Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 30, 2019

CLAIM NO. 201561010

KERRY SIPPLE PETITIONER

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

BECKMAN COULTER and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. Kerry Sipple ("Sipple") appeals from the May 24, 2019 Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge. The ALJ dismissed Sipple's claim after determining he had a pre-existing, active condition. The ALJ also determined the alleged work injury produced no harmful change. Neither party filed a petition for reconsideration.

On appeal, Sipple argues the ALJ misinterpreted the opinions of Dr. Jeffrey Fadel, as well as the treatment records, and erroneously concluded he suffered from a pre-existing active, symptomatic, impairment ratable condition. Sipple argues the ALJ erred in relying upon Dr. Ellen Ballard's opinion that does not constitute substantial evidence pursuant to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004). Sipple also argues the evidence compels a finding that he sustained a new compensable injury on August 31, 2015. Because the ALJ's determination is supported by substantial evidence and a contrary result is not compelled, we affirm.

Sipple filed a Form 101 alleging an August 31, 2015 work injury. Sipple alleged he "felt a pop in his back, followed by pain in his back and left leg" when he picked up a box and turned to place it on a pallet while working for Beckman Coulter as a distribution technician. Sipple disclosed two previous work-related low back injuries, one occurring in 2004 and the other in 2012. Sipple began working for Beckman Coulter in June 2014.

Sipple testified at the final hearing held March 26, 2019. Sipple sustained a 2004 work-related injury consisting of low back pain radiating into his left leg down to his knee. Sipple stated that although he continued to have low back pain, his left leg and knee symptoms resolved within a couple of months. Sipple was off work for a little over a year due to the 2004 injury. The parties settled a claim stemming from that injury in 2005 based upon a 5% impairment rating assessed by Dr. Stephen Scheer. In January 2010, the parties entered another settlement agreement wherein Sipple waived his remaining rights, including his right to reopen

and entitlement to past or future medical expenses stemming from the 2004 work injury.

Sipple continued to experience low back pain subsequent to the 2004 work injury, and continued to treat with his primary care physician, Dr. Bradley Patterson, who regularly prescribed narcotic pain medication in 2010, 2011, and 2012. On February 28, 2012, Sipple again felt a pop in his low back and experienced right leg pain. Sipple received treatment consisting of a lumbar MRI, lumbar steroid injections, physical therapy, and medication. Sipple denied missing any work due to the 2012 injury. Sipple was still taking narcotics when he began working for Beckman Coulter.

Sipple testified that on August 31, 2015, he was pulling orders. As he picked up a box and turned, Sipple heard a pop in his low back and experienced sharp pain, numbness, and tingling in his low back into his entire left leg and foot. Sipple underwent surgery in December 2015, which did not relieve his left leg symptoms. Sipple has not returned to work following the August 31, 2015 work injury. He continues to see Dr. Patterson every three to six months.

Although Sipple experienced prior low back pain, he testified he had never experienced similar left leg symptoms until the August 31, 2015 incident. The left-sided symptoms he experienced in 2004 only extended to his knee and had resolved. Sipple's current left lower extremity pain is different, and his symptoms extend throughout his entire left leg and foot. Sipple testified he was only experiencing low back pain prior to the May 22, 2015 incident.

Both parties filed medical records spanning from March 2004 through May 2015. Sipple treated with Dr. Jeff Blau on three occasions in March 2004 for a work-related injury occurring on March 2, 2004, consisting of left low back pain, and numbness and tingling in his left thigh to the knee. On March 16, 2004, Dr. Blau noted Sipple complained of worsening pain extending down his left leg and to his knee. He diagnosed a left lumbar strain and probable left piriformis syndrome for which he recommended physical therapy, and prescribed Ibuprofen, Robaxin, and Percocet. He also restricted Sipple to desk duty and advised him to follow up in one week.

Sipple treated with Dr. Patterson in 2010 and 2011. On May 25, 2010, Sipple reported low back pain radiating into the left pelvis. Dr. Patterson noted this was a chronic problem, with the current episode beginning over a year prior. Dr. Patterson diagnosed improved chronic back pain, improved ankle pain, and a strain for which he prescribed Hydrocodone. Sipple returned in October 2010, September 2011 and December 2011 complaining of chronic low back pain and stiffness for which he was prescribed Hydrocodone.

