

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: May 14, 2021

CLAIM NO. 201890704

JEFFREY L. LILE

PETITIONER

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

GENERAL MOTORS and  
HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**ALVEY, Chairman.** Jeffrey Lile (“Lile”) appeals from the December 1, 2020 Opinion, Award and Order, and the December 22, 2020 Order denying his Petition for Reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”). The ALJ awarded temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits.

On appeal, Lile argues the ALJ erred in failing to find him permanently totally disabled. He argues the evidence supports a finding of permanent total disability. We determine the ALJ appropriately summarized the evidence of record. Because substantial evidence supports the ALJ's determination, and a contrary result is not compelled, we affirm.

Lile filed a Form 101 on January 6, 2020, alleging he sustained head injuries on March 5, 2018 when he tripped over a cord in the course and scope of his job duties at the General Motors Corvette plant ("GM") in Bowling Green, Kentucky. Lile struck his head and face on a metal table when he fell.

Lile testified by deposition on February 23, 2020, and at the hearing held October 27, 2020. Lile was born on January 2, 1955, and he resides in Hardyville, Kentucky. Lile is a high school graduate, and he has had some training in welding and woodworking. Lile has worn eyeglasses since he was twelve or thirteen years old. He testified he does not have many hobbies, but occasionally engages in welding for personal projects. Lile testified he has experienced double vision since the date of the accident when he attempts to look to the left, right, and up. He denied having any previous problems with double vision.

Lile worked as a pipe fitter in GM's maintenance department from June 1981 until the March 5, 2018 work accident, and he has not worked anywhere since. His job as a pipe-fitter required welding and repairing pipe systems dealing with air, water, and pneumatics. On the day of the accident, he had gone to an older part of the plant to retrieve some parts when he tripped over a cord. This caused him to fall into a metal table, striking the area between his eyes. He lost consciousness,

and he was flown by helicopter to Skyline Medical Center in Nashville, Tennessee. Lile testified he received TTD benefits after the accident until March 17, 2019. He then received extended sickness and accident benefits until the end of 2019. After the accident, he retired from GM and he receives retirement benefits.

Lile underwent nasal surgery and eye surgery after the accident. He testified he now has double vision with certain ocular movements, and he has lost his senses of taste and smell. He testified he can look down with no problem, but he is unable to look upward without experiencing double vision. His primary complaint is the double vision, but he testified he has also developed problems with his memory. He testified he treats for depression in addition to his physical injuries.

Lile submitted multiple medical records in support of the Form 101. In a March 21, 2019 note, Dr. Ashley Norris, a primary care physician, stated Lile has experienced and treated for depression for many years, which has worsened since the work accident.

On November 15, 2019, Dr. Brad Mallory, the occupational medicine director with T. J. Samson Hospital in Glasgow, Kentucky, noted Lile sustained multiple injuries on March 5, 2018, including orbital floor fractures, medial wall fractures, multiple facial fractures, and monocular diplopia. He diagnosed Lile with bilateral orbital floor fractures, facial trauma, multiple facial fractures, a deviated septum, bilateral hypertrophy of the nasal turbinates, a nasal bone deformity, monocular diplopia, and loss of smell and taste. He noted Lile had reached maximum medical improvement (“MMI”), and he assessed a 24% impairment rating pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the

Evaluation of Permanent Impairment (“AMA Guides”). Dr. Mallory was uncertain if Lile would have any permanent restrictions.

Lile additionally submitted the March 5, 2018 records from Dr. Andrew Meador at the Skyline Medical Center. Dr. Meador noted Lile was 63 years old, and sustained multiple facial traumas when he fell and struck his face on a sharp metal box. He noted Lile fractured both orbital walls and bilateral orbital floor fractures. The March 7, 2018 and March 14, 2018 operative notes from Dr. Michael Cash and Dr. Steven Pres were included in those records. The March 9, 2018 discharge summary from the Skyline Regional Medical Center notes Lile was diagnosed as status-post fall causing multiple facial fractures, and a skull base fracture. He also sustained a pneumocephalus, a right retrobulbar hematoma, orbital floor fractures, facial and forehead lacerations, and a nasal orbital ethmoid fracture.

