

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 8, 2021

CLAIM NO. 201775469

JUDITH PENNINGTON

PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE**

ASHLAND COMMUNITY & TECHNICAL COLLEGE
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
VACATING AND REMANDING**

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and BORDERS Members.

STIVERS, Member. Judith Pennington (“Pennington”) appeals from the September 8, 2020, “Second Amended Opinion and Order on Remand” of Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). In the September 8, 2020, decision, the ALJ dismissed Pennington’s claim for failure to prove a work-related injury. No Petition for Reconsideration was filed.

On appeal, Pennington requests this Board reverse the ALJ's decision regarding causation and enter a determination that she has met her burden of proving she sustained a work-related injury. She also requested this Board to resolve the remaining contested issues.

As this is the third time this claim has found its way to the Board, we set forth our Opinion, dated July 17, 2020, which is, in relevant part, as follows:

BACKGROUND

We adopt the summary of facts and evidence as set forth in our January 24, 2020, Opinion Affirming in part, Vacating in part, and Remanding:

Pennington filed a Form 101 on August 29, 2018, alleging she injured her knees, hands, and face on July 6, 2017, while working at ACTC as a business affairs associate. Pennington indicated she reported the incident to her supervisor on the date of the accident. In the Form 104 employment history filed with her claim, Pennington noted she worked as an accounts payable clerk at a bank from 1973 to 2000, and as a business associate for ACTC from 2000 to 2017.

Pennington testified by deposition on November 27, 2018, and at the hearing held July 26, 2019. Pennington is a resident of Ashland, Kentucky, and was born on December 9, 1949. She testified that prior to her employment at ACTC, she was employed at a bank for 27 years, working in various job positions. She sustained no injuries while working for the bank. She began working for ACTC in 2000. Her job required taking and logging tuition payments. She was later promoted when her supervisor retired.

On July 6, 2017, Pennington had just returned from lunch. She was working

temporarily from a location different from her usual workstation due to HVAC repairs. She sat her purse on the desk and was going to the restroom prior to beginning her afternoon work duties. She did not take an insulin shot prior to heading to the restroom. She testified she was wearing sandals on the day of the accident. She related that she caught her toe on a trowel line left over from a repair performed in the hallway many years before. She testified the hallway had a concrete base with tile on top. She stated she had tripped and almost fallen in that hallway before, and had seen other workers stumble. When she fell, she was unable to get up, and sat in the hallway for forty-five minutes before anyone found her. Pennington stated she bruised her chin and nose when she fell, in addition to injuring both knees. She stated she did not lose consciousness. She also stated she broke crowns off her teeth in the fall, which dentist Dr. James Daniel replaced.

Eventually a worker in a different section saw her, and advised a security guard of the situation. When they assisted her with an attempt to stand, she was unable to do so due to the pain in her legs. She was placed in a desk chair and wheeled into the office. Pennington was taken by ambulance to the hospital, then underwent in-patient rehabilitation for six weeks. She had an additional eight weeks of outpatient physical therapy at her sister's home. She last treated in November or December 2017. She testified it is hard for her to get up or down stairs, or to walk very far due to her physical limitations stemming from the accident. She had a ramp built for her home to allow her to get from her car to the porch.

Pennington testified she treated for diabetes and high blood pressure prior to the accident. She also had a cardiac stent placed in November 2016. Pennington testified she was taking injections for her diabetes prior to the work incident. In November 2017, she began dialysis due to kidney problems. She has also had a stroke affecting her left side. Regarding the high blood sugar noted by both the ambulance report and the emergency room, Pennington testified high blood sugar does not make her dizzy or weak, it is when it drops that she has problems.

Pennington did not return to work after the accident. She used all of her sick time and vacation days. When those were exhausted, she retired. Pennington stated that ACTC denied her claim in its entirety. She never received any workers' compensation benefits, and none of her medical expenses were paid.

In support of her claim, Pennington filed Dr. Bruce Guberman's Form 107-I medical report. Pennington advised him that on July 6, 2017, she caught her shoe on a raised area of the floor at work, and she fell forward, striking her face and nose, and landing on both knees. Pennington reported continued pain in both knees, worse on the left. She also reported intermittent knee stiffness and locking. She also advised her problems are worse with prolonged standing, walking, and sitting, especially when she attempts to stand after sitting for long periods. Pennington stated that her job with ACTC was primarily sedentary, but she had to go up and down stairs, and move files. She reported difficulty with going up and down stairs since the accident. She also noted she would have difficulty moving heavy files.

Pennington reported she previously sustained a left knee injury in 2005 requiring surgery. She bumped the left knee into the corner of a metal file cabinet. She had also undergone a previous right knee arthroscopic surgery. On physical examination, Dr. Guberman noted Pennington had an antalgic gait, but she was steady.

Dr. Guberman diagnosed Pennington with bilateral tibial plateau fractures. He also diagnosed a history of contusions to the face, chin, and nose. He stated all of those conditions were caused by the work accident. He assessed a 6% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). Of this rating, he found 4% was due to the left knee, and 2% to the right knee. Dr. Guberman stated Pennington is unable to return to her job at ACTC. He noted she is only able to sit for 30 to 40 minutes at a time, for a total of four to five hours per day, and she is only able to stand for three to four hours per day, not to exceed 20 minutes at a time.

Pennington filed records from the Kings Daughters Medical Center (“KDMC”) emergency department. The notes reflect that on July 6, 2017, Pennington had fallen and had significant knee pain. She reported she had caught her shoe, tripped and fell on a tile floor. She also reported that she had fallen face first and hit both knees. She had a bruised forehead, and was reportedly unable to walk due to knee pain. On July 7, 2017, Dr. Chambers noted Pennington had fallen at work, had considerable difficulty with weight bearing, and was unable to stand. The July 10, 2017 discharge summary from KDMC reflects

Pennington had a left lateral tibial plateau fracture, and a right tibial spine avulsion.

