Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 13, 2022

CLAIM NO. 202100540

JENNIFER WHISMAN PETITIONER

VS. **APPEAL FROM HON. W. GREG HARVEY, ADMINISTRATIVE LAW JUDGE**

TOYOTA MOTOR MANUFACTURING OF KENTUCKY, INC. and
HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. Jennifer Whisman ("Whisman") appeals from the May 31, 2022 decision issued by Hon. W. Greg Harvey, Administrative Law Judge ("ALJ") dismissing her occupational disease claim filed against Toyota Motor Manufacturing of Kentucky, Inc. ("Toyota"). Whisman contends the ALJ erred in denying her claim for sinusitis allegedly caused by Pseudomonas to which she was exposed while

working at Toyota. Whisman also appeals from the June 30, 2022 Order denying her Petition for Reconsideration.

On appeal, Whisman argues the ALJ erred by finding her chronic sinusitis was not caused by exposure to Pseudomonas found in a coolant used by Toyota. Whisman also argues the opinions rendered by Dr. Sanford Archer, the university evaluator, cannot be afforded presumptive weight, and do not constitute substantial evidence because his determinations were based upon a substantially inaccurate or largely incomplete history, citing to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2014). We find the ALJ properly reviewed the evidence of record, made an appropriate analysis, and his opinions are supported by substantial evidence. A contrary result is not compelled; therefore, we affirm.

Whisman filed a Form 102 on April 1, 2021 alleging she contracted chronic Pseudomonas sinusitis while working at Toyota with a last injurious exposure date of September 11, 2020[1]. In the Form 104 filed in support her claim, Whisman noted she began working at Toyota through Kelly Services on August 1, 2011. Toyota hired her on November 18, 2013, and she continued working there until September 11, 2020. Whisman previously worked for multiple companies as an accountant and office manager.

Whisman filed a Form SVC on April 13, 2021 indicating Toyota had committed a safety infraction. She specifically noted she "contracted chronic Pseudomonas sinusitis due to the presence of Pseudomonas in a coolant at Toyota."

[1] Whisman subsequently amended her claim to include last injurious exposure dates of October 4, 2018; November 7, 2018; January 6, 2019; February 11, 2019; March 4, 2019; April 23, 2019; June 25, 2019; July 23, 2019; August 12, 2019; September 5, 2019; September 24, 2019; October 24, 2019; November 21, 2019; December 3, 2019; January 11, 2020; and June 2, 2020.

Whisman did not attach any information supporting the Form SVC, and this issue was not preserved at the Benefit Review Conference ("BRC"). Therefore, it will not be discussed further.

Whisman testified by deposition on April 27, 2021, and again at the Hearing held April 1, 2022. Whisman is a resident of Frankfort, Kentucky. She was born on June 5, 1971. She is a high school graduate and completed some college courses, but she has not obtained a degree or certification.

Whisman began working for Kelly Services at the Toyota facility in August 2011. She was hired as a Toyota employee on November 18, 2013. She last worked there on September 11, 2020, when she left due to sinus problems. Whisman worked at various jobs, and in multiple parts of the facility while working for Toyota. Her last job there involved assembling four-cylinder engines. Whisman testified that in the past 10 years she has had no health problems other than those involving her sinuses, except for two unrelated right knee surgeries. She began having problems with her sinuses in 2013 which initially caused some dizziness. She underwent sinus surgery by Dr. Ronald George Shashy in August 2014, and she returned to work at Toyota a couple of months later. She testified she is puzzled as to why Dr. Shashy's office notes indicate she was having problems due to exposure to mold in her home. She denied ever having such exposure. Whisman has smoked for over twenty years. At times, she smoked a pack of cigarettes per day, and she testified she currently smokes less than a pack per week.

Whisman's sinus problems flared up again in 2018. She has since treated with numerous otolaryngologists, physicians, allergists, and facilities for her

conditions. She underwent a second sinusitis surgery by Dr. Michael Cecil on March 19, 2020, and she testified she has undergone three additional procedures since that date. She testified lab studies ordered by Dr. Cecil indicate she has a Pseudomonas bacterial infection. She has been on multiple regimens of various antibiotic treatments for her sinus infections. She testified these were not general antibiotics, but were tailored for her specific condition. Whisman received short-term disability benefits, then long-term disability benefits for the periods of work she missed from Toyota. She continues to receive the long-term disability benefits.