Lile subsequently filed additional records from Dr. Pres. On February 9, 2019, the partially legible hand-written notes indicate Lile complained of double vision and a loss of taste and smell. Records from March 20, 2018 and April 26, 2018 are also generally illegible, but indicate continued complaints of double vision, bite changes, and inability to breathe through the right nostril.

Lile also filed Dr. Spencer Witcher’s June 11, 2019 report. Dr. Witcher examined Lile on February 25, 2019. He noted Lile’s complaints of diplopia (double vision), right eye socket injuries, and surgery. He found Lile had reached MMI. He stated he was unsure whether restrictions are necessary. He stated Lile could not safely operate a motor vehicle.

Lile additionally filed records from Dr. Kelly Everman for four treatment dates between May 14, 2018 and January 22, 2019. On May 14, 2018, Dr. Everman diagnosed left and right orbital floor fractures, and surgery was discussed. Dr. Everman performed right orbital floor repair surgery on June 27, 2018. On October 30, 2018, Lile reportedly experienced continued double vision when looking up. Dr. Everman noted Lile had nasal surgeries scheduled with Drs. Pres and Richard Gilpin. On January 22, 2019, Dr. Everman noted Lile's globes were in good position bilaterally, and his orbits had improved to maximal level. Dr. Everman diagnosed Lile with continued double vision.

Dr. Gilpin noted on December 17, 2018, Dr. Pres referred Lile to him. He diagnosed Lile with a deviated septum, hypertrophy of nasal turbinates, a nasal bone deformity, and an old nasal fracture. He performed a septorhinoplasty on January 14, 2019. At the January 27, 2019 follow-up examination, he noted Lile's condition was stable, and his septum position had improved.

Dr. Richard Eiferman evaluated Lile at GM's request on April 28, 2020. In his May 1, 2020 report, he noted Lile tripped and fell, striking a metal table. He found Lile sustained multiple traumatic orbital fractures involving the medial wall, orbital floor, and nasal bones caused by the fall. Dr. Gilpin stated Lile's visual prognosis is good, but he has diplopia with extreme lateral and upward gaze. He found Lile had reached MMI, and no additional treatment is necessary. He assessed a 15% impairment rating pursuant to the AMA Guides for Lile's visual impairment. He recommended Lile wear safety glasses, and avoid activities affected by this double vision.

Dr. James Farrage evaluated Lile on June 8, 2020 at GM's request. He diagnosed Lile with post-traumatic anosmia and ageusia due to severe mid-facial fracture injuries including the cribriform plate, resulting in olfactory neuropathy. Dr. Farrage assessed a 3% impairment rating, which he stated should be combined with the rating assessed by the maxillofacial surgeon and the ophthalmologist.

A Benefit Review Conference was held on June 19, 2020. The parties stipulated that Lile sustained work-related injuries on March 5, 2018, and his average weekly wage was \$2,384.16. The issues preserved for determination included whether Lile has the physical capacity to return to the type of work performed on the date of injury, work-relatedness/causation of vision problems, TTD benefits, credit for overpayments, permanent income benefits per KRS 342.730, and proper use of the AMA Guides.

In the Opinion, Award and Order rendered December 2, 2020, the ALJ found Lile sustained work-related injuries in the course and scope of his employment on March 5, 2018, when he tripped over a cord and struck his face on a table. She found Lile's ongoing visual issues were caused by the work injury. She also determined Lile is entitled to PPD benefits based upon the 15% impairment rating assessed by Drs. Mallory, Farrage, and Witcher, and the additional 3% impairment rating based upon the loss of taste and smell assessed by Dr. Farrage. She found Lile is not entitled to additional impairment for facial disfigurement. She also determined he is not entitled to an enhancement of his award of PPD benefits by the multipliers contained in KRS 342.730(1)(c)1. Despite Lile's testimony to the contrary, the ALJ determined he is not permanently totally disabled, and he has the

physical capacity to return to the work he performed prior to his work injury. The ALJ found Lile is entitled to PPD benefits in the amount of \$114.54, based upon an 18% impairment rating, beginning on March 5, 2018, limited by the version of KRS 342.730(4) effective July 14, 2018.