Pennington also filed treatment records from KDMC Orthopedics. Those records reflect five treatment dates with Dr. Michael Chambers from July 26, 2017 to November 16, 2017. The records outline Pennington's progress subsequent to the July 6, 2017 injuries she sustained in the fall. On October 3, 2017, Dr. Chambers stated Pennington had been unable to work since July 6, 2017, and her treatment was ongoing. Dr. Chambers diagnosed Pennington with healed right and left tibial plateau fractures as of November 16, 2017. He stated Pennington could return to sedentary work only, with no bending, squatting, or lifting. He limited her standing to less than five minutes at a time. He recommended additional physical therapy for Pennington's work injuries. Pennington had a history of multiple conditions prior to the July 6, 2017 fall. He noted she had a history of kidney problems, anxiety disorder, community acquired pneumonia, diabetes mellitus, hyperlipidemia, irritable bowel syndrome, lupus, and prior knee problems.

Pennington subsequently filed additional treatment records including the February 9, 2018 KDMC emergency department record revealing she experienced pain due to a fall that morning. She was diagnosed with a patellar fracture. On December 24, 2018, it was noted that Pennington complained of bilateral knee pain. She reportedly had generalized weakness possibly attributable to end-stage renal disease. Pennington also filed physical therapy records from KDMC physical therapy for 29 treatment dates between July 11, 2017 and August 21, 2017.

Pennington also filed unpaid medical bills and documentation of out-of-pocket medical expenses she had paid.

On March 20, 2019, ACTC filed a Special Answer asserting Pennington had failed to follow reasonable medical advice by not taking insulin immediately after lunch on July 6, 2017.

Dr. J. Kevin Shockey evaluated Pennington at ACTC's request on December 12, 2018. He noted the July 6, 2017 accident when Pennington purportedly tripped over an uneven surface in the hallway at work where a tile was replaced years before. She reported she was unable to get up after the fall, and required assistance getting into a chair. She was taken to the emergency room for a facial contusion, and fractures of both the left and right tibial plateaus. There was no reported loss of consciousness. Dr. Shockey stated, "Ms. Pennington was noted to have a significant elevation of her glucose level." Dr. Shockey stated Pennington walked slowly during her examination, but did not have significant analgia. Dr. Shockey noted Pennington had multiple medical issues increasing her risk of a fall, and she has a high risk for recurrent falls. He found no additional treatment is necessary due to the fall at work. He found Pennington had reached maximum medical improvement, her fractures had healed, and she had a good range of motion. He found no indication that Pennington could not return to work. He stated any limitation in function is due to her co-morbidities. He assessed a 4% impairment rating pursuant to the AMA Guides, of which he attributed 2% to each knee.

ACTC also filed the records from the KDMC emergency department. ACTC also filed the intake sheet from Tri-

State Rehabilitation dated October 14, 2017. That record reflects Pennington's reported difficulties with standing, walking, stair climbing, lifting, sitting, and other physical activities.

ACTC additionally filed the February 27, 2018 note from Jeremy Kaltenbach, PA-C, from KDMC Orthopedics. He noted Pennington had fallen from a standing height two and a half weeks before, with an indirect blow to her right knee. He noted she had full range of motion, and was encouraged to engage in full weight bearing activities, as tolerated, with the use of a walker.

ACTC also filed the July 7, 2017 Boyd County EMS records. The notes record Pennington's fall, and her appearance when the EMTs arrived. The notes reflect Pennington complained the floor caused her fall. Her blood pressure was measured as 179/78, and her Glucose level was 525. She was noted to have a history of hypertension, diabetes, and she had a stent placed one year prior. The records reflect Pennington had eaten lunch, and had not yet taken her insulin when she fell.

ACTC filed Dr. Daniel's treatment ledger, largely illegible, which it asserts reflects Pennington needed to have the dental work performed after the incident, even before its occurrence. Pennington filed an undated note from Dr. Daniel stating she had several teeth rebuilt on December 6, 2016. Dr. Daniel noted when he saw Pennington on May 21, 2018, all of her anterior teeth (numbers 6, 8, 9, 10, 11) were damaged and replaced with a partial plate.

Kellie Allen ("Allen"), the director of human resources at ACTC, testified by deposition on March 7, 2019. She stated

that at the time of the incident, Pennington was working in a different location due to HVAC repairs in the area of her usual workstation. She was aware of Pennington's accident. After the accident, the maintenance department was contacted to determine if repairs were necessary to the floor in the area of the fall. No defects were reportedly found. Allen stated that Pennington did not provide any reason for her fall. She just reported that she fell, and was in a lot of pain. Allen called an ambulance. She testified no blood was found at the scene, and there was no evidence of a fall. She stated that after Pennington exhausted all of her leave, she retired. Allen also testified that Pennington's job was sedentary. She noted that as a cashier, Pennington took tuition payments and dealt with third party billing. She stated Pennington was not required to lift much, and if lifting was required, assistance was available for her.

James Michael Blevins ("Blevins"), the capital project manager for the Kentucky Community and Technical College System in eastern and northern Kentucky, testified by deposition on March 7, 2019. He has held that position since July 1, 1999. Prior to that, he worked for Ashland Oil. Blevins testified that a floor renovation to the area of the fall occurred in the summer of 2002. At that time, a sewer leak from the restrooms was found. A small area of the floor was excavated to access the sewer lines. He testified after the repairs were performed, the floor was put back the way it was previously, with no trowel lines. After the concrete was poured, the floor was tiled and buffed. He stated if a bump was seen in the tile, it was taken up and replaced. He stated the floor had not been repaired

or touched since the repairs were completed in 2002.

A benefit review conference was held on July 26, 2019. The parties identified the contested issue as benefits per KRS 342.730, work-relatedness/causation, unpaid or contested medical expenses, injury as defined by the Act, temporary total disability benefits, unreasonable failure to follow reasonable medical advice, and duration of benefits.