Sipple began treating with Dr. Ashok Jarkani and Dr. Bradbury Skidmore at the Mayfield Clinic on February 28, 2012 for work-related low back pain radiating into his right leg due to a work accident that occurred the same morning. Dr. Jarkani noted a 2005 MRI confirmed Sipple had previously sustained a herniated disc at L3-4. Sipple was diagnosed with acute low back pain, lumbar disc disease with radiculopathy, and a history of degenerative disc disease at L3-4. Dr. Jarkani prescribed medication, including Oxycodone, and ordered a lumbar

MRI, which was performed on March 2, 2012. The lumbar MRI demonstrated a disc protrusion at L5-S1 impinging on the right S1 nerve root centrally, and broad-based degenerative disease causing foraminal narrowing bilaterally, right greater than left; disc protrusion, spondylosis an facet hypertrophy at L4-5, and right greater than left foraminal narrowing; and degenerative disease at L3-4 and L2-3.

Dr. Skidmore examined Sipple on March 9, 2012 for a neurosurgical consultation, and noted both the 2004 and February 2012 back injuries. Dr. Skidmore performed an examination and compared MRIs from 2004, 2007, and 2012. In comparing the studies, Dr. Skidmore noted Sipple has always had degenerative disc disease at L3-4, L4-5, and L5-S1. The current study shows, "light progression of his disc at L5-S1 more on the left than on the right. He does not have an obvious lumbar spondylolisthesis . . . though he does have stress in the pars predominately on the left side." Dr. Skidmore opined Sipple did not require surgical intervention, but recommended continuing physical therapy, lumbar epidural steroid injections and weight loss. Sipple continued to treat with Dr. Jarkani and Dr. Phillip Zaacks in March, May, June and July of 2012 while awaiting approval for the injections. Sipple continued to complain of back pain radiating into his right leg. He was consistently diagnosed with a lumbar sprain and strain, lumbar back pain, a herniated lumbar disc, and lumbar radiculopathy. He was prescribed Neurontin, Zanaflex and Effexor, and was advised to continue therapy.

Thereafter, Sipple continued to treat approximately twice a year from 2012 to 2015 with Dr. Patterson for chronic low back pain radiating into his right leg, as well as other unrelated conditions including Type II diabetes. Sipple was

regularly prescribed Oxycodone. In January 2014, Sipple reported left low back pain and right knee problems. In November 2014, Sipple reported chronic low back pain radiating into his thighs. The last recorded visit prior to the work injury occurred on May 22, 2015. Dr. Patterson noted the following:

> Kerry is here for regular follow-up for chronic pain. He reports that his pain is unchanged than last evaluation . . . The location(s) of the pain include: back – lower to the left leg. He describes the quality of pain as: sharp. When the pain is most severe, he rates the pain as 9/10. When the pain is the least severe, he rates the pain as 2/10. Functional limitations include has to sit down and stretch out frequently at work.

Subsequent to the August 31, 2015 work injury, Sipple returned to the Mayfield Clinic and Dr. Patterson. On October 28, 2015, Dr. Steven Wunder noted the following:

> . . . chief complaint of acute and chronic low back pain. He has had chronic low back pain for years. He was first sent to Mayfield Clinic in 2004. His MRI in 2004 showed disc desiccation from L3-S1. He did[sic] a left L3-4 protrusion with L4-5 and L5-S1 bulges. He had acceleration of his symptoms in 2007. His MRI is about the same. There is L3-4 disc space narrowing and protrusion. In 2012, he had an MRI that continued to show some desiccation that increased at L5-S1. He saw Dr. Skidmore and no surgery was advised. He saw Dr. Zaacks in 2012 from 2014. He had a new work injury on 8/31/15. He was lifting a 70 pound box. He developed shooting pain down the left leg as he was turning . . . He had an updated MRI . . . There is degenerative bulging at L3-4, L4-5, and L5-S1 with various degrees of annular tears. There is moderate to severe foraminal narrowing at L5-S1.

Dr. Wunder noted Sipple continued to complain of pain, numbness and tingling in his low back and left leg. He also noted Sipple had been prescribed Percocet for over a decade. Dr. Wunder diagnosed lumbar radiculopathy, acute and

chronic low back pain, left sided sciatica, and moderate to severe foraminal narrowing at L5-S1. He ordered EMG/NCV studies which were read as normal with no evidence of acute radiculopathy, plexopathy or peripheral neuropathy.