Whisman testified she believes her condition was caused by exposure to vapors and mists at Toyota. She does not believe she can return to work at Toyota due to her dizziness, blurred vision, breathing problems, and swelling. She also has varying symptoms including neck swelling, throat clearing, drainage, nose blowing, swollen lymph nodes/glands, and facial pain. Whisman contacted OSHA who she indicated tested the machines at Toyota. She noted the testing reflected Pseudomonas was present in a coolant used in the manufacturing process at Toyota.

Whisman filed a report from Ray Fouser, P.E., who performed testing at her residence on October 27, 2020. The report indicates a sample from the master bathroom sink in her house tested negative for Pseudomonas. We note references were made to an OSHA investigation report, and there were references to exhibits in the depositions of both Dr. Cecil and Dr. Archer; however, there is no indication in the LMS records that such report was ever filed into evidence. Although referenced, no exhibits were attached to any of the depositions.

In support of her claim, Whisman filed Dr. Cecil's January 18, 2021 office note. He diagnosed her with chronic sinusitis. He noted she had recently undergone surgical debridement and she remained symptomatic despite normal endoscopy results. He noted she was taking oral and topical antibiotics. He additionally noted she smokes a half pack of cigarettes per day.

Dr. Cecil testified by deposition on November 29, 2021. He has been an otolaryngologist since 2006. He first saw Whisman for treatment on February 19, 2020. She presented with symptoms of chronic sinusitis, including facial pain and pressure, nasal obstruction, mucus, and drainage from the nasal cavity. A CT-scan revealed evidence of chronic sinus infection. He noted she had previously undergone sinus surgery, and he recommended a revision surgery. He also noted that during his course of treatment, Pseudomonas has always been present in Whisman's cultures. He additionally noted Whisman has undergone multiple nasal endoscopies and multiple cultures have been taken.

Dr. Cecil only performed one surgery on Whisman's sinuses. He performed three or four nasal washings afterward, and he prescribed several medications. He does not believe additional surgery is necessary. He diagnosed Whisman with chronic sinusitis. He stated she was theoretically exposed to Pseudomonas at work, although he did not specifically research this issue. He testified this reference was based upon Whisman's narrative. He stated Whisman has reached maximum medical improvement ("MMI"). He recommended she use saline rinses and nasal steroid sprays. He stated it is reasonable for Whisman to return to work at Toyota. When he last saw Whisman on October 25, 2021, her

sinuses were normal, and her primary complaints were with unrelated shortness of breath.

Dr. Cecil testified he is unsure if the Pseudomonas is merely present or causing Whisman's symptoms. He noted she has had sinus problems for a long time. He additionally noted there is a difference between a Pseudomonas infection and a colonization. He stated Pseudomonas is a common finding in chronic sinusitis. He noted it is possible, not probable, that Pseudomonas caused Whisman's colonization. He also testified he is unsure as to what the OSHA report reflects. When asked if exposure to Pseudomonas in the coolant at Toyota could independently cause Whisman's disease, Dr. Cecil specifically testified as follows:

> I think that that's - - I mean it's - - you know, I'm not an occupational hazard physician. But if there's Pseudomonas in the potential air and she's getting Pseudomonas in her respiratory system, you know, just putting two and two together it makes sense that that could be where this is coming from.

Dr. Cecil testified that his statement regarding how Whisman contracted Pseudomonas was expressed within a reasonable degree of medical probability. Later in his deposition, Dr. Cecil stated, "Maybe probable's not the right word not having known this, but I'm kind of putting two and two together so I think it's potentially a cause." He also testified, "So, you know, I think it's probably more reasonable to put 'possible.' I don't know that I'm the person to be able to determine if it directly came from the coolant or where it came from."