In the September 24, 2019, Opinion, the ALJ determined Pennington had not sustained her burden of proving she sustained a work-related injury, and dismissed her claim. The ALJ noted Pennington testified she tripped over trowel lines resulting from repair work performed many years before. The ALJ discounted her testimony finding as follows:

The ALJ finds that the Plaintiff in this matter has not satisfied her burden to establish the occurrence of a work related injury. Specifically, the ALJ finds that serious questions exist and have not been answered regarding the issue of what caused the Plaintiff to fall. While the Plaintiff alleges that the cause was attributable to raised trowel lines left on the floor from repair work that occurred many years prior, the credible testimony of Mr. Blevins directly contradicts this account.

The ALJ finds that Mr. Blevins was credible in his testimony that the area identified by the Plaintiff as the spot of her fall was not included in the repair work that was referenced. The ALJ further finds that the pictures of the area attached to the deposition of Kellie Allen depicted no uneven or raised surface or any perceptible risk of fall.

The ALJ next determined:

The ALJ finds that the far more likely explanation was that the Plaintiff's blood sugar was significantly elevated as confirmed by the emergency room records, and that this caused the Plaintiff to lose consciousness and fall. This theory is also supported by the nature of the Plaintiff's injuries as pointed out by the Defendant Employer. More particularly, the Plaintiff fell forward but made no apparent effort to break her fall as evidenced by the injuries to her face and teeth. Significantly, there was no evidence of bruising to the hands or arms from an attempt to breach the fall.

Pennington filed a petition for reconsideration primarily making the same arguments she made on appeal. The ALJ overruled her petition for reconsideration.

Pennington appealed, arguing the ALJ's decision was erroneous and had failed to provide additional findings as requested in her petition for reconsideration. Pennington asserted the medical evidence submitted by ACTC did not overcome the presumption of a work-related fall. She argued the evidence did not support the ALJ's finding she fell due to increased blood sugar level.

We affirmed the determination Pennington did not fall as a result of tripping over a trowel line holding as follows:

It is undisputed that Pennington fell on ACTC's premises on July 6, 2017. It is also clear that she sustained multiple injuries in the fall. Regarding whether Pennington tripped over a trowel line in the floor from a repair performed 15 years prior, we find the ALJ performed the appropriate analysis. The evidence supports his determination that she did not in fact trip over a floor imperfection. The determination that she did not trip over a trowel line is supported by Blevins' testimony, and the photographs reviewed by the ALJ. Because substantial evidence

supports this determination, and a contrary result is not compelled, on this finding, we affirm.

We vacated the determination Pennington's fall was mostly likely caused by her elevated blood sugar holding:

However, our review of the record does not reveal any evidence supporting the ALJ's determination that the fall was most likely caused by her elevated blood sugar. We acknowledge both the EMS and the emergency room records document that indeed Pennington's blood sugar was elevated, but we do not discern any evidence indicating this caused her fall. Pennington in fact testified at the hearing that she does not feel ramifications when her blood sugar is high, "It's when it drops low it makes you dizzy and weak." On remand, we direct the ALJ to point to the evidence that establishes the elevated blood sugar caused Pennington's fall. We do not direct any particular determination, however if there is no evidence directly linking the fall to the blood sugar, the ALJ must determine if there is another explanation for Pennington's fall, or if in fact it is unexplained. (emphasis added).

KRS 342.0011(1) defines "injury" as a work-related traumatic event "arising out of and in the course of employment" that is the proximate cause producing a harmful change in the human organism. It has long been established that "in the course of employment" refers to the time, place, and circumstances of an accident, while "arising out of" refers to the cause or source of the accident. AK Steele Corp. vs. Adkins, 253 S.W.3d 59 (Ky. 2008).

Where an employee sustains an injury at work due to a purely individual cause, i.e., such as an internal weakness, and the work does not contribute independently to the effects of the resulting harmful change, the injury as a matter of law is idiopathic in nature and, therefore, not compensable. Workman vs. Wesley Manor Methodist Home, *supra*. By contrast, an unexplained fall is exactly what its designation purports - that which cannot be identified sufficiently with any thoroughness of detail. Salyers vs. G. & P. Coal Co., 467 S.W.2d 115 (Ky. 1971) and Coomes vs. Robertson Lumber Co., 427 S.W.2d 809 (Ky. 1968).

In Workman vs. Wesley Manor Methodist Home, 462 S.W.2d at 900, the Court acknowledged there is a rebuttable presumption that an unexplained fall which occurs during the course of employment is work-related. In the absence of such rebutting evidence, the ALJ cannot find against the claimant on the issue of whether the accident arose out of the employment. However, the Court found the rebuttable presumption had been reduced to a permissible inference when the employer presented enough evidence to establish the employee's fall was not unexplained, but, rather, resulted solely from a prior, non-work-related back condition. *Id.* at 901-902. Consequently, the Court held the evidence did not compel a finding the employment was a causative factor in the employee's injuries. Rather, the ALJ was free either to decide in the claimant's favor or to remain unpersuaded claimant's work was a causative factor in precipitating the injury. *Id.*

In Vacuum Depositing, Inc. v. Dever, 285 S.W.3d 730, 734 (Ky. 2009), the Kentucky Supreme Court held "that

evidence the claimant was clumsy and wearing high heels was not sufficient to prove that the cause of her fall was idiopathic. The evidence did not overcome the presumption that the fall was unexplained and, thus, that it was work-related.” Dever testified she slipped and fell in the break room, but did not know why. The claimant was wearing boots with two inch heels, and denied being dizzy or feeling any pain. Another witness testified the claimant reported being clumsy. *Id.* at 731-732. The ALJ determined substantial evidence existed to rebut the Workman presumption of work-relatedness. Therefore, the presumption was reduced to a permissible inference, and the weight of reliable evidence established the fall did not arise from claimant’s employment. *Id.* at 732. The Board reversed and remanded, and the Kentucky Court of Appeals affirmed. In affirming, the Supreme Court stated as follows:

To summarize, a work-related fall occurs if the worker slips, trips, or falls due to causes such as a substance or obstacle on the floor of the workplace or an irregularity in the floor. When the cause of a workplace fall is unexplained, the fall is presumed to be work-related under Workman. Unexplained falls divide ultimately into two categories: 1.) those the employer has shown to result from a personal or idiopathic cause but which may be compensable under the positional risk doctrine; and 2.) those that remain unexplained and entitled to a presumption of work-relatedness.

