added as a party.

Both parties filed the treatment records of Dr. Ozyurekoglu from May 2017 through May 2018. Following surgery, Dr. Ozyurekoglu diagnosed, “postop R CTS, Rt lateral epicondylitis,” recommended physical therapy, and administered injections. He imposed light duty restrictions. He explained the right common extensor and flexor origin debridement was unnecessary. On February 5, 2018, Dr. Ozyurekoglu noted Sucur had a reoccurrence of symptoms two months prior, and she was placed back on restrictions. He noted Sucur received a left carpal tunnel injection four weeks prior, and reported improved symptoms. He diagnosed, “resolved R CTS s/p release. L CTS improved with injection. R lat epicondylitis s/p debridement.” He found Sucur was had reached MMI, and he permanently restricted her from using vibratory tools and from overhead work. A May 16, 2018 work slip noted the diagnoses of “Recurrent RT CTS. L CTS, R Lat Epicondylitis s/p debridement, R biceps tendinitis.” Sucur was also restricted from repetitive pushing, pulling, pinching, and gripping of both hands.

Sucur filed Dr. James Farrage's November 29, 2017 report. He diagnosed, "repetitive overuse syndrome of the right upper extremity who developed right [CTS] and right lateral epicondylitis requiring surgical release for both conditions who is having continued issues with pain, decreased sensation, reduced strength, and impaired functional capacity." He opined Sucur's clinical presentation and history account were consistent with the proposed mechanism of injury, and determined her medical treatment had been appropriate. Dr. Farrage opined Sucur is at MMI and imposed restrictions to her right upper extremity. He opined Sucur does not retain the physical capacity to return to her previous job. Dr. Farrage assessed a combined 8% impairment rating pursuant to the AMA Guides for the right upper extremity, entirely due to the April 2014 work injury.

JCIM filed Dr. Gleis' December 18, 2017 report. He evaluated Sucur on November 29, 2017 at its request. Dr. Gleis noted his previous university evaluation report and deposition in 2016, as well as Sucur's subsequent treatment. He noted Sucur complained of pain in her right palm, wrist, elbow, and forearm. Dr. Gleis noted Sucur reported her left upper extremity continued to bother her. He performed an examination of both upper extremities and reviewed the records. He noted his diagnoses contained in the 2016 report were unchanged. He found the right carpal tunnel release and the sensory test he performed showed a good result. He opined Sucur obtained MMI from the surgery on September 18, 2017. He also opined Sucur experienced an exacerbation of her right carpal tunnel condition in November 2017 after she returned to work. Dr. Gleis opined the pending request for referral to a hand surgeon is unlikely to determine she needs any new treatment.

Dr. Gleis again stated Sucur's right elbow complaints and treatment are unrelated to the alleged work-related injury, including the surgical treatment of the right lateral epicondylitis. Dr. Gleis noted his opinions as to causation remained unchanged from his 2016 university evaluation and deposition. Dr. Gleis assessed a combined 5% impairment rating for Sucur's right CTS pursuant to the AMA Guides. Dr. Gleis opined Sucur does not retain the physical capacity to return to prior work.

Finally, Sucur filed Dr. Jules Barefoot's April 4, 2019 report. He noted Sucur complained of bilateral hand pain, right elbow pain, diminished grip strength in both hands, numbness and tingling in both hands involving the index, middle, and ring fingers. Dr. Barefoot diagnosed right CTS/median nerve neuropathy and right elbow rear of the common extensor origin; 5/9/17 right carpal tunnel release and right elbow tenotomy, debridement, and reinsertion of the common extensor tendon; recurrent right median nerve neuropathy with ongoing, persistent, right elbow epicondylitis; and left carpal tunnel syndrome/median nerve neuropathy.

Dr. Barefoot assessed an 11% upper extremity impairment rating for right median nerve neuropathy, an 11% upper extremity impairment rating for left median nerve neuropathy, and a 3% whole person impairment rating for right elbow pain, for a combined 16% whole person impairment rating pursuant to the AMA Guides. Dr. Barefoot apportioned the entire impairment rating to her repetitive workplace activities of 2014. Dr. Barefoot recommended a referral back to the hand surgeon, and assessed restrictions affecting her bilateral upper extremities.

In the August 25, 2020 Opinion, the ALJ found the only compensable condition is the right CTS, stating as follows, *verbatim*:

JCIM asserts that the only compensable portion of Sucur's claim is her right carpal tunnel syndrome. JCIM further argues any other allegations of a bilateral upper extremity injury caused by cumulative trauma was dismissed by Chief ALJ Gott's second interlocutory opinion and order, issued on October 3, 2016. This ALJ reviewed the evidence, including Dr. Gleis' university evaluation and deposition testimony. Dr. Gleis' opinions are afforded presumptive weight under KRS 342.315 (2). This ALJ reviewed Drs. Farrage and Barefoot's opinions, but was not persuaded to disturb Chief ALJ Gott's interlocutory findings under *Bowerman v. Black Equipment Co.*, 297 S.W.3d 858 (Ky. App. 2009). As such, this ALJ also relies on Dr. Gleis to find Sucur has not proven work-related injuries to her elbows, forearms, or left wrist.