When asked if exposure to the coolant at Toyota caused Whisman's sinus problems, Dr. Cecil testified *verbatim* as follows:

> I definitely - - well, I mean I don't know about independently. I mean certainly I've operated on her before there's been purulence in her sinus cavities that grew Pseudomonas so that was certainly a pathogenic organism that was in her sinuses and was causing it. I don't know if that's the only cause of it, but certainly that was part of it.

Dr. Cecil testified that although he reviewed an OSHA report that identified Pseudomonas, it did not indicate the level of exposure. He also testified he does not have the experience to know what the exposure would mean. He likewise testified he has no idea whether Pseudomonas in coolant within a machine would be an exposure causative of her condition.

Whisman subsequently filed numerous office records from Dr. Cecil representing 15 office visits from March 27, 2020 to January 18, 2021. Dr. Cecil treated Whisman for sinusitis and asthma. His treatment included a surgery consisting of a debridement, multiple endoscopic washings, and medication. Dr. Cecil noted Whisman's 20-year history of smoking a half of a pack of cigarettes daily. He noted she has chronic sinusitis, and she has been dealing with Pseudomonal sinusitis for a significant period. Whisman also filed Dr. Cecil's records for treatment on five occasions between March 3, 2021 and July 14, 2021. Those records reflect treatment for chronic sinusitis, dental pain, pressure in her face, blurry vision, and nasal congestion. Routine cultures dated April 12, 2021 and June 17, 2021 revealed heavy growths of Pseudomonas.

Whisman filed an application for short-term disability benefits she completed for Lincoln Financial Group on July 6, 2020. Dr. Cecil completed a portion of that form on July 10, 2020. Dr. Cecil noted Whisman has chronic

sinusitis. He also noted she was unable to work due to the national health crisis. The form does not reflect whether the condition was work-related.

Dr. James Owen evaluated Whisman at her attorney's request on December 21, 2021. He stated Whisman has had recalcitrant Pseudomonas since 2018, which has been treated intermittently, and her condition has worsened. He stated her condition is due to exposure to engine coolant spray in her workplace. Dr. Owen diagnosed Whisman with chronic sinusitis exacerbated by her returns to work, which is associated with chronic facial pain. He noted he could not make a definitive diagnosis regarding her facial pain. Dr. Owen opined her conditions were caused by her workplace exposure. He found she has reached MMI. He assessed a 6% impairment rating based upon the American Medical Association Guides to Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). He found she had no underlying conditions prior to 2014, and none of her impairment rating is due to pre-existing active conditions. Dr. Owen additionally stated Whisman does not have the physical capacity to return to the type of work performed at the time of her injury.

Dr. Brent Mortenson, a maxillofacial surgeon, examined Whisman on April 28, 2022. Whisman complained of pain and swelling in the left submandibular space. He noted she had a tender lymph node in that area. He also noted she has experienced sinus issues for which she was treating with Dr. Cecil. He found her oral examination and dentition within normal limits. Dr. Mortenson stated he believed her problems stem from her sinuses.

Dr. Archer evaluated Whisman on June 22, 2021, as the university evaluator pursuant to KRS 342.315. He noted Whisman complained of migraine headaches, dizziness, atypical facial pain, and sinusitis beginning in 2013. At her evaluation, Whisman attributed all her symptoms to the work environment. Dr. Archer diagnosed Whisman with atypical facial pain, migraine headaches (by history), no acute or chronic sinus disease, and non-otologic dizziness. He determined she is not entitled to an impairment rating pursuant to the AMA Guides attributable to her complaints allegedly caused by her work environment. Dr. Archer found neither Whisman's condition nor her complaints were caused by her work environment. He likewise determined she has no pulmonary impairment caused by the work environment. He determined Whisman has the physical capacity to return to her previous work at Toyota. He recommended no restrictions. Dr. Archer noted Whisman has an eleven pack-year smoking history, and she continues to smoke.