The claimant alleged an unexplained fall but, as in Workman, the ALJ found that the employer rebutted the presumption of work-relatedness and showed the fall to be personal or

idiopathic. The employer asserts that the Board erred by substituting its judgment for the ALJ's and, thus, that the Court of Appeals erred by affirming the Board. We disagree.

The ALJ characterized the claimant as “not an entirely credible witness” but determined that a workplace fall occurred although its cause was idiopathic. The fact that the claimant's work did nothing to cause her fall was immaterial under Workman. The record contained no evidence that she suffered from a pre-existing disease or physical weakness that caused her to fall and no evidence that she was engaged in conduct when she fell that would take the injury outside Chapter 342. Nor did the record contain evidence that her footwear was inherently dangerous and inappropriate for work in the employer's offices. Like the Board and the Court of Appeals, we are convinced that evidence the claimant was clumsy and wearing high heels was not sufficient to prove that the cause of her fall was idiopathic. The evidence did not overcome the presumption that the fall was unexplained and, thus, that it was work-related.

Id. at 733-734

The claim was remanded with the following instructions:

As noted above, in this instance, the ALJ determined Pennington did not trip over a trowel line, thus eliminating that explanation as a reason for her fall. On remand, he must determine from the evidence whether Pennington's accident occurred from some other explained or idiopathic cause or whether the fall was unexplained, and therefore presumptively compensable. Again, we do not direct any particular result, however we do

direct the ALJ to conduct the appropriate analysis based upon the evidence.

In the March 31, 2020, decision, the ALJ did not alter his summary of the evidence contained in the September 24, 2019, Opinion. Numerical paragraphs 17 through 23 of the findings of fact and conclusions of law in the March 31, 2020, decision are a reiteration of the same numbered paragraphs set forth in the ALJ's September 24, 2019, Opinion. The ALJ added three paragraphs. The findings of fact and conclusion of law are set out *verbatim* below:¹

17. Injury is defined as “any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.” KRS 342.0011(1).

18. An employee has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of his worker's compensation claim. *Snawder v. Stice*, 576 SW2d 276 (Ky. App. 1979).

19. The Plaintiff has provided the opinion of Dr. Guberman who has opined that the Plaintiff suffered a fall at work and checked a box indicating that the impairment rating issued was due to a work injury. Dr. Guberman noted that the history provided by the Plaintiff indicated that she fell due to catching her shoe on a raised area in the floor.

20. The ALJ finds that the Plaintiff in this matter has not satisfied her burden to establish the occurrence of a work related injury. Specifically, the ALJ finds that serious questions exist and have not been answered regarding the issue of what caused the Plaintiff to fall. While the

¹ The new paragraphs are number 24, 25, and 26.

Plaintiff alleges that the cause was attributable to raised trowel lines left on the floor from repair work that occurred many years prior, the credible testimony of Mr. Blevins directly contradicts this account.

21. The ALJ finds that Mr. Blevins was credible in his testimony that the area identified by the Plaintiff as the spot of her fall was not included in the repair work that was referenced. The ALJ further finds that the pictures of the area attached to the deposition of Kellie Allen depicted no uneven or raised surface or any perceptible fall risk.

22. The ALJ finds that the far more likely explanation was that the Plaintiff's blood sugar was significantly elevated as confirmed by the emergency room records, and that this caused the Plaintiff to lose consciousness and fall. This theory is also supported by the nature of the Plaintiff's injuries as pointed out by the Defendant Employer. More particularly, the Plaintiff fell forward but made no apparent effort to break her fall as evidenced by the injuries to her face and teeth. Significantly, there was no evidence of any bruising to the hands or arms from an attempt to break the fall.

23. The ALJ finds in light of the foregoing, that the pronouncement by Dr. Guberman based upon the history provided by the Plaintiff is outweighed by the testimony of Mr. Blevins and the pictures of the subject area. The Plaintiff has therefore failed to satisfy her burden to establish the occurrence of and injury as defined by the Act.

24. 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 (Ky. 1979).

25. The evidence in this matter lead the ALJ to the inference that the Plaintiff suffered a fall due to elevated blood sugar. The Boyd County EMS records dated July 6, 2017, indicated that the Plaintiff's glucose level was significantly elevated at 525 and that the Plaintiff had just eaten but had not taken her insulin yet. Similarly, it was noted that the Plaintiff had no defensive wounds as would be expected from a trip and fall as she has alleged.

26. The ALJ therefore finds based upon the reasonable inferences drawn from the credible evidence reviewed herein, that the Plaintiff had a diabetic episode as a result of failing to take insulin as prescribed before her meal. The ALJ finds that the Plaintiff lost consciousness resulting in a fall wherein she was not able to brace herself resulting in the injuries to her face and teeth. The ALJ therefore finds that the injuries suffered by the Plaintiff were not causally work related.

Pennington first asserts the ALJ did not point to any medical evidence supporting the finding the elevated blood sugar caused her fall. Thus, on remand, the ALJ's opinion is unsupported by substantial evidence. Pennington observes the Board's opinion vacating held there was no medical evidence supporting the ALJ's initial decision that the elevated blood sugar caused her to fall in the hallway at work resulting in her injuries. Therefore, Pennington contends there is no evidence establishing she "sustained an 'injury at work due to a purely individual cause, i.e. such as an internal weakness to make her injury idiopathic in nature.'

Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898 (Ky. 1971).”

Next, Pennington argues the un rebutted facts demonstrate she tripped and fell at her workplace. She asserts that, on remand, the question to be resolved was whether her fall at work was unexplained and work-related. Pennington maintains the ALJ failed to cite any medical evidence indicating elevated blood sugar caused her fall. Accordingly, the “failure of the [ALJ] to cite to any other explained or idiopathic cause leaves the only correct conclusion from the evidence that the fall was acknowledged as unexplained and therefore compensable.”