Additionally, Dr. Gleis did not find any evidence of the bilateral shoulder injury. Following Dr. Gleis' university evaluation and follow-up evaluation at JCIM's request, he did not find any evidence of a work-related shoulder condition. Additionally, neither Drs. Farrage or Barefoot opined Sucur sustained a work-related shoulder condition. As such, this ALJ finds the only compensable condition Sucur suffers from is right carpal tunnel syndrome.

The ALJ next determined Sucur attained MMI on September 18, 2017 and awarded TTD benefits from May 9, 2017 through September 18, 2017. The ALJ determined Sucur's right CTS warranted a 5% impairment rating based upon Dr. Gleis' opinion and she is unable to perform her pre-injury work, entitling her to the three multiplier.

The ALJ next determined Sucur is not permanently totally disabled due to her work-related right CTS. The ALJ set forth the five step analysis that is required in determining whether a Claimant is permanently and totally disabled

pursuant to Ashland v. Stumbo, 461 SW3d 392 (Ky. 2015) and the factors to be considered in determining whether an injured worker is totally disabled in accordance with Ira A. Watson Department Store v. Hamilton, Ky., 34 S.W.3d 48 (2000). The ALJ stated as follows, *verbatim*,

After considering Sucur's age, educational level, vocational skills, medical restrictions, and the likelihood she can resume some type of work under normal employment conditions, this ALJ finds Sucur is not permanently and totally disabled. First, this ALJ notes Sucur is 52 years old. She remains a reasonably young woman, and this factor does not support an award of permanent total disability. Secondly, Sucur has a 12th-grade education and post-high school education studying law. Thus, her educational level does not support an award of permanent total disability.

This ALJ has thoughtfully considered Sucur's vocational skills in tandem with her work restrictions. The ALJ will now consider Sucur's medical restrictions and notes a claimant's testimony may be substantive when considering occupation disability. Hush v. Abrams, 584 S.W.2d 48(Ky. 1979). Sucur does not feel capable of performing any work. However, this ALJ concludes Drs. Barefoot and Gleis' recommended work restrictions indicate she can perform light-duty work. This ALJ feels Sucur can obtain and perform work within Drs. Barefoot and Gleis' recommended restrictions. Thus, this ALJ feels Sucur has the capacity to obtain light-duty work and is not permanently and totally disabled.

The ALJ awarded TTD benefits, PPD benefits increased by the three multiplier pursuant to KRS 342.730(1)(c)1, and medical expenses. Sucur filed a Petition for Reconsideration raising the same arguments she now makes on appeal. The ALJ denied the petition, setting forth the following additional findings, *verbatim*:

On October 3, 2016, Chief ALJ Gott issued his second interlocutory opinion and found Plaintiff did not prove work-related injuries to her elbows, forearms, or left wrist. Thus, those claims were dismissed. Also,

Plaintiff's left shoulder claim was dismissed. Plaintiff argues Dr. Gleis' opinions are no longer timely because she underwent surgery and continuing treatment.

This ALJ considered and weighed the proof filed following the interlocutory decisions. Ultimately, she was not persuaded by Drs. Farrage and Barefoot's causation opinions. Chief Gott issued findings and relied on Dr. Gleis' opinions. After reviewing the evidence, under Bowerman v. Black Equipment Co., 297 S.W.3d 858 (Ky. App. 2009), this ALJ was not persuaded to modify Chief Gott's findings. Rather, this ALJ totally agreed with those findings and Chief Gott's reliance on Dr. Gleis' opinions. Dr. Gleis' causation opinions were issued following a university evaluation. As such, he was not retained by any expert in this claim, at that juncture, and his opinions were devoid of bias. Also, his opinions are afforded presumptive weight under KRS 342.315 (2). Plaintiff's proof simply did not rise to the level to overcome the rebuttable presumption in KRS 342.315 (2). Thus, Plaintiff's right carpal tunnel condition was the only compensable condition.

Plaintiff underwent a right carpal tunnel release and elbow surgery on May 9, 2017 with Dr. Tuna. Thereafter, Dr. Gleis evaluated Plaintiff on November 29, 2017 at the request of Defendant. After a thorough review of treatment records and physical examination, Dr. Gleis assessed 5% permanent impairment for Plaintiff's right carpal tunnel syndrome. Importantly, Dr. Gleis' opinion addressing permanent impairment was assessed after Plaintiff reached maximum medical improvement on September 18, 2017. Thus, this ALJ cannot conclude Dr. Gleis' opinion addressing permanent impairment was untimely. As a result, this portion of Plaintiff's petition is over-ruled.

