Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 9, 2019

CLAIM NO. 201791338

LARRY BROWN PETITIONER

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

FORD MOTOR COMPANY and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART & REMANDING
* * * * * *

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

ALVEY, Chairman. Larry Brown ("Brown") appeals from the February 18, 2019 Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"), dismissing his claim against Ford Motor Company ("Ford"). The ALJ determined Brown falsified his job application with Ford. Brown also appeals from the March 28, 2019 order revising the decision in response to his Petition for Reconsideration.

On appeal, Brown argues the ALJ erred in relying upon Dr. Raymond Hart's testimony in dismissing his claim. Brown also argues the ALJ erred in finding a causal connection between his false statement and his injury. We affirm the ALJ's determination that Brown knowingly and willfully falsified his job application, and that Ford relied upon this falsification as a substantial factor in his hiring. However, we must vacate the ALJ's determination, in part, and remand for additional findings addressing the causal connection between the falsification and Browns' alleged injury.

Brown filed a Form 101 on January 17, 2018 alleging he injured his low back, left leg, and buttocks, in addition to developing blood clots in his leg, when he was lifting a box of screws while working for Ford on February 21, 2017. In the Form 101, Brown indicated he previously sustained work-related low back injuries on July 26, 1999 (Claim No. 1999-72382) (which he settled for $30,000.00), and on September 11, 2008 (Claim No. 2008-76203). In his Form 104, Brown indicated his previous employment included assembly line work, spray dryer operator, floor supervisor for a janitorial service, construction laborer, and various positions through a temporary agency.

Brown testified by deposition on May 21, 2018, and at the hearing held December 19, 2018. Brown is a resident of Prospect, Kentucky, and was born on February 10, 1969. He completed the eleventh grade, and later obtained a GED. He has no specialized or vocational training. Brown acknowledged he previously injured his low back in 1999 while working for a temporary service agency, for which he filed a workers' compensation claim. He also discussed a previous motor vehicle

accident ("MVA") which resulted in a brief flare-up of low back pain. After the MVA, he recovered and experienced no low back pain between 2011 and 2016. He testified he received a settlement after that injury. He also discussed the 2003 surgery, but could not recall a work injury in 2008.

Brown began working for Ford in 2016. His father had previously retired from Ford, and assisted Brown in getting a job there. Brown testified he underwent a pre-employment physical examination in New Albany, Indiana. He testified the examining physician did not ask about his surgical scar. He completed a job application after the physical examination. He began orientation with Ford on May 23, 2016, and began working in the plant on June 1, 2016. He testified he advised Ford of his 2003 surgery on his job application. On February 21, 2017, his job consisted of connecting front drive shafts to the axles of vehicles, which required a lot of bending. When he returned to work at Ford in November 2017, his job had changed, although it was still in assembly, and he was earning higher pay.

On February 21, 2017, he squatted to get a box of screws as part of the assembly process. When he stood up, he experienced pain in his back and buttocks, primarily on the left side. He attempted to continue to work, but was unable to do so. He reported the injury to Scott Henderson, his team leader. He sat for a period of time but was unable to get up, and he was taken to the Ford medical department on a gurney. He testified he experienced low back pain radiating into both legs. He advised the physician at Ford medical about his 2003 low back surgery.

Brown was sent by ambulance to Norton's Brownsboro Hospital. After a few days, he was transferred to Norton's Hospital in Louisville. He was

eventually sent to the Masonic Home in Louisville for two weeks of recovery. For a brief period, he was confined to a wheelchair, and later progressed to using a walker, then a cane. He saw Dr. George Raque who performed his surgery in 2003. He had physical therapy and epidural steroid injections. No additional surgery was recommended. He attempted to return to work on August 13, 2017, but was prevented due to his restrictions. He testified workers' compensation stopped paying any benefits at that time. He did not return to work until November 14, 2017. He had no restrictions when he returned to work, but still experienced low back, buttock, and left leg pain. He testified his current job does not require the bending he was doing at the time of his injury.