ANALYSIS

A review of Kentucky law on the issue begins with Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898 (Ky. 1971), where benefits were denied to an employee who fell and broke her hip in the course of her employment. The facts indicated that the employee did not slip or stumble but fell after her back gave way due to an injury previously suffered in one or possibly two automobile accidents. The Kentucky Supreme Court’s predecessor, the Court of Appeals, held that “an injury from a fall resulting during the course of the employment but solely from a cause or causes to which the work is not a contributing factor is not compensable.” *Id.* at 901. The Court further noted that, under the “positional risk theory,” benefits may be allowed for injuries sustained in a fall “if the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle.” *Id.* (quoting Larson, *Workmen's Compensation Law*, § 12.11).

The Workman Court acknowledged there is a rebuttable presumption that an unexplained fall during the course of employment is work related. However, the Court found that the rebuttable presumption had been reduced to a permissible inference by evidence that the employee's fall was not unexplained but, rather, resulted solely from a prior, non-work-related back condition. Consequently, the “old” Board was not compelled to

find that the employment was a causative factor in the employee's injuries.

The continuing viability of the Workman decision was addressed in Jefferson County Public Schools/Jefferson County Board of Education v. Stephens, 208 S.W.3d 862 (Ky. 2006), in which the Supreme Court upheld a determination by the ALJ that the claimant sustained a work-related injury when she fell walking from a carpeted surface to a tile floor. There was evidence introduced the claimant might have experienced dizziness prior to her fall. However, the ALJ believed the claimant's testimony that she did not experience any such dizziness. The Court stated as follows:

The burden is on an injured worker to prove every element of her claim, including that a workplace injury arose out of the employment. See Workman v. Wesley Manor Methodist Home, 452 S.W.2d 898 (Ky. 1971); Stasel v. American Radiator & Standard Sanitary Corp., 278 S.W.2d 721 (Ky. 1955). As explained in Arthur Larson and Lex K. Larson, Larson's Workers' Compensation Law, § 4 (2006), an analysis of whether a work-related injury arises out of employment begins with a consideration of the three categories of risk: 1.) risks distinctly associated with employment (e.g., machinery breaking, objects falling, explosives exploding, fingers getting caught in machinery, exposure to toxic substances); 2.) risks that are idiopathic or personal to the claimant (e.g., a disease, internal weakness, personal behavior, or personal mortal enemy that would have resulted in harm regardless of the employment); and 3.) neutral risks (e.g. a stray bullet, a mad dog, a running amuck, lightning). Where an employment and personal cause combine to produce harm, the law does not weigh the importance of the two causes but considers whether the employment was a contributing factor.

Although one naturally infers that a fall in the workplace has something to do with the employment, proving that it arose out of the employment can be problematic when the reason that it occurred is unexplained. Workman v. Wesley Manor Methodist Home, supra, stands for the principle that an unexplained workplace fall is presumed to arise out of the employment unless the presumption is rebutted. The court determined subsequently in Indian Leasing Company v. Turbyfill, [supra], that even an idiopathic fall may be compensable if work placed the individual in a position that increased its dangerous effects.

We explained in Magic Coal Co. v. Fox, 19 S.W.3d 88, 95 (Ky. 2000), that rebuttable presumptions are governed by KRE 301. Such a presumption shifts the burden of going forward with evidence to rebut or meet it to the party against whom it is directed, but it does not shift the burden of proof (i.e., the risk of nonpersuasion) from the party upon whom it was originally cast. If a presumption is not rebutted, the party with the burden of proof prevails on that issue by virtue of the presumption. If a presumption is rebutted, it is reduced to a permissible inference. The ALJ must then weigh the conflicting evidence to decide which is most persuasive.

Because a fact must be proved with substantial evidence, a rebuttable presumption must be met with substantial evidence. Therefore, an employer asserting that a workplace fall was idiopathic must meet the presumption with substantial evidence to that effect. If the employer does so, the ALJ must weigh the conflicting evidence, including the permissible inference that a workplace fall

arises out of the employment. The burden of persuasion remains on the worker.

Id. at 866-867.

In Jefferson County Public Schools, the employer produced substantial evidence to support the presumption regarding the aforementioned dizziness; therefore, the presumption was reduced to a permissible inference. Thus, the claimant retained the burden to prove the fall arose out of the employment. The ALJ found credible the claimant's testimony that she simply fell when stepping from the carpet to the smoother surface. Accordingly, the claimant's testimony along with the presumption constituted substantial evidence upon which to base the decision of work-relatedness.

In the case *sub judice*, Pennington testified the cause of her fall was the uneven floor surface. The ALJ rejected her explanation based on the testimony of Blevins and the pictures introduced at Allen's deposition. That determination was affirmed by this Board and not appealed, and it is now the law of the case. However, the analysis does not end there. The ALJ must also determine whether Pennington's fall was unexplained or idiopathic.

The ALJ initially determined Pennington's fall was related to elevated blood sugar and, thus, idiopathic. We vacated the determination because of the ALJ's failure to cite the medical evidence supporting his determination.

On remand, the ALJ was to cite the medical evidence establishing the elevated blood sugar caused Pennington to lose consciousness and fall. The ALJ's amended decision did not address our directive. He again stated elevated blood sugar caused her to lose consciousness and fall. The ALJ also cited to the July 6, 2017, Boyd County EMS record indicating Pennington's glucose level was significantly elevated at 525, and she had just eaten without taking her insulin. The ALJ also relied upon the absence of defensive wounds which would be expected from a trip and fall. The ALJ concluded the reasonable inference to be drawn from the evidence is Pennington had a diabetic episode as a result of her failure to take her prescribed insulin before her

meal. However, the ALJ did not cite to any medical evidence linking Pennington's elevated blood sugar level to her fall. Similarly, he did not cite to any medical evidence demonstrating Pennington suffered a diabetic episode due to her failure to take insulin before her meal causing a loss of consciousness and her to fall.