Dr. Archer testified by deposition on December 13, 2021. He is a board-certified ENT (otolaryngologist). Dr. Archer testified that Dr. Cecil is respected in the medical community; however, he does not agree with everything Dr. Cecil described. He noted Dr. Cecil diagnosed Whisman with chronic sinusitis on July 22, 2021. Dr. Archer did not review a 2020 CT-scan indicating Whisman has a chronic infection. He stated Pseudomonas is a chronic bacteria seen in infectious sinusitis. When Dr. Archer examined Whisman, she had no abnormal findings so there was no basis to assess an impairment rating pursuant to the AMA Guides. He noted no pathological findings were present except for those consistent with her previous surgeries, meaning some bone structure had been removed. Dr. Archer

does not believe Whisman's complaints are caused by chronic sinusitis. Dr. Archer specifically testified *verbatim* as follows:

> Chronic sinusitis is classically defined as chronic infection of the sinuses that have lasted three months or longer, persisted despite medical or surgical management. It can be caused by any number of things that can block the sinuses, including allergies, mass lesions, like polyps, anatomic variance like septal deviations and abnormal turbinate structures.
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> It can be caused by bacteria, fungus. Viral inflammation can set it up as well. And when the sinuses get blocked, they can potentially stay blocked and give that chronic nature to an acute sinus infection.

Dr. Archer additionally testified *verbatim* as follows:

> Her symptoms were pretty much out of proportion to what her findings where. She had on my examination and on Dr. Saini's previous examination two years prior complaints of atypical facial pain and neither his examination or my examination identified any pathology on her in her sinuses.
>
> And because she's had extensive sinus surgery, we actually have the opportunity of placing scopes into the sinus, not just into the nose, to examine those areas and the scans that were referred to at the time did not show any evidence of acute or chronic sinusitis either.
>
> And so the atypical facial pain can come from many different regions and we recommended that she see basically a orofacial pain clinic here for further evaluation of her complaints.

Toyota submitted Dr. Shashy's treatment records from July 11, 2014 through September 16, 2014. Those records reflect Whisman initially reported problems with migraine headaches, dizziness, fatigue, and facial swelling. Whisman reported she had weight gain, vision loss, eye pain, ear drainage, and hearing loss. Dr. Shashy diagnosed her with chronic sinusitis, mucus retention,

chronic rhinitis, and remnants of migraine, not otherwise specified. On July 16, 2014, Dr. Shashy recommended nasal irrigation with normal saline, endoscopic sinus surgery, and possibly a septoplasty. Dr. Shashy proceeded with the septoplasty, and followed up with Whisman on August 22, 2014. He noted she had undergone a septoplasty, a partial resection of the inferior turbinate on both sides, a total ethmoidectomy on both sides, a middle meatal anstrostomy on both sides, a sphenoidectomy on both sides, and sinus surgery. He noted it was too early to assess her nasal obstruction and whether she had any recurrent sinus infections. In addition to his previous diagnoses, Dr. Shashy noted Whisman had a deviated septum.

Dr. Shashy saw Whisman again on August 26, 2014. She presented for sinus debridement. In addition to the previous diagnoses, he noted she has tobacco use disorder and migraines. Dr. Shashy next saw Whisman on September 9, 2014. She continued to complain of dizziness and allergic rhinitis. He again saw Whisman on September 16, 2014 for a follow up regarding her sinuses and post-nasal drip.

Toyota filed Dr. Leslieann Asbury's October 24, 2018 office note. Dr. Asbury is with Ear, Nose, and Throat Specialists of Central Kentucky. She noted Whisman's history of sinus problems, and the previous surgery performed by Dr. Shashy. Whisman's symptoms included excessive dizziness, ear pain and fullness, pain and pressure in the right cheek area, and dental pain. Whisman reported her symptoms never resolved after the previous surgery. Her symptoms recently increased after moving molded furniture. Dr. Asbury diagnosed Whisman with

seasonal allergic rhinitis dur to fungal spores, a history of sinus surgery, and dizziness.

At the BRC held on April 1, 2022, the parties preserved several issues for determination. The BRC Order and Memorandum reflects no temporary total disability ("TTD") benefits or medical benefits were paid. It was noted Whisman alleged contracting an occupational disease on December 3, 2019, January 15, 2020, and September 11, 2020. The issues preserved included extent and duration, work-relatedness/causation, injurious exposure, permanent income benefits per KRS 342.730, including multipliers, TTD benefits, medical benefits, and whether Whisman has the physical capacity to return to the type of work performed at the time of her injury. The BRC Order and Memorandum does not reflect the issue of a safety violation by Toyota was preserved as alleged in the SVC Whisman filed, and therefore, as noted above, we will not discuss that allegation.