GM filed a Petition for Reconsideration, arguing the ALJ made no findings regarding Lile's entitlement to TTD benefits. GM argued Lile was entitled to TTD benefits from March 6, 2018 to February 26, 2019, and it should receive credit for any overpayment. Lile filed a Petition for Reconsideration, arguing the ALJ erred in finding he has the capacity to perform his pre-injury work. He argued the evidence does not support the ALJ's determination. He asserted Dr. Witcher permanently restricted Lile from returning to work at GM. He requested a finding of permanent total disability, yielding an award of \$848.41 per week.

The ALJ issued Orders on the Petitions on December 22, 2020. Regarding GM's Petition for Reconsideration, the ALJ determined Lile was entitled to TTD benefits from March 6, 2018 to March 17, 2019. Regarding Lile's Petition for Reconsideration, the ALJ reiterated her determination that he is not permanently totally disabled, and reaffirmed the award of PPD benefits. She stated Lile could return to his pre-injury work based upon Dr. Mallory's opinion.

On appeal, Lile argues the evidence confirms he is permanently totally disabled. As the claimant in a workers' compensation proceeding, Lile 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 Lile was unsuccessful in proving he is permanently 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 that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). 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*.

Substantial evidence supports the ALJ's determination Lile is not entitled to benefits based upon a permanent total disability. Thus, a contrary result is not compelled. In the December 1, 2020 decision, the ALJ specifically found as follows:

Next, this ALJ must address whether Lile has the capacity to perform his pre-injury work. This ALJ notes Lile's testimony regarding why he could no longer perform his pre-injury job duties due to ongoing double vision. An ALJ may rely on a claimant's own assessment of his/her ability to labor in determining whether to enhance a claimant's benefits pursuant to KRS 342.730(1)(c)1. *See Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979). However, this ALJ also notes Lile's treating physicians did not impose permanent work restrictions. Importantly, Dr. Mallory also felt Lile could perform his pre-injury work. Thus, this ALJ is not convinced Lile cannot perform his pre-injury work based upon a lack of restrictions from his treating physicians. Thus, this ALJ finds Lile retains the capacity to perform his pre-injury work. This finding renders Lile's argument that he is permanently and totally disabled moot.

In the December 22, 2020 Order on Lile's Petition for Reconsideration, the ALJ found as follows:

This ALJ previously considered Plaintiff's testimony regarding his work capacity. Plaintiff cites Dr. Witcher's treatment note from February 25, 2019. This ALJ reviewed this treatment note at the time she issued her decision and upon petition. However, this ALJ is not convinced this treatment note warrants a finding of permanent total disability or permanent partial disability benefits enhanced by the three multiplier. It is important

to note that Dr. Brad Mallory issued a report on November 5, 2019, nine months after Dr. Witcher's treatment notes. Dr. Mallory felt Plaintiff could return to regular duty work with Defendant. This ALJ finds Dr. Mallory's most recent assessment of Plaintiff's capacity is more credible than Dr. Witcher's February 25, 2019 treatment note. Thus, this ALJ continues to find Plaintiff is not permanently and totally disabled and is not entitled to the three multiplier.

We find no merit in Lile's argument that the ALJ's determinations are "clearly erroneous based upon the reliable, probative, and material evidence contained in the record." It is undisputed that Lile sustained serious injuries when he tripped and fell at work on March 5, 2018, necessitating multiple surgeries. However, while there are indications in the record that Lile should wear safety glasses and avoid situations he believes are unsafe, this does not compel a finding by the ALJ that he is unable to perform his previous work, much less that he is permanently totally disabled. The ALJ appropriately reviewed the medical evidence of record, and explained the basis for her determination. Essentially, Lile requests this Board to substitute its judgment for that of the ALJ, which we cannot do. We find the ALJ's determination is supported by substantial evidence, and a contrary result is not compelled. Therefore, her decision will not be disturbed.

Accordingly, the December 1, 2020 Opinion, Award & Order and the December 22, 2020 Orders rendered by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER:**

**LMS**

HON W CRAVENS PRIEST  
P O BOX 770  
BOWLING GREEN, KY 42102

**COUNSEL FOR RESPONDENT:**

**LMS**

HON WALTER E HARDING  
400 W MARKET ST, SUITE 2300  
LOUISVILLE, KY 40202

**ADMINISTRATIVE LAW JUDGE:**

**LMS**

HON STEPHANIE L KINNEY  
MAYO-UNDERWOOD BLDG  
500 MERO STREET, 3<sup>rd</sup> FLOOR  
FRANKFORT, KY 40601