Plaintiff argues the ALJ committed a patent error in not finding Plaintiff permanently and totally disabled. However, this ALJ applied the applicable and weighed the evidence. After doing so, she was not convinced Plaintiff was permanently and totally disabled. This ALJ concluded Plaintiff has the ability to perform light duty work and is not permanently and totally disabled. As

such, this portion of Plaintiff's petition for reconsideration is over-ruled.

On appeal, Sucur argues the ALJ erred in dismissing her claims for injuries to her elbows, forearms, and left wrist because she failed to provide a sufficient analysis of the lay and medical evidence. Sucur also alleges the ALJ relied upon the opinions of the university evaluator, Dr. Gleis, which are no longer timely. Sucur next argues the ALJ erred in determining she is not permanently totally disabled and she did not provide a sufficient analysis allowing for a meaningful review.

As the claimant in a workers' compensation proceeding, Sucur had the burden of proving each of the essential elements of her claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Sucur was unsuccessful in proving work-related injuries to her bilateral shoulders, elbows, forearms, and her left wrist and in proving she is totally disabled, 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, *supra*.

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). 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 inadequate 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 the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could 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.

After careful review, we find substantial evidence supports the ALJ's determination that Sucur only sustained a compensable right carpal tunnel condition due to her work activities with JCIM, and a contrary result is not compelled. Dr. Gleis examined Sucur on two occasions, once as a university evaluator, and again at JCIM's request. He also testified by deposition on August 2, 2016. Although Sucur submitted contrary evidence subsequent to the second interlocutory opinion rendered October 3, 2016, the ALJ was not compelled to accept it as persuasive. In

Bowerman v. Black Equipment Company, 297 S.W.3d 858, 867 (Ky. App. 2009), the Court determined an ALJ as fact-finder *may* reverse a dispositive interlocutory factual finding on the merits in a subsequent final opinion, only by showing of new evidence, fraud or mistake. (emphasis added). The fact Dr. Gleis performed a university evaluation on May 3, 2016 and again examined Sucur on November 29, 2017, prior to Dr. Barefoot's April 4, 2019 examination, merely goes to the weight to be afforded his testimony. We emphasize Dr. Gleis re-examined Sucur on November 29, 2017, after she reached MMI on September 18, 2017. Therefore, we determine substantial evidence supports the ALJ's decision that Sucur sustained only a right carpal tunnel condition due to her work activities with JCIM, and a contrary result is not compelled.

We next note that permanent total disability is defined 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 because of an injury. KRS 342.0011(11)(c). "Work" is defined as providing services to another in return for remuneration on a regular and sustained basis in a competitive economy. KRS 342.0011(34). In determining whether Sucur is permanently totally disabled, the ALJ was required to perform an analysis pursuant to the City of Ashland v. Stumbo, *supra* and Ira A. Watson Department Store v. Hamilton, *supra*.

We find the ALJ performed an analysis pursuant to the required factors set forth in City of Ashland v. Stumbo, *supra*, and Ira A. Watson Department Store v. Hamilton, *supra*, in finding Sucur is not permanently totally disabled. The ALJ explained the five-step process required to support her determination. The ALJ

found Sucur sustained a compensable work-related injury warranting a 5% impairment rating based upon Dr. Gleis' assessment. The ALJ considered Sucur's age, education, vocational skills, and light duty work restrictions imposed by Dr. Gleis and Dr. Barefoot. The ALJ appropriately outlined the steps necessary, and outlined the evidence she relied upon in reaching her determination. The ALJ properly analyzed the claim, and her decision falls squarely within her discretion. Therefore, her determination on this issue will remain undisturbed and we affirm.

The ALJ must provide a sufficient basis to support his or her determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining, Co., 634 S.W.2d 440 (Ky. App. 1982). This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his or her reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). Here, the ALJ provided summaries of the interlocutory opinions rendered by CALJ Gott. The ALJ specifically noted much of the evidence was summarized and noted by CALJ Gott in the interlocutory opinions and declined to again summarize this evidence in the interest of brevity. The ALJ then summarized the evidence submitted subsequent to the second interlocutory opinion. We determine the ALJ's summary of the

records and her stated reliance upon Dr. Gleis' opinions adequately provided the basis of her decision.

With that said, we vacate in part and remand, on the narrow issue of the unresolved medical fee dispute. Subsequent to the second interlocutory opinion rendered October 3, 2016 by CALJ Gott, JCIM filed a medical fee dispute on May 7, 2018 challenging a request for authorization of continued treatment by a hand specialty orthopedic surgeon and right upper extremity treatment including but not limited to future physical therapy. In support of the dispute, JCIM filed several reports by Dr. Nicoson. This dispute was not addressed. Therefore, on remand, the ALJ is directed to specifically resolve this outstanding medical dispute.

Accordingly, the August 25, 2020 Opinion, Award & Order and the September 25, 2020 Order on Petition for Reconsideration by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED IN PART AND VACATED IN PART**. This claim is **REMANDED** to the ALJ to resolve the outstanding medical fee dispute filed by JCIM during the pendency of this claim.

ALL CONCUR.

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