Dr. Skidmore examined Sipple on November 6, 2015. He noted Sipple's prior back problems and the August 31, 2015 work accident. He also reviewed the September 2015 MRI, which he interpreted as showing desiccated bulging disc at L5-S1 with central and left paracentral, and left foraminal component that could catch the existing left S1 and L5 roots. Dr. Skidmore noted Sipple "seems to have a left leg radiculopathy" and recommended surgery. The December 28, 2015 operative report notes Dr. Skidmore performed a laminotomy and discectomy at L5-S1 and identified the post-operative diagnosis as herniated disc at left L5-S1. The post-operative records demonstrate Sipple continued to experience back and left leg symptoms despite surgery. A repeat lumbar MRI showed no evidence of recurrent or residual herniated lumbar disc. On June 7, 2016, Dr. Skidmore diagnosed lumbosacral intervertebral disc disorder with radiculopathy and referred him to pain management. In the last treatment date of record dated November 21, 2016, Dr. Patterson diagnosed Sipple with Type II diabetes, lumbar radicular pain, lumbar disc disease with radiculopathy, history of L3-L4 degenerative disc disease, morbid obesity, and chronic bilateral low back pain with sciatica present. Additional surgery was not recommended.

Beckman Coulter filed Dr. Gerald Papp's October 5, 2016 report. Dr. Papp noted the 2004 and 2015 work injuries, as well as Sipple's history of diabetes, hypertension and opioid prescription. Dr. Papp diagnosed Sipple as status post L4-

L5-S1 discectomy, excessively obese, opioid dependent with chronic pain, and having Type II diabetes mellitus. He opined that, "As far as causality of the reported two disc herniations and his injury and mechanism of injury of 08/31/2015, would be very remote." Dr. Papp opined Sipple's prognosis is poor and attributed the degenerative disc disease to his morbid obesity. He noted Sipple might have some component of neuropathic pain due to his diabetes. Dr. Papp opined Sipple needs no further treatment related to the August 31, 2015 injury and anticipated he will attain maximum medical improvement ("MMI") by December 31, 2016. Dr. Papp did not specifically identify the medical records he reviewed, if any, in formulating his opinions.

Sipple filed a June 29, 2017 report prepared by Dr. Wunder, who noted the 2004, 2012 and 2015 low back injuries. He diagnosed a left L5-S1 disc herniation and chronic left S1 radiculopathy. He opined the Sipple's injury caused his complaints, and there was a harmful change in the human organism. Dr. Wunder assessed a 13% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), attributable to the August 31, 2015 work injury, concluding Sipple's prior history of low back and left leg pain resolved in 2012.

Beckman Coulter filed Dr. Ballard's August 23, 2017 report. Dr. Ballard also testified by deposition on September 5, 2018. Sipple reported the 2004 and 2012 work accidents resulting in back problems, as well as the August 31, 2015 work incident resulting in low back pain radiating down into his left lower extremity. Dr. Ballard reviewed medical records from 2010 to the present from St. Elizabeth

Physicians Family Medicine, Dr. Jarkani, Dr. Skidmore, Dr. Wunder, Dr. Jeffrey Schiffman, Dr. David Trotter, and Dr. Papp. She also reviewed the 2015 EMG/ NCV, lumbar MRI reports from 2012, 2015 and 2016, physical therapy records, and labs/urinary drug screen reports. Dr. Ballard opined Sipple has a history of chronic low back pain, recent lumbar surgery at L5-S1, chronic narcotic use prior to work injury, morbid obesity, and diabetes.

Regarding the cause of Sipple's condition, Dr. Ballard opined as follows:

> The patient has a long-standing history of chronic back pain from various work-related issues with previous 2004 injury resulting in permanent restrictions and impairment. In my opinion, his present condition is due to his pre-existing problems... . He had a pre-existing condition, which was not aroused into disabling reality, as it was already active, and he was receiving regular treatment for it.

Dr. Ballard opined Sipple is at MMI and does not require any additional treatment. Dr. Ballard assessed a 13% impairment rating pursuant to the AMA Guides, and restricted Sipple from repetitive bending or stooping and lifting over twenty pounds. In a letter dated March 28, 2018, Dr. Ballard clarified the 13% impairment rating is due to the 2004 herniated disc.