While the medical evidence indicates Pennington's glucose level at some point after the fall was 525, the ALJ failed to cite to the medical evidence supporting the basis for his conclusion the fall was due to an elevated glucose level or a diabetic episode stemming from a failure to take insulin before eating. The ALJ must provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). The parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. 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 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. Chafins, 502 S.W.2d 526 (Ky. 1973). The ALJ failed to provide the medical evidence which formed the basis of his decision that Pennington's fall was due to elevated blood sugar and/or "a diabetic episode as a result of failing to take insulin as prescribed before her meal."

As a general rule, causation is a factual issue to be determined within the sound discretion of an ALJ as fact-finder. Union Underwear Co. v. Scarce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W.2d 565 (Ky. 1969). Nevertheless, it is well-settled that where the matter being considered involves a question of medical causation that is not obvious to a lay person, it must be established by expert medical testimony. Elizabethtown Sportswear v. Stice, 720 S.W.2d 732 (Ky. App. 1986); Mengel v. Hawaiian-Tropic Northeast &

Central Distributors, Inc., 618 S.W.2d 184 (Ky. App. 1981).

We decline to remand for a finding Pennington's fall was unexplained and compensable. In our January 24, 2020, decision, we directed the ALJ to cite the medical evidence establishing elevated blood sugar caused Pennington's fall. We emphasized we were not directing any particular determination. However, if there is no evidence directly linking the fall to the elevated blood sugar level, the ALJ was to determine if there was another explanation for Pennington's fall. Thus, the ALJ was not limited to solely determining whether her elevated blood sugar caused Pennington's fall. Stated another way, if he concluded based on the medical evidence that ACTC failed to establish the elevated blood sugar caused the fall, the ALJ could then determine if there was another reason, personal to Pennington, which caused her fall.

We are cognizant that, pursuant to KRS 342.285, in the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether there is substantial evidence in the record to support the ALJ's conclusion. Stated differently, where no petition for reconsideration was filed prior to the Board's review, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record supporting the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

However, because the claim was remanded with specific directions with which the ALJ did not comply, we decline to engage in the Workmen analysis and determine whether ACTC has introduced substantial evidence to rebut the presumption that the fall was unexplained and, consequently, work-related. Since the Board does not have fact-finding authority, the ALJ must conduct the analysis. We reaffirm our holding that the ALJ was not limited to strictly determining whether there is medical evidence establishing a causal connection between the elevated blood sugar and/or the diabetic episode and Pennington's fall. Rather, the ALJ was directed to determine, based upon the evidence in

the record, whether the cause of Pennington's fall was due to an idiopathic cause or is unexplained.

We note the record contains evidence the ALJ must address in his analysis on remand. In the July 6, 2017, emergency room record of King's Daughters Medical Center, Terika Bledsoe, RN, made three notations which are set out below:

Pt was at work when she fell. Presented by Boyd County EMS. **She has a hx of falling** and she states both of her knees hurt but her L knee hurts worse. She states her foot got 'hung up' on the wall and she 'just went down.' Pt is A&Ox3. Skin is PWD. Pedal pulses are equal bilaterally. She hit the R side of her face but she doesn't know how. Call light is in reach, bed is in the low position and both rails are up. (emphasis added).

Pt was at work when she fell. **She has a hx of falling** and states both of her knees hurt but her L knee hurts worse. She states her foot got 'hung up' on the wall and she 'just went down.' Pt is A&Ox3. Skin is PWD. Pedal pulses are equal bilaterally. She hit the R side of her face but she doesn't know how. Call lights is in reach, bed is in the low position and both rails are up. (emphasis added).

Gluc is 525 pt states she just ate hasn't covered it and she wants to take her own.

The principle diagnosis was listed as: "Closed fracture of left tibial plateau. Active problems: Essential hypertension. OSA on CPAP. Type 2 diabetes mellitus without complication. Chronic combined systolic and diastolic CHF (congestive heart failure). ASHD (arteriosclerotic heart disease)."

Significantly, in his December 12, 2018, Independent Medical Evaluation, Dr. J. Steven Shockey noted: "Ms. Pennington was noted to have a significant elevation of her glucose on admission at 525, was unable to walk, but had no loss of consciousness." Dr. Shockey

provided a summarization of Pennington's medical history and under the heading "Impression/Recommendations" and stated as follows:

Ms. Pennington has multiple medical issues which would cause her to be at increased risk for fall. These have been previously delineated and would include labile hypertension, history of congestive heart failure necessitating two hospitalizations in the preceding 12 months prior to her fall, history of atherosclerotic cerebrovascular disease which subsequently manifested as a stroke in late 2107. She is known to have chronic renal insufficiency which was felt at the time of her injury to be stage 3 out of 4 and subsequently now is stage 4. She has diabetic issues with Ms. Pennington noted to have a serum glucose level in the mid-500s at the time of admission to the emergency room. Indeed, as mentioned earlier, her risk criteria for recurrent falls was noted to be high and, at her discharge evaluation from physical therapy with a rating of five risks [sic] factors out of a possible 10, with anything over four considered to be high risk, this did not include the history of a recent fall prior to her evaluation. These predictors are independent for location in terms of causation of falling.

Dr. Shockey did not opine Pennington's elevated glucose level, which was 525 at some time prior to her admission to the emergency room, was the cause of Pennington's fall. Thus, given the above-cited medical evidence, the ALJ must again undertake an analysis to determine whether the rebuttable presumption of work-relatedness is reduced to a permissible inference by this medical evidence. On remand, if the ALJ does determine work-relatedness is indeed a permissible inference, he must then determine whether Pennington's fall resulted from a prior non-work-related condition or is unexplained, and provide the basis for his determination. Even though a petition for

reconsideration was not filed, we decline to engage in the required analysis, as we believe the ALJ must conduct the analysis and render the ultimate determination.

In the September 8, 2020, “Second Amended Opinion and Order on Remand,” the ALJ set forth the following findings of fact and conclusion of law:

Benefits Per KRS 342.730/Injury as Defined by the Act Work-Relatedness and Causation

17. Injury is defined as “any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.” KRS 342.0011(1).

18. An employee has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of his worker’s compensation claim. *Snawder v. Stice*, 576 SW2d 276 (Ky. App. 1979).