The ALJ rendered his decision on May 31, 2022, and found *verbatim* as follows:

> This is an unusual case. Whisman clearly has developed the onset of chronic sinusitis. She has had five surgeries to address the chronicity of those symptoms. There is proof that Whisman, like many who have chronic sinusitis, had the presence of pseudonoma bacteria in her sinuses. The ALJ's view of the evidence is conflicted. At the time of Dr. Archer's evaluation he did not believe there was any work-related diagnosis. Dr. Cecil initially opined he felt exposure at work probably caused the sinusitis. He then was equivocal and indicated it was possible.
>
> The Defendant makes the point that Whisman's onset of chronic sinusitis actually began in 2014. The location where coolant with pseudomonas was located was found in the T-2 block line where she did not begin

> working until 2017. The ALJ also notes Whisman continues to have symptoms as evidenced by her treatment with Dr. Mortenson in 2022. She has not worked for the Defendant since September 2020.
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> There is no doubt Whisman has chronic sinusitis. The evidence on the cause of that condition is murky. It may be that Whisman was exposed to pseudomonas at work but the exposure itself and any link between it and the onset of her symptoms is questionable. Dr. Archer's opinion on the question of causation is what is most important to the ALJ. He did not find a link between Whisman's alleged work-related exposure and her chronic sinusitis. In truth, the ALJ also interprets Dr. Cecil's testimony as being less than clear on the question of causation. He did not have any expertise as to the level of exposure or what would be required to cause the onset of chronic sinusitis. In light of the foregoing, the ALJ finds Whisman has failed to persuade the ALJ her chronic sinusitis is the result of occupational exposure to pseudomonas. For that reason, her claim is dismissed.

Whisman filed a Petition for Reconsideration noting the ALJ correctly noted she has sinusitis, but she argued the ALJ erred in relying upon Dr. Archer's report which does not constitute substantial evidence pursuant to Cepero v. Fabricated Metals Corp., supra. Whisman contended she was only required to show that her workplace exposure could independently cause her disease or condition as the Kentucky Supreme Court noted in Letcher County Board of Education v. Hall, 576 S.W.3d 123 (Ky. 2019). Whisman requested the ALJ to reverse his decision and award TTD benefits, permanent partial disability benefits, including the three-multiplier contained in KRS 342.730(1)(c)1, and medical benefits for her chronic sinusitis.

In his Order denying the Petition for Reconsideration issued on June 30, 2022, the ALJ stated as follows:

This matter is before the ALJ on Plaintiff's Petition for Reconsideration of the Opinion and Order entered on May 31, 2022. Plaintiff argues Dr. Archer's opinion does not constitute substantial evidence because he failed to review records relevant to her treatment and the OSHA report that indicated the presence of pseudomonas in the coolant at the Defendant's factory.

The Defendant has responded to the Petition. It argues both Dr. Cecil and Dr. Archer found Plaintiff to be without sinusitis during their respective evaluations (July and October 2021 and July 2021). The record indicates Plaintiff began having sinusitis issues years prior to any potential exposure in the Defendant's place of business. The Defendant also argues there was no evidence regarding the level of pseudomonas present such that it could be deduced that they were significant enough to have resulted in injurious exposure to the Plaintiff.

The ALJ reviewed the opinion evidence from Whisman's treating physician, Dr. Cecil. He candidly opined he thought workplace exposure was potentially a cause but that he could not say Plaintiff's problems were directly caused by the coolant. He also testified the last few times he had examined Whisman her sinuses looked good.