During her deposition, counsel for both parties questioned Dr. Ballard extensively regarding Sipple's prior medical records and treatment compared to the medical treatment received after the August 31, 2015 incident. She reiterated her opinion that the August 31, 2015 event did not aggravate his prior low back condition, which was pre-existing and active. She clarified Sipple does not require any additional treatment related to the August 31, 2015 work incident. Although Dr.

Ballard assessed a 13% impairment rating due to the 2004 work injury resulting in a disc herniation, she acknowledged she did not review the 2005 MRI report or any medical records from 2005 to 2009. The earliest record Dr. Ballard reviewed was from April 2010. Dr. Ballard opined the 2015 surgery stemmed from the 2004 work injury, and that no new injury or further change in his condition occurred due to the August 31, 2015 event. Dr. Ballard also noted Sipple's long-term narcotic regimen for his chronic low back problems since 2004. Dr. Ballard stood by her opinions and conclusions contained within her report.

Beckman Coulter also filed Dr. Michael Best's August 6, 2018 report and addendums dated March 18, 2019 and March 22, 2019. In the August 2018 report, Dr. Best noted the August 31, 2015 and the 2004 work injuries. Dr. Best diagnosed a L5-S1 left-sided disc herniation and status post microscopic lumbar laminectomy and discectomy at L5-S1, left side. Dr. Best opined the left-sided disc herniation is a new problem and related to the August 31, 2015 work incident. Dr. Best noted Sipple's L5-S1 pathology prior to the 2015 was limited to the right side while his L5-S1 pathology after the work injury was located on the left side. Therefore, the new pathology resulting in the left leg radiculopathy is secondary to the August 31, 2015 work event. Dr. Best opined Sipple is at MMI and requires no further treatment other than to reduce or eliminate opioid medication. Dr. Best opined Sipple met the criteria for a 10 to 13% impairment rating for the previous injuries pursuant to the AMA Guides. Dr. Best declined to assess an impairment rating at the time of his examination without reviewing the previous awards and/or decision from 2004 and 2012. Dr. Best found any restrictions would be due to

Sipple's pre-existing diabetes and morbid obesity. He also had pre-existing disc herniation at L5-S1 and degenerative disc disease with stenosis at L4-5.

In the March 18, 2019 supplement, Dr. Best emphasized the May 22, 2015 medical record of Dr. Patterson, approximately three months prior to the work injury. Dr. Best concluded Sipple had, "chronic low back pain that was an active medical condition that preexisted the work event of August 31, 2015. The new pathology of the left leg developed essentially three months prior to the work event of August 31, 2015." Therefore, Dr. Best assessed a 10% impairment rating in May 2015 and determined Sipple's impairment rating as of August 31, 2015 remained at 10%. In the March 22, 2019 letter, Dr. Best clarified, "there is no additional impairment rating . . . attributable to the August 31, 2015 work event."

Sipple filed Dr. Fadel's October 18, 2018 report, who also testified by deposition on March 4, 2019. He noted the 2004 and 2012 incidents of low back symptoms, as well as the August 31, 2015 work injury. Dr. Fadel diagnosed failed back surgery syndrome from a herniated lumbar disc at L5-S1 disc space requiring surgical excision due to August 31, 2015 work injury. He assessed a 32% impairment rating for Sipple's low back condition pursuant to the AMA Guides, apportioning 5% to a pre-existing active condition and 27% to the August 31, 2015 work injury. Dr. Fadel opined Sipple sustained an aggravation of his pre-existing active disease, which began in 2004 and afterward received regular treatment for that condition. He further noted Sipple was able to work and perform acts of daily living except for occasional exacerbations. Dr. Fadel found the August 2015 incident was the ultimate event that herniated the L5-S1 disc to a point where the pressure was

mostly placed on the left S1 nerve root requiring surgical removal on December 28, 2015. He further noted the left leg radiculopathy was not present prior to August 31, 2015. Fadel found Sipple attained MMI in December 2016. Dr. Fadel restricted Sipple to clerical work and opined he is unable to return to his previous employment.

Dr. Fadel's testimony is consistent with his report. He again found Sipple developed new left leg pain for the first time on August 31, 2015. Dr. Fadel testified as follows regarding the possibility of the occurrence of left leg pain prior to the work injury:

> Q: . . . [I]f his left leg pain started on an earlier date than August 31, 2015, then that might cause you to change your opinion as to the onset of his left herniation; is that correct?
>
> A: Yeah, that would be correct, if it was a sustained problem that was similar to his presentation at this - - at this injury time.
>
> Q: Like I say, if he had actually had . . . left leg pain three months earlier, for example, that would . . . tend to date the onset of the left-sided problem.
>
> A: Yeah. I mean, it really depends on the severity of the pain and - - the answer to your question would be yes.