Brown testified his leg swells and hurts by the end of his shift. He also testified he did not intentionally attempt to mislead anyone with his job application, although he admitted he checked the box on the medical history form indicating he had never previously had back trouble or pain. He admitted he incorrectly indicated that he had never been limited or restricted at work.

In support of his claim, Brown filed the Form 107-I report completed by Dr. Peter J. Buecker after his November 30, 2017 evaluation. Dr. Buecker noted Brown's reported history of picking up a twenty-five pound box of screws on February 21, 2017, and afterward feeling low back pain shooting into his right foot. When Brown attempted to pick up another axle, he experienced pain into both legs. He noted the history of the 2003 lumbar fusion. Dr. Buecker diagnosed Brown with spinal stenosis with acute exacerbation related to his work injury. He testified the injury was caused by Brown's work activities at Ford. He assessed a 10%

impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. Dr. Buecker testified that a portion of this impairment rating was due to the 2003 surgery. He stated Brown reached maximum medical improvement ("MMI") six months after the date of the work injury. He recommended restrictions of no lifting greater than twenty-five pounds, and no repetitive twisting, bending, stooping, or repetitive walking on hard floors.

Brown also filed the February 21, 2017 note from Dr. Brenden Wetherton, and Mark Harris, R.N. at Ford medical. It was noted that Brown complained of low back pain radiating from his left buttock to his left foot from attempting to pick up a box of screws. The note also reflects Brown had previously undergone L4-L5 disc surgery.

Brown additionally filed records from Norton's Hospital. On February 22, 2017, it was noted that Brown complained of low back pain with constant sharp left buttock and hip pain, exacerbated with movement. His previous L4-L5 spinal fusion was noted. On April 11, 2017, Dr. Raque noted Brown has mild foraminal stenosis at L3-L4 and L4-L5, with no clear-cut nerve root compression. He found no surgically correctable lesion.

Ford filed a special answer. It asserted that Brown fraudulently denied previous low back injuries and surgeries when he applied for employment, and the claim should therefore be dismissed.

Lonnie Corkum ("Mr. Corkum") testified by deposition on July 17, 2018. He is a senior labor relations representative at Ford. He has worked for Ford

for 26 years, of which he has spent 24 years in labor relations. He testified that Ford relies upon the accuracy of information contained in job applications and medical histories in the hiring process. He stated it is problematic if full information is not disclosed. He stated Brown's pre-employment physical examination would have been conducted based upon the information he provided in his medical questionnaire.

Dr. Hart, an occupational medicine physician, testified by deposition on July 17, 2018. Dr. Hart is the plant physician at the Ford Kentucky Truck Plant in Louisville. He has worked there for over ten years. In his capacity as plant physician, he treats first time injuries and long-term cases. He also performs pre-employment physical examinations. He additionally works with ergonomics, safety, and plant engineers.

Dr. Hart outlined the Ford hiring process. He noted a pool of candidates is administered a dexterity test. If the dexterity test is successfully completed, a candidate is provided a packet of information, including a questionnaire regarding medical history, past surgeries, and potential restrictions/ limitations. A nurse reviews the information provided by the candidate for completion. A drug screen is then administered. After clearing the drug screen, the candidate is administered an eye exam and a hearing test. Vital signs are also taken. A physical examination is then performed based upon the information provided by the candidate in the medical questionnaire. If issues arise during the examination, the candidate is given a form to be completed by a physician or specialist (in this case Dr. Raque) for certification that it is safe to work at Ford. In an instance where an

individual discloses a previous history of injury or surgery, a specific series of questions are asked. The hiring of the candidate is placed on hold until the receipt of the certification by the physician or specialist. If the candidate passes the physical examination, a certification for hiring is issued. Dr. Hart noted that at one time, some of the pre-employment physical examinations were performed at other facilities, but the process is the same.

