

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 7, 2020

CLAIM NO. 201594425

KENNETH TURNER

PETITIONER

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

COMMONWEALTH OF KENTUCKY -
DEPARTMENT OF CORRECTIONS and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
VACATING & REMANDING**

* * * * *

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

ALVEY, Chairman. Kenneth Turner (“Turner”) appeals from the Remand Opinion and Order rendered by Hon. Jonathan R. Weatherby on October 22, 2019. The ALJ awarded temporary total disability (“TTD”) benefits for injuries Turner sustained on February 16, 2015, while working for the Commonwealth of Kentucky Department of Corrections (“KDC”). The ALJ also awarded temporary medical

benefits. Turner also appeals from the November 7, 2019 order denying his petition for reconsideration.

On appeal, Turner argues Dr. Thomas O'Brien's opinion, relied upon by the ALJ, is based on an inaccurate and incomplete history, and therefore cannot constitute substantial evidence. Turner also argues the ALJ's decision does not contain sufficient findings of fact to inform the parties of the basis of the decision to allow for meaningful review. Turner also argues the ALJ did not address the conflicting evidence or explain why he relied upon Dr. O'Brien's opinions. We determine the ALJ failed to provide an analysis based both upon the records of the Trigg County Hospital Rehabilitation Department, and the March 2015 physical therapy records as directed by this Board in our decision issued August 2, 2019, or provide sufficient reasoning for his reliance upon Dr. O'Brien's opinion. Therefore, we must again vacate the ALJ's decision, and remand for additional analysis.

Turner filed a Form 101 on November 11, 2018, alleging he sustained multiple injuries to multiple body parts when he slipped and fell at work on February 16, 2015. In a decision issued on July 23, 2018, the ALJ, relying upon Dr. O'Brien's opinions, determined Turner sustained only temporary injuries to the shoulder, ribs, and hip due to the work accident. The ALJ awarded TTD benefits from the date of the accident until May 12, 2015, when he determined Turner had reached maximum medical improvement. The ALJ also awarded a temporary period of medical benefits.

This Board issued an opinion on January 11, 2019 vacating the ALJ's decision. The claim was remanded to the ALJ for a review of the evidence, in

particular Dr. O'Brien's opinions. This Board noted Dr. O'Brien's opinions were suspect based upon the information contained in Turner's physical therapy records, and the records from the Trigg County Hospital Rehabilitation Department. On remand, the ALJ was directed to review Dr. O'Brien's opinions based upon a review of those records.

On March 18, 2019, the ALJ issued his first decision on remand. The ALJ again found that Turner only sustained temporary injuries, but did not reference or explain the impact of the records from the Trigg County Hospital Rehabilitation Department.

This Board issued a second decision on August 2, 2019. We noted that again the ALJ did not review the records directed. The only mention of the physical therapy records was, "[w]hile there was some reference to neck symptoms made at a physical therapy visit on March 24, 2015, as well as a complaint to a nurse on April 6, 2015, the point made by Dr. O'Brien regarding the late onset of symptoms is still persuasive." On remand, the ALJ was directed to provide a summary of the records from the Trigg County Hospital Rehabilitation Department. We noted the ALJ's summary of those records failed to include the fact that Turner was experiencing cervical spine pain at his appointment, and did not reference the March 24 and 31, 2015 physical therapy records. The ALJ was directed to address all three records as they pertain to Turner's cervical condition. The ALJ was also directed to note that Dr. O'Brien did not review the physical therapy records. We acknowledged that Dr. Gregory Gleis evaluated Turner at KDC's request, reviewed

all of the records, and determined there was a causal link between the February 16, 2015 accident, and the cervical injury.

On remand, the ALJ noted Turner introduced records from the Trigg County Hospital Rehabilitation Department. The ALJ noted the records were primarily illegible. The ALJ noted that the records referenced Turner was seen on April 13, 2015, and made some references to shoulder impingement, cervical complaints, apparent range of motion measurements, and a possible Spurling's test. However, the ALJ found the records of little value because they were illegible. Although he addressed those records, the ALJ failed to provide any reference to or analysis of the March 2015 physical therapy records. The ALJ again stated he relied upon Dr. O'Brien's opinions. He noted the objective findings supporting Dr. O'Brien's opinions included his review of an interpretation of the June 23, 2015 MRI.

On appeal, Turner again argues the ALJ's decision falls short of providing the requested analysis. Turner argues the ALJ must address the conflicting evidence in the record, and explain the basis for his decision. He argues Dr. O'Brien's opinion is based on an inaccurate and incomplete history and therefore does not constitute substantial evidence. Citing to the holdings by the Kentucky Supreme Court in Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004), and Eddie's Service Center v. Thomas, 503 S.W.3d 881 (Ky. 2016), Turner argues the ALJ erred by relying upon Dr. O'Brien's opinion because it was based upon a flawed history. Turner also argues the ALJ's decision does not contain sufficient findings of fact to inform the parties of the basis of his decision to allow for

meaningful review. Turner again argues the ALJ did not address the conflicting evidence, and provide an adequate explanation for his decision.

We acknowledge that an ALJ has wide-ranging discretion in reaching his or her decision. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976); Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 219 (Ky. 2006). KRS 342.285 designates the ALJ as the finder of fact. The ALJ has the sole discretion in determining the quality, character, and substance of evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Likewise, the ALJ, as fact-finder, may choose whom and what to believe and, in doing so, may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977); Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977).

However, such discretion is not unlimited. While authority generally establishes that an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, he is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. However, in reaching a determination, the ALJ must provide findings sufficient to inform the parties of the basis for the decision to allow for meaningful review. The ALJ's decision must also be based upon an accurate review of the evidence. 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); Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973).

We note the ALJ has had multiple opportunities to provide an accurate review of the evidence, but has failed to do so. In his latest decision, the ALJ only made a passing statement that the records from the Trigg County Hospital Rehabilitation Department are “illegible”, and did not reference the physical therapy records. We must therefore, again vacate the ALJ’s determinations, and remand for a complete review of the evidence, including the physical therapy records, and those from the Trigg County Hospital Rehabilitation Department. The ALJ must then discuss the impact of the information contained in those records upon Dr. O’Brien’s opinion. After reviewing the evidence and the impact, the ALJ may make any determination supported by the evidence. We do not direct any particular result; however, any decision must be based upon an accurate review of the evidence and its impact.

For the foregoing reasons, the Remand Opinion and Order rendered October 22, 2019, and the Order regarding Turner’s Petition for Reconsideration issued November 7, 2019, by the Hon. Jonathan R. Weatherby, Administrative Law Judge, are **VACATED**. This claim is **REMANDED** for determinations in conformity with the views herein expressed.

STIVERS, MEMBER, CONCURS.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON JEFFERY A ROBERTS
509 MAIN STREET
MURRAY, KY 42071

COUNSEL FOR RESPONDENT:

LMS

HON LEE JONES
HON SARA MAY
PO BOX 1167
PIKEVILLE, KY 41502

ADMINISTRATIVE LAW JUDGE:

LMS

HON JONATHAN R WEATHERBY
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601