Dr. Fadel critiqued the opinions of Dr. Ballard. Dr. Fadel stood by his assessment of impairment contained within his report and attributed 27% to the August 31, 2015 work injury.

The ALJ provided the following analysis in dismissing Sipple's claim:

> 14. For purposes of determining the extent of employer's liability for workers' compensation benefits for the work-related arousal of a pre-existing condition, to be characterized as active, an underlying pre-existing condition must be symptomatic and impairment ratable

> pursuant to the [AMA Guides] immediately prior to the occurrence of the work-related injury. Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007)
>
> 15. The ALJ finds that the Plaintiff is a sympathetic individual but is unable to avoid the conclusion that the evidence relied upon by the Plaintiff is outweighed by the credibility of the Defense evidence submitted indicating he had a pre-existing and active condition on the date of the injury at issue herein.
>
> 16. The ALJ notes that Dr. Wunder lacked the records of Dr. Patterson that indicate that the Plaintiff was symptomatic in the low back and left leg in November of 2014 and in May of 2015. Likewise, Dr. Fadel was forced to admit that had he known that the Plaintiff had been symptomatic in the left leg prior to the date of injury August 31, 2015, he would have attributed that to the prior injury.
>
> 17. The ALJ is most persuaded therefore by the opinion of Dr. Ballard who diagnosed the Plaintiff with chronic low back pain and found that the August 31, 2015, work event didn't aggravate his condition, but instead found that the condition had been active since 2004.
>
> 18. The ALJ therefore finds based upon the opinion of Dr. Ballard that the Plaintiff was having left-sided problems in 2012 and 2014 and that he had no harmful change to his condition due the August 31, 2015, event. Dr. Ballard found that the Plaintiff had a 5% whole person impairment as a result of the 2004 injury and that the increase in impairment was due to the surgery related to that injury only and having nothing to do with the alleged 2015, incident. The ALJ therefore finds based upon this credible opinion that the Plaintiff had an underlying pre-existing condition that was symptomatic and impairment ratable immediately prior to the occurrence of the work-related injury.
>
> Neither party filed a petition for reconsideration.

On appeal, Sipple argues the ALJ misinterpreted Dr. Fadel's opinion when he stated, "Dr. Fadel was forced to admit that had he known that the Plaintiff

had been symptomatic in the left leg prior to the date of injury August 31, 2015, he would have attributed that to the prior injury." Sipple argues this statement erroneously assumes Dr. Fadel was presented with substantial evidence of an active, pre-existing left leg injury immediately prior to the work injury. He also asserts Dr. Fadel merely answered a hypothetical question at the deposition. He also points out Dr. Fadel did in fact find Sipple had a pre-existing 2004 injury when he carved out 5%, which he determined contained no radiculopathy component. Sipple asserts the evidence in the record supports Dr. Fadel's assessment of a pre-existing 5% impairment rating.

Sipple also argues the November 2014 and May 2015 records do not support a finding of low back and left leg symptomology. In a related argument, Sipple argues the ALJ misapplied the test outlined in Finley v. DBM Technologies, 217 S.W.3d 261, 265 (Ky. App. 2007), and that the two prior treatment records are insufficient to prove he suffered from an active, impairment ratable condition in his left leg immediately prior to the work injury.

Sipple argues Dr. Ballard's opinions do not constitute substantial evidence pursuant to Cepero v. Fabricated Metals Corp., supra, since she did not review any records prior to April 15, 2010.

Finally, Sipple argues the evidence compels a finding he sustained a new compensable injury on August 31, 2015. He asserts the medical evidence establishes he did not experience any left-sided radiculopathy after he recovered from his 2004 injury until after the August 31, 2015 work injury. He similarly argues the November 2014 and May 2015 records do not constitute objective medical findings

of left-sided radiculopathy. Rather, according to Sipple, the medical evidence establishes a new injurious event occurred on August 31, 2015 warranting an impairment rating.