The undersigned found Whisman developed sinusitis and had five surgeries to treat that condition. The undersigned also acknowledged the evidence indicated Whisman's symptoms began in 2014 and that she did not begin working in an area where the coolant she alleges caused her condition was located. She continued to have symptoms in 2022 despite the fact she last worked for the Defendant in September 2020. The evidence of the cause of the condition was characterized by the undersigned as "murky." Dr. Archer, the university evaluator, declined to find a causal link between the workplace and Whisman's symptoms. Dr. Cecil's testimony was not definitive and very candid in his uncertainty about the role the pseudomonas and/or workplace played. After reviewing the totality of the evidence, the ALJ was not persuaded Whisman's sinusitis was caused by occupational exposure to pseudomonas. That analysis will not be changed here.

On appeal, Whisman argues the ALJ erred in dismissing her claim. As the claimant in this workers' compensation proceeding, Whisman had the burden of proving each of the essential elements of her cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since she was unsuccessful before the ALJ, 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). This is a high burden to overcome as it is not enough to merely show there was evidence of substance which could have justified a finding in his favor. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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). In rendering a decision, Kentucky's Workers' Compensation Act grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. *See* KRS 342.275; KRS 342.285; AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). The 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. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977). Although a party may note evidence supporting an outcome other than that reached by the ALJ, this is not

adequate to support a reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). 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 reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, supra.

KRS 342.0011(2) states an occupational disease is a disease arising out of and in the course of the employment. KRS 342.0011(3) states an occupational disease is deemed to arise out of the employment:

> ... if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;

KRS 342.0011(4) defines "injurious exposure" as "that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made." KRS 342.0011(4) requires only that the exposure "would" independently cause the disease, not that

the exposure *did in fact* independently cause the disease. "All that is required … is that the exposure be such as *could* cause the disease independently of any other cause." Childers v. Hackney's Creek Coal Co., 337 S.W.2d 680, 683 (Ky. 1960) (emphasis added)(interpreting identical predecessor statute). The Kentucky Court of Appeals has similarly interpreted that provision as requiring proof the received exposure "would have produced or caused the disease in and of itself regardless of any other exposure." Mills v. Blake, 734 S.W.2d 494, 496 (Ky. App. 1987). "All that is required … is that the exposure be such as *could* cause the disease independently of any other cause." Miller v. Tema Isenmann, Inc., 542 S.W.3d 265, 271 (Ky. 2018); *see also* Letcher County Board of Education v. Hall, supra.

When the question of causation involves a medical relationship not apparent to a layperson, the issue is properly within the province of medical experts. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184, 186-187 (Ky. App. 1981). Medical causation must be proven by medical opinion within "reasonable medical probability." Lexington Cartage Company v. Williams, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work-related causation is insufficient. Pierce v. Kentucky Galvanizing Co., Inc., 606 S.W.2d 165 (Ky. App. 1980).

Whisman argues the ALJ erred by relying on medical opinions which were based upon a corrupt history. Specifically, Whisman contends Dr. Archer did not review the entirety of the medical record, and was not provided with the OSHA report, therefore he could not competently provide any determination. She argues Dr. Archer's conclusions are so flawed and corrupt they cannot constitute substantial

evidence. Therefore, they cannot be relied upon and should be excluded based upon the holding in Cepero v. Fabricated Metals Corp. supra.

We note that in Cepero, supra, the plaintiff alleged a work-related knee injury. The ALJ awarded benefits based upon evidence from two physicians that indicated his knee condition was related to a work injury. However, neither doctor was aware that Cepero had suffered a severe injury to his knee several years earlier. The Board reversed the ALJ's finding that the doctors' opinions were sufficient evidence upon which to base an award of benefits. The Kentucky Supreme Court affirmed, stating:

> [I]n cases such as this, where it is irrefutable that a physician's history regarding work-related causation is corrupt due to it [*sic*] being substantially inaccurate or largely incomplete, any opinion generated by that physician on the issue of causation cannot constitute substantial evidence. Medical opinion predicated upon such erroneous or deficient information that is *completely unsupported by any other credible evidence* can never, in our view, be reasonably probable.
>
> Cepero, supra, at 842. (emphasis added).

This claim is distinguishable from the facts in Cepero and the Board does not conclude the doctors' opinions expressed were based on a corrupt history. In fact, Dr. Archer noted Whisman's history of sinus problems including her surgical procedures. He did not have all her medical records; however, his report generally reflects an accurate history of her condition and treatment. He also noted she reportedly attributed her sinusitis to exposure of Pseudomonas at work. Dr. Archer, however, found there was no evidence Whisman had sinusitis at the time of his

examination. This case is distinguishable from Cepero and we note that in this instance there was no deception hoisted on the medical examiners.

