

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: December 11, 2020

CLAIM NO. 201900442

LEXINGTON FAYETTE URBAN  
COUNTY GOVERNMENT

PETITIONER

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

MICHAEL GOSPER AND  
HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**ALVEY, Chairman.** Lexington Fayette Urban County Government (“LFUCG”) appeals from the July 25, 2020 Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ determined Michael Gosper’s (“Gosper”) bilateral knee condition was caused by cumulative trauma, and he awarded permanent partial disability (“PPD”) and medical benefits. LFUCG

also appeals from the August 20, 2020 Order overruling its Petition for Reconsideration.

On appeal, LFUCG argues the ALJ erroneously indicated there were “consensus opinions” by Dr. John Balthrop, Dr. Frank Burke, and Dr. T. Scott Prince regarding the cause of Gosper’s conditions. It also asserts Dr. Burke’s opinion regarding causation cannot constitute substantial evidence due to several errors contained within his May 30, 2019 report. LFUCG argues the ALJ erred in adopting the impairment rating assessed by Dr. Burke. It further asserts the ALJ failed to support his conclusion that Dr. Burke’s assessment of impairment was in accordance with the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). Because substantial evidence supports the ALJ’s determination, we affirm.

Gosper filed a Form 101 alleging injuries to both knees caused by cumulative trauma he sustained while working as a firefighter for LFUCG. Gosper identified December 13, 2017 as the injury date.

Gosper testified by deposition on August 5, 2019, and at the final hearing held May 27, 2020. He began working for LFUCG as a firefighter on June 18, 2001. In addition to his duties as a firefighter, Gosper also performed EMT paramedic job tasks. Gosper was required to crawl up and down trucks, drag or carry patients and victims, climb ladders, drag hoses, pull ceilings with tools, and crawl. Gosper performed his job duties while wearing gear and equipment weighing approximately eighty pounds. He also attended training four times per year.

Gosper sustained a meniscal injury to his right knee at work in 2007, eventually undergoing surgical repair by Dr. Balthrop in May 2007. Gosper recovered from this surgery within a month and returned to his normal job without restrictions. At his deposition, Gosper indicated he subsequently experienced “minor bumps and bruises” due to the nature of his job, but he missed no additional work until 2017. At the hearing, Gosper indicated his primary care physician began prescribing him Arthrotec, a NSAID, on an ongoing basis for his right knee in approximately 2012 because “there was minor swelling and items like that sometimes - - and it was particularly worse after duty days and work days.” Gosper emphasized he did not miss any work and was not under any restrictions after recovering from his meniscal surgery in 2007 until December 2017. Following his meniscus surgery, Gosper testified he was symptom-free in his right knee for a period of time. Other than the meniscus injury, Gosper testified he did not have any serious, prior injuries or problems with his knees.

Gosper began experiencing gradual right knee pain and loss of range of motion in 2017. He subsequently developed gradual left knee symptoms, for which he eventually sought medical treatment with Dr. Balthrop on December 13, 2017. Gosper felt he could no longer perform his job safely since his knee condition caused him difficulty with performing several aspects of his jobs. Dr. Balthrop increased his prescription of Arthrotec and ordered MRIs. Gosper eventually underwent a total right knee replacement on July 12, 2018 and a total left knee replacement on August 23, 2018. He completed physical therapy in December 2018, and Dr. Balthrop advised him to look into another line of work. Gosper testified his knees are

currently pain-free and he has full range of motion. He does not take any medication for his knees.

Gosper was off work while he recovered from his knee replacement surgeries, and he continued receiving his full wages from LFUCG. Gosper was unable to return to full duty work afterward. Gosper was awarded disability retirement benefits based solely on his bilateral knee problems, effective April 12, 2019. Gosper currently works part-time at Toyota as a valet.

Gosper testified Dr. Balthrop informed him in December 2017 that his knee condition was work-related, and he then notified his supervisor. Gosper believes his work activities with LFUCG contributed to his bilateral knee problems and necessitated his total knee replacements. When asked what activities contributed to his bilateral knee condition, Gosper testified as follows:

Everything from climbing in and out of the trucks - - I did that . . . I'd say probably thousands. I rode on an ambulance for five years early on in my career. And then making anywhere between 12 to 18, 19 runs a day. And then - - and so that was part of training scenarios, actual fire runs, EMS runs, climbing ladders. There's just so many things that it's hard to express all the ways in which you know, its strenuous activity.

Dr. Balthrop, an orthopedic surgeon, testified by deposition on December 6, 2019. He began treating Gosper for right knee pain in 2006, at which time he noted a moderate degree of varus deformity. Dr. Balthrop initially treated Gosper's right knee conservatively, but ultimately performed arthroscopic surgery. Dr. Balthrop indicated he saw Gosper multiple times in the last fourteen years, and prescribed him arthritic medication. Dr. Balthrop stated Gosper developed left knee pain sometime in 2013. He also indicated Gosper's varus deformity increased over

time. Dr. Balthrop confirmed he performed total replacements of both knees in 2018. He also noted Gosper appeared to be satisfied with his surgical outcome. He stated any impairment rating assigned would be based upon Gosper having achieved a good result.