As the claimant in a workers' compensation proceeding, Sipple had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Sipple unsuccessful in his burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming, no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary

to the ALJ's decision is inadequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. As long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

The ALJ apparently blended his analysis regarding causation/ work-relatedness and pre-existing, active condition. On one hand, the ALJ found Dr. Ballard's opinion most persuasive. The ALJ noted Dr. Ballard diagnosed chronic low back pain and found that the August 31, 2015 work event did not aggravate his condition, but instead found that the condition had been active since 2004. The ALJ also found Sipple experienced left-sided problems prior to the work injury and he experienced no harmful change to his condition from the August 31, 2015, event again based upon Dr. Ballard's opinion.

On the other hand, the ALJ cited Finley v. DBM Technologies, supra, and found Sipple had an underlying pre-existing condition that was symptomatic and impairment ratable immediately prior to the occurrence of the work-related injury. An analysis pursuant to Finley is only required where a Claimant is first found to have sustained a work-related injury warranting an impairment rating. Then, if the

issue has been raised, the ALJ must determine if a carve out of the impairment rating is appropriate for a pre-existing, active condition pursuant to Finley. If an ALJ determines a Claimant did not sustain any work-related injury, a Finley analysis is not required.

We note that no petition for reconsideration was filed. In the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether there is any substantial evidence in the record to support the ALJ's conclusion. Stated otherwise, 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). Thus, our sole task on appeal is to determine whether substantial evidence supports the ALJ's decision. We conclude it does.

The ALJ clearly relied upon Dr. Ballard's opinion in dismissing Sipple's claim. After reviewing the August 23, 2017 report and the September 5, 2018 deposition, we conclude Dr. Ballard's opinion constitutes substantial evidence supporting the ALJ's determination and a contrary result is not compelled. In her report, Dr. Ballard summarized the history of back injuries in 2004 and 2012 as reported by Sipple, as well as the August 31, 2015 work incident and subsequent treatment. Dr. Ballard summarized the records she reviewed and performed an examination. Dr. Ballard noted Sipple's history of chronic low back pain and the recent lumbar surgery at L5-S1. She also noted he was a chronic narcotic user prior

to the work injury, was morbidly obese, and diabetic. Dr. Ballard assessed a 13% impairment rating pursuant AMA Guides, and later clarified the impairment rating is related to the 2004 herniated disc.

At her deposition, Dr. Ballard reiterated her opinion that the August 31, 2015 event did not aggravate his prior low back condition which was pre-existing and active. Dr. Ballard opined the December 2015 surgery stemmed from the 2004 work injury, and that no new injury or further change in his condition occurred due to the August 31, 2015 event. Dr. Ballard stood by her opinions and conclusions contained within her report subsequent to extensive questioning regarding Sipple's prior medical records and treatment. We conclude Dr. Ballard's opinions address the work-relatedness and/or cause of Sipple's current condition, and therefore, a Finley analysis was not required. We also note Dr. Best's supplemental reports dated March 18, 2019 and March 22, 2019 support the ALJ's determination.

We conclude Sipple's reliance on Cepero v. Fabricated Metals Corp., supra, is misplaced. This case is distinguishable from Cepero, which was an unusual case involving not only a complete failure to disclose, but also affirmative efforts by the employee to cover up a significant injury to the left knee two and a half years prior to the alleged work-related injury to the same knee. The prior, non-work-related injury left Cepero confined to a wheelchair for more than a month. The physician upon whom the ALJ relied was not informed of this prior history by the employee and had no other apparent means of becoming so informed. Every physician who was adequately informed of this prior history opined Cepero's left knee impairment was not work-related but, instead, was attributable to the non-

work-related injury two and a half years previous. In Cepero, the Supreme Court found a medical opinion erroneously premised on the claimant's egregious omission of directly relevant past medical history was sufficient to mandate reversal based on an insufficient history received by the medical expert. The Court held a "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." Id.

After reviewing the evidence and the ALJ's decision in the present claim, we cannot conclude Dr. Ballard was provided a history so inaccurate or incomplete as to render her opinion lacking in probative value. In her report, it is clear Sipple reported the 2004 injury. Although Dr. Ballard had not reviewed records of the prior treatment in 2004 and/or 2005, she reviewed other medical records containing summaries and descriptions of such treatment. Dr. Ballard was questioned extensively in her deposition regarding Sipple's prior treatment. Instead, the arguments raised by Sipple regarding Dr. Ballard's opinion go to the weight of the evidence, and are not an adequate basis to reverse on appeal.

Accordingly, the May 24, 2019 Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, is **AFFIRMED**.

ALL CONCUR.

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