As fact-finder, the ALJ is entitled to pick and choose among conflicting medical opinions. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). While Dr. Owen offered a different opinion, and Dr. Cecil's opinions were equivocal, the ALJ chose to rely upon the opinion of Dr. Archer, the university evaluator. We note KRS 342.315 states in relevant part:

> [T]he clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

KRS 342.315(2) generally requires affording presumptive weight to the clinical findings and opinions of a university evaluator. An ALJ has the discretion to reject such testimony where it is determined the presumption has been overcome by other evidence and the reasons for doing so are expressly stated within the body of the decision. Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 891 (Ky. 2007); Morrison v. Home Depot, 197 S.W.3d 531, 534 (Ky. 2006); Magic Coal Co. v. Fox, 19 S.W.3d 88, 94-95 (Ky. 2000). Whether a party overcomes the presumption established pursuant to KRS 342.315(2) is not an issue of law, but rather a question of fact at all times subject to the ALJ's discretion as fact-finder to pick and choose from the evidence. Magic Coal Co. v. Fox, Id. KRS 342.315(2) does not alter the claimant's burden of persuasion but, "[t]o the extent that the university evaluator's testimony favors a particular party, it shifts to the opponent the burden of going

forward with evidence which rebuts the testimony. If the opponent fails to do so, the party whom the testimony favors is entitled to prevail by operation of the presumption." Magic Coal, Id., at 96. Accordingly, "clinical findings and opinions of the university evaluator constitute substantial evidence with regard to medical questions which, if uncontradicted, may not be disregarded by the fact-finder." Id.

KRS 342.315(2) is properly governed by KRE 301 which provides as follows:

> In all civil actions and proceedings when not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. Magic Coal Co. v. Fox, supra, at 95.

The ALJ based his decision on the opinions of Dr. Archer, the university evaluator, and to a lesser extent the testimony and office notes of Dr. Cecil in determining Whisman failed to establish she sustained an injurious exposure to Pseudomonas at Toyota, and in dismissing her claim. As noted by the ALJ, Dr. Cecil testified he could not state Whisman sustained an injurious exposure to Pseudomonas at work which would independently cause her sinusitis. Dr. Archer opined Whisman did not have sinusitis when he examined her, but he noted her history of that condition. Although Dr. Owen opined Whisman's condition was caused by her exposure to Pseudomonas at work, that only constitutes a contrary opinion upon which the ALJ could have relied, and does not compel a contrary result.

Whisman was required to first prove she has chronic sinusitis, and then she must show her condition was caused by an exposure at work. Likewise, she was required to prove such exposure could independently cause her condition. The ALJ determined Whisman first experienced sinus problems long before she worked in the portion of Toyota's facility where Pseudomonas was purportedly found. There is also no evidence of record, other than Whisman's assertions, that Pseudomonas is actually present at Toyota. Dr. Cecil testified he could not determine whether any exposure at Toyota could have independently caused her condition. He noted there is no evidence of the level of exposure, or whether Pseudomonas within a machine could even cause an exposure, and ultimately her sinusitis.

We find the ALJ appropriately reviewed the evidence and exercised his discretion in determining Whisman failed to establish she contracted sinusitis due to Pseudomonas she may have encountered at Toyota. The ALJ enumerated the basis for his dismissal of Whisman's claim. The ALJ acted within the scope of his authority in determining which evidence to rely upon, and it cannot be said his conclusions are so unreasonable as to compel a contrary result. McCloud v Beth-Elkhorn Corp., supra. The ALJ's determination is supported by substantial evidence, and a contrary result is not compelled; therefore, we affirm.

Accordingly, the Opinion and Order rendered on May 31, 2022, and the Order denying Whisman's Petition for Reconsideration issued June 30, 2022 by Hon. W. Greg Harvey, ALJ, are hereby **AFFIRMED**.

ALL CONCUR.

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