On cross-examination, Dr. Balthrop indicated it was “very likely” Gosper experienced significant stress on his joints considering the physical aspects of his job, including wearing heavy gear, coupled with his lengthy career as a firefighter. He also agreed the varus deformity combined with the physical demands of his job could have accelerated the deterioration of Gosper’s knees over time. Dr. Balthrop stated as follows:

Q: ... [I]f you combine his physical makeup, combine the arduous nature of his work, combine the physical activities that he was involved in over a period of time, clearly his knee deterioration and ultimate need for knee joint replacement was accelerated by the combination of those factors?

A: ... I will say that his occupation and what he did, carrying excessive weight and being fairly strenuous would be akin to being an athletic event at an age in which most people are no longer engaging in the type of strenuous event, if you add 19 years of strenuous activity with a predisposed, anatomic tendency to put stress on his knees, the combination of A plus B accelerated his wear over another individual.

LFUCG filed records from Family Practice Associates. On August 21, 2012, Gosper complained of bilateral knee pain, was diagnosed with osteoarthritis, and prescribed Meloxicam. On April 26, 2013 and May 3, 2013, Gosper complained of right knee pain radiating into his right leg. X-rays of the right knee revealed mild arthritis. He was prescribed Baclofen and Lortab, and referred to Dr. Balthrop.

Gosper treated with Dr. Balthrop on at least nine occasions from May 2013 through March 2014. Gosper initially complained of right knee pain, and later bilateral knee pain. Dr. Balthrop ordered a right knee MRI and diagnosed degenerative joint disease. Dr. Balthrop prescribed Nabumetone, Celebrex and Arthrotec. Gosper also received four Orthvisc injections. On March 11, 2014, Gosper was prescribed Arthrotec for complaints of bilateral knee pain.

On October 2, 2017, Gosper returned to Family Practice Associates to refill his medication. Dr. Wesley Johnson noted Gosper's osteoarthritis was stable and recommended continuing his current treatment regimen with Arthrotec.

Gosper returned to Dr. Balthrop on December 13, 2017 complaining of constant bilateral knee pain. Dr. Balthrop stated as follows:

[Gosper] is now 52 years old. I first saw him was in a decade ago for arthritic symptoms in his knees at that time demonstrated a mild [sic] but he already had 5-6° of varus deformity of the knees. He was seen in 2013 in both his arthritic symptoms on the varus collapse and worsened – measured at that time at 13°. He was treated with Flexeril/hyaluronate. This provided him with surprisingly good relief. Over the last several years his arthritis worsened. He now has increasing pain with weight bearing activity. He also notices that his knees are more bowed and his range of motion is now limited to about 90° of flexion in both knees.

Dr. Balthrop performed an examination and ordered X-rays, which revealed increased varus collapse to approximately 17 degrees. Dr. Balthrop noted Gosper's arthritis is more severe medially, consistent with the angulatory deformity. Dr. Balthrop recommended injections.

Gosper filed the July 12, 2018 operative report. Dr. Balthrop performed a right total knee arthroplasty. The report listed the pre- and post-

operative diagnosis as primary degenerative joint disease right knee. Gosper also filed the August 23, 2018 operative report. Dr. Gosper performed a complex left total knee arthroplasty. The report listed the pre- and post-operative diagnoses as primary degenerative joint disease in both knees with flexion contracture and fixed varus contracture.

On December 19, 2018, Dr. Balthrop noted Gosper is “status-post bilateral total knee replacement and is functioning well”. He placed Gosper on permanent light duty and recommended medical retirement. Dr. Balthrop opined Gosper’s osteoarthritis “is unlikely to be caused by his occupation which is very vigorous, but his occupation certainly impacted likely even worsen his arthritis.”

Gosper submitted Dr. Prince’s February 21, 2019 report. Dr. Prince performed a disability evaluation at the request of the LFUCG Policemen’s and Firefighter’s Retirement Fund. Dr. Prince reviewed medical records from 2006 through 2018. After performing the examination, Dr. Prince diagnosed osteoarthritis of both knees with significant varus deformity, status-post total knee replacement bilaterally; and history of right meniscal injury with prior right meniscectomy. He opined Gosper had attained maximum medical improvement (“MMI”). Dr. Prince assigned restrictions, which precluded Gosper from doing many emergency response functions. Dr. Prince stated as follows regarding causation:

3. Mr. Gosper’s disability is not due primarily to occupational causes.
4. Mr. Gosper’s varus deformity is the primary cause of his bilateral, progressive degenerative changes.
5. Mr. Gosper’s work-related right knee injury would have accelerated his degenerative changes on that side.