Dr. Hart noted it is incumbent upon the employee to provide accurate information to ensure safe placement in the plant. He also stated it is less likely Brown would have been hired if he had provided an accurate history. Dr. Hart did not examine Brown. However, he testified it is unlikely that Brown was asked to remove his shirt so a surgical scar could have been seen absent the reporting of the prior surgery.

Ford filed Dr. Russell Travis' June 12, 2017 report. Brown reported he sustained a work injury on February 21, 2017. At the time of the evaluation, Brown continued to complain of constant pain into the left buttock and rectum. He reported the left leg was not as painful as it had been, but was weak. Dr. Travis noted the history of a disc fusion in 2003. He determined that at most, Brown sustained a lumbar sprain or strain on February 21, 2017. A comparison of radiographic and imaging studies from 2008 to 2017 revealed no evidence of neural compromise to explain Brown's complaints. He saw no evidence of disc herniation, spinal stenosis, or neural compromise. He found age-related degenerative changes only. Dr. Travis stated the examination was fraught with flagrant symptom magnification without evidence of clear-cut objective abnormal findings. Dr. Travis stated his findings were

consistent with those of Dr. Raque. Dr. Travis determined Brown sustained no significant injury with permanent sequelae. He stated he saw no evidence on physical examination precluding Brown from having an excellent outcome and ability to return to work.

Ford also filed Dr. Travis' August 3, 2017 supplemental report. Dr. Travis noted he had reviewed additional studies, along with those from 2008. He noted Brown underwent a lumbar fusion at the L4-L5 in 2003. Since his February 2017 incident, Brown complained of ongoing pain, and decreased tolerance to sitting, standing, and walking. He had not worked since the incident. Dr. Travis noted Brown displayed five out of five positive Waddell's signs for symptom magnification. He noted that Brown's complaints were not supported by the physical examination and the imaging studies. He likewise determined Brown's complaints of groin/scrotal symptoms are not objectively supported. Dr. Travis determined Brown had reached MMI. He also stated Brown exhibited flagrant symptom magnification. He had no treatment recommendations, other than Brown should be weaned from opioid medications.

Ford filed additional records from its medical department. On June 28, 2017, Mary Bobay, R.N. noted Brown had reached MMI by June 12, 2017. The November 14, 2017 note reflects Brown presented paperwork to return to work.

Ford additionally filed records from Norton's Hospital. On June 23, 2017, Anita Miller, R.N., noted Brown's complaints of low back and bilateral low back pain. The previous 2003 surgery was noted. An epidural steroid injection was administered, and Brown was diagnosed with degenerative disc disease, L4-L5

radiculopathy, and chronic low back pain. A discharge summary from March 3, 2017 noted the same findings along with mild L3-L4 spinal stenosis and L4-L5 spinal stenosis. The April 3, 2011 note indicated Brown was seen for low back pain stemming from a MVA. On September 11, 2008, Brown had an MRI after he experienced a pop in his back from lifting heavy objects. He complained of pain going down his right leg. Ford also filed physical therapy records from the Sam Swope Medical Care Center at the Masonic Homes of Kentucky for in-patient treatment from February 22, 2017 through March 3, 2017. Ford additionally filed Dr. Raque's April 11, 2017 note taking Brown off work until May 18, 2017. It also filed Dr. Raque's October 30, 2017 allowing Brown to return to work with no restrictions.

Ford also filed the new hire medical information questionnaire from Brown's May 4, 2016 examination. Brown denied he had ever previously experienced any back trouble or pain, denied any previous operations, denied any previous complaints or disability, and left blank the questions concerning any previous hospitalizations or surgery.

Ford filed Dr. Raque's July 12, 2011 note. Dr. Raque noted Brown's complaints of low back pain radiating down his left leg. He also noted the previous fusion surgery. Epidural steroid injections were ordered due to the April 3, 2011 MVA. Ford also filed Dr. Stacie Grossfeld's February 9, 2015 report. Dr. Grossfeld saw Brown for unrelated complaints of right and left shoulder problems and tendinitis.