19. The Plaintiff has provided the opinion of Dr. Guberman who has opined that the Plaintiff suffered a fall at work and checked a box indicating that the impairment rating issued was due to a work injury. Dr. Guberman noted that the history provided by the Plaintiff indicated that she fell due to catching her shoe on a raised area in the floor.

20. The ALJ finds that the Plaintiff in this matter has not satisfied her burden to establish the occurrence of a work-related injury. Specifically, the ALJ finds that serious questions exist and have not been answered regarding the issue of what caused the Plaintiff to fall. While the Plaintiff alleges that the cause was attributable to raised trowel lines left on the floor from repair work that occurred many years prior, the credible testimony of Mr. Blevins directly contradicts this account.

21. The ALJ finds that Mr. Blevins was credible in his testimony that the area identified by the Plaintiff as the spot of her fall was not included in the repair work that was referenced. The ALJ further finds that the pictures of the area attached to the deposition of 10 Kellie Allen

depicted no uneven or raised surface or any perceptible fall risk.

22. The ALJ finds that while there is circumstantial evidence of factors personal to the Plaintiff that contributed to the fall, the record lacks direct evidence that is sufficient to prove the actual cause of her fall.

23. The ALJ therefore finds that in the absence of any credible and documented theory of the Plaintiff's fall that is supported by substantial evidence, the fall must be considered idiopathic.

24. The presumption regarding idiopathic falls is set forth in *Workman v. Wesley Manor Methodist Home*, 462 S.W.2d 898 (Ky. 1971), wherein the Kentucky Supreme Court cited Larson, Workers' Compensation Law (2004) § 9.01(1), as follows:

...the basic rule on which there is now general agreement, is that the effects of an idiopathic fall are compensable if the employment places the employee in a position of increasing the dangerous effects of such a fall, such as height, near machinery or sharp corners or a moving vehicle.

25. The ALJ finds that the failure of the Plaintiff's stated theory of the fall along with the absence of any evidence of any such positional risk factor, constitutes the burden having been met by substantial evidence.

26. The ALJ therefore finds that this matter is analogous to *Beatty v. Norton Healthcare* 2005 WL 1199039, wherein the Plaintiff argued for the presumption of workrelatedness but the Kentucky Supreme Court found that no such presumption was available per *Workman* due to the lack of any positional risk factors.

27. The *Beatty* court noted that it was very unlikely that the Plaintiff came into contact with anything during her fall in finding that the Employer was not liable. Similarly, 11 the evidence in this case indicates that Ms. Pennington did not encounter any object other than the floor in her fall and the circumstances of the employment provided no increased risk of falling.

28. While the Plaintiff in *Beatty* admittedly suffered a non-work related synchopal episode unlike the Plaintiff herein, the ALJ finds that there is substantial evidence of factors that are personal to the Plaintiff which, like the Plaintiff in *Beatty*, are very likely to have contributed to the fall.

29. The ALJ finds specifically that the Plaintiff had a history of falling as indicated by the EMS and emergency room records and had a blood sugar level of 525 following the incident. The records also indicate that the Plaintiff admitted that she did not take insulin prior to her meal that day which was immediately prior to the fall.

30. The ALJ also finds that the evolving explanation offered by the Plaintiff for the fall is instructive. The Plaintiff initially told Boyd County EMS personnel that she fell while standing up after having been seated in a chair but she then testified at the final hearing that her fall occurred due to raised trowel lines in the floor that were subsequently found not to exist.

31. The ALJ further finds that the lack of defensive wounds or any consistent memory of the incident indicates a possible loss of consciousness. The ALJ therefore finds per *Workman* and *Beatty*, that the presumption of work-relatedness afforded to the Plaintiff's idiopathic fall has been overcome by the lack of positional risk factors and the abundance of factors personal to the Plaintiff that were likely contributors. The ALJ consequently finds that the Plaintiff has failed to satisfy her burden to establish the occurrence of a work-related injury.

As stated, no Petition for Reconsideration was filed.

To summarize, in our July 17, 2020, Opinion, this Board instructed the ALJ to do the following:

- To cite to the medical evidence supporting his conclusion that Pennington's fall was due to her elevated glucose level or a diabetic episode.
- The ALJ was then to determine, based upon the medical evidence in the record, if there was another

explanation, personal to Pennington (idiopathic), for the fall. After considering this evidence, the ALJ was instructed to determine, pursuant to Workman, supra, if the rebuttable presumption of work-relatedness for Pennington's unexplained fall was reduced to a permissible inference. As this Board concluded, "if the ALJ does determine work-relatedness is indeed a permissible inference, he must then determine whether Pennington's fall resulted from a prior non-work-related condition or is unexplained, and provide the basis for his determination." (Emphasis added).

First, we note the ALJ failed to adhere to the Board's first instruction as set forth in our July 17, 2020, Opinion. In paragraph 29 of his findings of fact and conclusions of law, as set forth in the September 8, 2020, decision the ALJ cited the fact that Pennington failed to take insulin prior to the meal she consumed preceding her fall and her blood sugar level was 525 following the fall. However, as we instructed in the July 17, 2020, Opinion, before the ALJ can cite any blood sugar irregularities as evidence proving the July 6, 2017, fall was idiopathic in nature and caused by an issue related to her blood sugar level, the ALJ must cite the supportive medical evidence. On remand, he must do so.

Further, as summarized above, the second part of our instructions on remand included reviewing the medical evidence in the record and determining if there is another explanation for Pennington's fall that is personal to her (idiopathic) outside of her elevated blood sugar and to cite the supportive medical evidence. In the "Second Amended Opinion and Order on Remand," along with the unsupported findings about Pennington's blood sugar level, the ALJ cited the fact that Pennington has a history of falling as evidence that the fall was ultimately idiopathic.