At the Benefit Review Conference held December 4, 2018, the issues preserved for determination included benefits per KRS 342.730, work-relatedness/ causation, average weekly wage, unpaid or contested medical expenses, exclusion for pre-existing disability/impairment, TTD, application of multipliers, false statement on an employment application, fraud, and whether Brown retains the capacity to return to the type of work performed at the time of injury. The parties stipulated Brown sustained a work-related injury on February 21, 2017.

The ALJ dismissed Brown's claim in the opinion rendered February 18, 2019. The ALJ found the opinions rendered by Dr. Travis more credible than those of Dr. Buecker. The ALJ was persuaded by Dr. Travis' opinion regarding the lack of changes on the February 22, 2017 MRI from the one dated September 11, 2008. He additionally referenced Dr. Travis' notation that the imaging studies reveal only age-related degenerative changes with no evidence of neural compromise. The ALJ also noted that Dr. Travis concluded Brown's complaints were subjective, without evidence of radiculopathy, and he disagreed with Dr. Buecker's assessment of a 10% impairment rating.

Regarding the allegation of the false statement on the job application, the ALJ found as follows:

Alleged False Statement on Employment Application/Fraud

18. KRS 342.165(2) provides as follows:

> No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in

writing, his or her physical condition or medical history, if all of the following factors are present:

(a) The employee has knowingly and willfully made a false representation as to his or her physical condition or medical history;

(b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and

(c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

19. The ALJ finds that the deposition testimony of Dr. Hart is credible in this matter and must therefore conclude that the Plaintiff has intentionally made a false representation regarding his prior medical history. Dr. Hart noted that the Plaintiff marked "no" on the application indicating that he denied having prior operations, back pain, or that he had been otherwise restricted or limited due to his health.

20. Dr. Hart also credibly testified that the Defendant relied on the false information provided by the Plaintiff during the hiring process and that if the Plaintiff had been truthful, he would not have been hired with his medical history.

21. The ALJ finds, based upon this testimony and the application completed by the Plaintiff that the matter must be **DISMISSED** per KRS 342.165(2).

22. The Plaintiff's explanation for his false statements on the employment application were due to the voluminous documents that he was required to complete. He also added that he did not have the intent to mislead. While the ALJ is not persuaded by this and finds specifically that the Plaintiff made a knowingly false statement on the application that if answered truthfully would have disqualified him from employment, the ALJ declines to make a fraud referral as the Plaintiff's intent in making the knowingly false statement has not been fully established herein.

23. The remaining contested issues have been rendered **MOOT** by the foregoing.

Brown filed a Petition for Reconsideration requesting multiple additional findings of fact, many of which focus on the opinions and testimony of Dr. Hart and Mr. Corkum. The ALJ issued an order on the Petition for Reconsideration on March 28, 2019, amending his decision as follows:

Benefits Per KRS 342.730/
Work-Relatedness and Causation

Pre-existing Active Disability or Impairment

15. The Plaintiff has presented the opinion of Dr. Buecker in support of his claim for a work-related injury resulting in a 10% whole person impairment. Dr. Buecker diagnosed spinal stenosis with acute exacerbation due to a work injury but noted that the Plaintiff had prior spinal stenosis in 2003. Dr. Buecker opined that the Plaintiff was not symptomatic prior to the event.

16. The ALJ finds that Dr. Travis has effectively refuted the opinion of Dr. Buecker with objective medical evidence. The ALJ is particularly convinced and persuaded by Dr. Travis' comparison of his findings to the results of the Plaintiff's imaging studies. Dr. Travis examined the Plaintiff on June 12, 2017, and found no changes from the Plaintiff's MRI dated February 22, 2017, or the prior one dated September 11, 2008. He noted that the imaging studies revealed only age-related degenerative changes with no evidence of neural compromise.

17. The ALJ finds that the opinion of Dr. Travis is particularly convincing in regard to his criticism of the opinion of Dr. Buecker. Dr. Travis credibly opined that the Plaintiff did not exert appropriate effort when evaluated at Frazier Rehab on July 6, 2017, and added that the findings did not justify a DRE Lumbar Category III with a 10% impairment rating. Dr. Travis

concluded that the Plaintiff's complaints were subjective and did not agree with the finding of radiculopathy. He further stated that signs of spasm and guarding did not warrant a DRE III radiculopathy with a 10% impairment.

Alleged False Statement on Employment Application/ Fraud

18. KRS 342.165(2) provides as follows:

No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his or her physical condition or medical history, if all of the following factors are present:

(a) The employee has knowingly and willfully made a false representation as to his or her physical condition or medical history;

(b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and

(c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

19. The ALJ finds that the deposition testimony of Dr. Hart is credible in this matter and must therefore conclude that the Plaintiff has intentionally made a false representation regarding his prior medical history. Dr. Hart noted that the Plaintiff marked "no" on the application indicating that he denied having prior operations, back pain, or that he had been otherwise restricted or limited due to his health.

20. Dr. Hart also credibly testified that the Defendant relied on the false information provided by the Plaintiff during the hiring process and that if the Plaintiff had been truthful, he would not have been hired with his intentionally concealed medical history.

> 21. The ALJ finds, based upon this testimony and the application completed by the Plaintiff **that the Plaintiff knowingly and willfully made a false representation as to his medical history, that the employer relied upon the false representation, and that this reliance was a substantial factor in the hiring of the Plaintiff. The ALJ further finds in accordance with the opinion of Dr. Travis that the Plaintiff's MRI results in 2017, were essentially unchanged from the results seen in 2008. The ALJ therefore finds that there is an unmistakeable[sic] causal connection between the prior undisclosed medical history and the injury claimed herein for which benefits are sought. The ALJ therefore concludes** that this matter must be **DISMISSED** per KRS 342.165(2). (Emphasis added).
>
> 22. The Plaintiff's explanation for his false statements on the employment application were due to the voluminous documents that he was required to complete. He also added that he did not have the intent to mislead. While the ALJ is not persuaded by this and finds specifically that the Plaintiff made a knowingly false statement on the application that if answered truthfully would have disqualified him from employment, the ALJ declines to make a fraud referral as the Plaintiff's intent in making the knowingly false statement has not been fully established herein.
>
> 23. The remaining contested issues have been rendered **MOOT** by the foregoing.

On appeal, Brown argues the ALJ erred in dismissing the claim based upon Dr. Hart's testimony. He also argues the ALJ erred in finding a causal connection between the false statement and the injury.

We initially note that as the claimant in a workers' compensation proceeding, Brown had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). The function of

the Board in reviewing a decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine 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). Although a party may note evidence supporting a different outcome than reached by an ALJ, this is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). 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, 708 S.W.2d 641, 643 (Ky. 1986).

As noted by the ALJ, KRS 342.165(2) bars recovery by an employee for an alleged work injury if three criteria are met. First, it must be established that the employee knowingly and willfully made a false statement regarding his physical condition or medical history. Second, the employer has to have relied upon the false statement as a substantial factor in hiring. Finally, there must be a causal connection between the false representation and the injury for which compensation is claimed.

In Gutermuth v. Excel, 43 S.W.3d 270 (Ky. 2001), the Kentucky Supreme Court affirmed the dismissal of a claim based upon the employee's falsification of her job application. In that instance, the ALJ determined the job application was falsified, the employer relied upon the job application in hiring the employee, and the injury was causally related to the misrepresentations. There, the employee had previously undergone multiple surgeries, and additional surgery had been proposed in the past for precisely the same injuries she alleged. The employee failed to disclose any of this information to her employer regarding her previous injuries. The evidence supported the ALJ's determination that the undisclosed information was causally connected to her alleged work injury.