Even though the ALJ cited the emergency room records from King's Daughters Medical Center which note Pennington's history of falling, he was also instructed to "address" this evidence in his analysis on remand when making the determination as to whether the rebuttable presumption of work-relatedness, as articulated in Workman, is reduced to a permissible inference. While the evidence needed to defeat the presumption of work-relatedness need not be "substantial," it does need to satisfy the "reasonable man test." Workman at 900. On this, the Court stated as follows:

On the other hand, if the defendant employer comes forward with sufficient evidence that the work was not a contributing cause to raise a substantial doubt that it was, then the rebuttable presumption is reduced to a permissible inference and the board is free either to find or decline to find that it was. The countervailing defensive evidence need not be 'substantial' in that it would support a positive conclusion that the work was not a contributing cause; it need only cast enough doubt on the validity of the initial presumption in the case at hand to justify a reasonable man in disregarding it. Cf. Blankenship v. Lloyd Blankenship Coal Co., Ky., 463 S.W.2d 62 (1970). ***It must, however, when considered together with all the other evidence in the case, have enough substance to satisfy the 'reasonable man' test as it has been expressed here and in various precedents discussed and cited in Blankenship.***

Id. at 900-901. (Emphasis added).

Pennington's history of falling, without medical documentation linking this history to the July 6, 2017, fall, fails to create "enough doubt on the validity of the initial presumption in the case at hand to justify a reasonable man in disregarding it." Id. at 900. In other words, mere clumsiness is insufficient to prove that the cause of Pennington's fall is idiopathic. Vacuum Depositing, Inc. v. Dever,

285 S.W.3d 730, 734 (Ky. 2009). Similarly, without medical documentation linking Pennington's blood sugar level to the July 6, 2017, fall, Workman is not satisfied.

On remand, the ALJ must set forth the supportive medical evidence, if any exists, establishing a causal link between the July 6, 2017, fall and Pennington's history of falling and/or her heightened blood sugar level if he chooses to once again cite these conditions as supportive of Pennington's fall being idiopathic. As indicated in our July 17, 2020, Opinion, the ALJ cannot rely upon Dr. Shockey for the proposition that Pennington's elevated glucose level caused Pennington's fall, as Dr. Shockey makes no causal connection. If there is no medical evidence in the record supporting a causal connection between these conditions and Pennington's July 6, 2017, fall, then the record lacks evidentiary support for a finding that the fall is personal to Pennington or ideopathic. If there is medical evidence in support of a causal connection, the ALJ is free to deem Pennington's fall idiopathic as long as the medical evidence is clearly set forth in his order on remand. Then, the ALJ must conduct an analysis in order to rule out application of the positional risk doctrine.

The ALJ must also resolve certain inconsistencies as set forth in his findings of fact and conclusions of law thereby demonstrating a proper understanding of the distinction between an unexplained fall and an idiopathic fall.

These inconsistencies include but are not limited to the following:

- The following language in Paragraph 20 contradicts the ALJ's conclusion that Pennington's fall was idiopathic: "Specifically, the ALJ finds that serious questions exists and have not been answered regarding the issue of what caused the Plaintiff to fall."

- Paragraphs 22 and 23 contradict the ALJ's conclusion Pennington's fall was idiopathic.

The ALJ cannot simultaneously find that “serious questions exist” regarding what caused Pennington to fall while also concluding Pennington's fall is idiopathic. If serious questions exist regarding what caused Pennington to fall on July 6, 2017, the fall remains unexplained, and the presumption of work-relatedness, as articulated in Workman, pertains to *unexplained* falls. The Workman Court held, in relevant part, as follows:

The essential problem was discussed in Coomes v. Robertson Lumber Co., Ky., 427 S.W.2d 809 (1968), in which this court held that an unexplained fall in the course of one's employment gives rise to a rebuttable presumption that it arose ‘out of’ the employment as well. Stated another way, when an employe [sic] during the course of his work suffers a fall by reason of some cause that cannot be determined, there is a natural inference that the work had something to do with it, in the sense that had he not been at work he probably would not have fallen.

Id. at 900.

Therefore, if the ALJ cannot, based upon the medical evidence in the record, find Pennington's fall was caused by a condition personal to her, then the fall remains unexplained and the presumption of work-relatedness prevails.

We acknowledge Pennington did not file a Petition for Reconsideration. However, as the Court of Appeals instructed in the case of AGI Transportation, Inc. v. Adkins, Claim No. 2018-CA-000861-WC, rendered November 30, 2018, Designated Not To Be Published, “[w]hether an award conformed to Chapter 342 was a question of law that a court should review, regardless of whether contested by a party....[citation omitted].” Pursuant to KRS

342.285(2), this Board is authorized to determine whether an award conforms with Chapter 342 regardless of whether the particular error was contested by a party or whether the initial award was appealed on a different ground.

To summarize, on remand, the ALJ must perform the following:

- Cite to the specific medical evidence which establishes a causal connection between any blood sugar peculiarities and/or a history of falling and the July 6, 2017, fall. If there is no medical evidence in the record establishing this causal connection, the ALJ cannot once again cite these conditions as being supportive of the fall being personal to her (i.e. idiopathic).
- If the ALJ is unable to link Pennington's blood sugar level or history of falling to the July 6, 2017, fall, the ALJ must determine if there is another explanation, personal to Pennington (i.e. idiopathic) for the fall utilizing the medical evidence in the record. If there is no medical evidence supporting a conclusion that the fall was caused by a condition personal of Pennington, the ALJ shall not deem the fall idiopathic. The fall, in such a scenario, remains unexplained, the presumption of work-relatedness prevails, and the ALJ must resolve the remainder of the contested issues.
- Resolve the internal inconsistencies as outlined herein, thereby establishing a proper understanding of the distinction between an idiopathic fall and an unexplained fall as delineated by Workman. The ALJ cannot once again conclude Pennington's fall is idiopathic if he also determines serious questions exist regarding why the fall occurred.
- If the ALJ deems Pennington's fall is truly idiopathic based upon the evidence in the record and the tenets set forth by the Workman Court, he must rule out positional risk.

Accordingly, we **VACATE** the September 8, 2020, "Second Amended Opinion and Order on Remand" dismissing Pennington's claim for failure to prove a

work-related injury. This claim is **REMANDED** for additional findings and entry of a decision consistent with the views expressed herein.

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