In Baptist Hosp. East v. Possanza, 298 S.W.3d 459 (Ky. 2009), the Kentucky Supreme Court found the ALJ erred in dismissing the claim. In that case, the employee claimed a neck injury. He had previously sustained lumbar injuries for which he underwent surgery. He did not disclose his previous injury, surgery, or restrictions due to the lumbar injury. The Court found as follows:

> We presume that by listing three separate factors and by stating that all must be present the legislature intended for KRS 342.165(2) to create distinct requirements. If subsection (c) requires only proof that the injury would

> not have occurred because the worker would not have been hired, and employer will always win simply by showing that it relied on a misrepresentation and would not hired the work had it known the truth. KRS 342.165 (2)(c) requires "a causal connection between the false representation and the injury for which compensation has been claimed." The hospital states correctly that the claimant failed to disclose his lifting restriction; that he exceed the restriction by lifting a heavy patient; and that he injured his neck as a consequence of lifting the patient. We do not agree that these facts supported a finding under KRS 342.165 (2)(c) because we view whether exceeding the lumbar lifting restriction helped to cause the claimant's neck injury to be a medical question.
>
> This is not a case in which lumbar weakness or symptoms contributed to the mechanism of the injury. Nor is it a case in which the claimant's lumbar condition increased his susceptibility to the type of harm that occurred.
> Id. at 463.

That said, we believe the ALJ could reasonably conclude based upon the evidence that Brown "knowingly and willfully made a false representation as to his or her physical condition or medical history", and Ford "relied upon the false representation, and this reliance was a substantial factor in the hiring".

However, the "causal connection between the false representation and the injury for which compensation has been claimed" is not as clear. Although Brown previously sustained multiple low back injuries, one of which resulted in a lumbar fusion, it is unclear from the evidence whether there is specific connection between the alleged injury, and the previous back injuries he concealed. As noted above, the ALJ relied upon Dr. Travis' findings in determining the MRI results in 2017 were unchanged from the 2008 MRI. The ALJ concluded this establishes a

causal link between the prior undisclosed medical history and the injury he now claims.

We disagree. Standing alone, Dr. Travis' finding of no structural change appears to establish that Brown's current complaints are unrelated to his previous injury for which surgery was performed. There appears to be no evidence in the record establishing that Brown sustained any structural lumbar injury on February 21, 2017 while working for Ford. The ALJ failed to provide a finding as to how a possible strain in 2017 is related to a previous structural injury without interval change demonstrated on imaging studies. Dr. Travis acknowledged that Brown might have sustained a sprain or strain, despite his opinions regarding symptom embellishment. This would seem to establish his complaints are unrelated to the previous structural changes which were not disclosed to Ford.

We must therefore vacate the ALJ's dismissal of Brown's claim. We remand for additional findings regarding the causal connection between Brown's falsification regarding his medical history and the injury he sustained on February 21, 2017 in accordance with KRS 342.165 (2)(c). We direct no particular result. However, the ALJ's determination must be based upon the evidence of record.

If the ALJ determines there is no causal connection between the previous injuries and the surgery Brown failed to disclose, he must make a determination regarding whether an injury occurred on February 21, 2017. If the ALJ finds an injury occurred, he must determine if it is temporary or permanent, the extent of disability (if any), and entitlement to medical benefits (temporary or

permanent). Again, we direct no particular result, and the ALJ may make any determination supported by the evidence.

Accordingly, the February 18, 2019 Opinion an Order, and the March 28, 2019 Order on reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, is **AFFIRMED IN PART and VACATED IN PART**. This claim is **REMANDED** for additional determinations as outlined above.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER: **LMS**

HON JOHN W SPIES
420 WEST LIBERTY ST, STE 260
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT: **LMS**

HON JOSHUA W DAVIS
401 SOUTH FOURTH ST, STE 2200
LOUISVILLE, KY 40202

ADMINISTRATIVE LAW JUDGE: **LMS**

HON JONATHAN R WEATHERBY
657 CHAMBERLIN AVE
FRANKFORT, KY 40601