Also, work that is sustained, repetitive, and strenuous has been identified as a risk factor for arthritis. This type of work increases the risk of arthritis by about 20% from the (limited) summary research available. Although the significant majority of people in those jobs would have developed arthritis anyway, it is reasonable to attribute a degree of aggravation to his work duties.

....

8. Other medical and physical conditions likely did contribute to Mr. Gosper's disability.
9. Being overweight is also a significant risk factor for developing knee arthritis.

Pursuant to the AMA Guides, Dr. Prince assessed a 15% impairment rating for the left knee condition and a 15% impairment rating for the right knee condition, yielding a combined 28% impairment rating. Dr. Prince attributed "75% of his left knee impairment and 50% of his right knee impairment to these non-occupational factors. Recalculated, this yields a 12% [impairment rating] attributable to occupational factors." (Original emphasis)

Dr. Prince's September 9, 2019 deposition testimony was consistent with his report. He confirmed Gosper has varus deformity, which is when the "knee is not straight and it bends outward a little bit so it puts more pressure on the medial part of the knee." Dr. Prince testified varus deformity predisposes an individual "almost exclusively arthritis in the long-term . . . it's just pressure on the medial part of your joint. So it's another wear and tear factor on the medial part of your joint." Dr. Prince opined Gosper's right knee osteoarthritis progressed over time. He acknowledged Gosper was prescribed Celebrex and Arthrotec on at least an intermittent basis for osteoarthritis and inflammation of the hip prior to 2017.

Gosper also received Orthvisc injections between March and July 2014 for osteoarthritis and degeneration. Dr. Prince reiterated his assessment of impairment, attributing a combined 12% impairment rating caused by Gosper's work activities. Dr. Prince attributed the remaining impairment rating to the non-occupational factors of varus deformity and being overweight.

On cross-examination, Dr. Prince agreed Gosper could return to his normal job without restrictions after the work-related 2007 injury until December 2017. He testified as followings regarding what role Gosper's work activities contributed to the acceleration of his degenerative arthritic condition:

A: Well, firefighting - - the firefighting part is fairly strenuous, at least in an intermittent basis. A firefighter and paramedic typically . . . goes on more runs, because they'll respond to medical things, not just fire events, and you do more kneeling and squatting, some more lifting and carrying just on these medical runs than you would even do for a fire response.

Q: Okay. So he has to do a lot of bending, lifting patients and maybe climbing into remote areas or in and out of vehicles?

A: Yes.

Q: Is it your opinion in this case that he still experiences that impairment rating that you provided to Lori a moment ago?

A: Yes.

Q: It is also your opinion that his preexisting degenerative changes were dormant as in so far as they affected his occupation until the December 2017 incident?

A: Yes.

.....

Q: Just in follow up, Dr. Prince. You were asked about the condition in his knees was dormant prior to - - prior to December of 2018. Now, given the fact that he was receiving medication and received injections, would that be something that would tend to indicate that, perhaps, that was an active condition if he were continuing to treat?

A: Yes . . . I felt that he would not be having active symptoms at that point without his - - or to the - - to the degree, certainly, without his contribution of his occupational stressors on it.

Q: Okay. So if he was - - if he was continuing to experience - - continuing to require treatment over time, that would be - - you would think that it would be active in a medical sense?

A: Medical sense, yes.

Gosper filed Dr. Burke's May 30, 2019 report. In reviewing Gosper's injury history, Dr. Burke noted he had fallen on ice at work in December 2017, which ultimately resulted in a partial medial meniscectomy of the right knee on May 21, 2017.<sup>1</sup> Gosper returned afterward to full duty as a firefighter. Dr. Burke noted Gosper experienced a return of right knee symptoms and a new onset of left knee pain, but continued to work. He noted Gosper received injections in both knees, which provided significant relief for nearly four years.

Gosper reported that by the end of 2017, his knees began deteriorating and he sought treatment with Dr. Balthrop, who ultimately recommended bilateral total knee arthroplasties. Dr. Burke performed an examination and reviewed the

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<sup>1</sup> The evidence of record clearly establish this event and surgery occurred in 2007, not 2017.

medical records of Bluegrass Orthopedics and Dr. Prince's report, which includes a timeline of medical records available since January 2006.

Dr. Burke believed Gosper sustained progressive development of osteoarthritis in both knees "contributed to significantly by work-related injuries, well documented on the right knee, but both knees involved over an extensive career of firefighting." He noted Gosper was frequently required to wear 50 to 80 pounds of firefighting equipment and to pull and apply over 100 pounds of additional force. Dr. Burke opined the nature and the duration of Gosper's work contributed to the development of progressive knee osteoarthritis, resulting in bilateral total knee arthroplasties. He further opined the application of additional and chronic force to the knees through usage and the physical activities of his work accelerated the progression of his arthritis.

Dr. Burke found Gosper had attained MMI. Pursuant to the AMA Guides, Table 17-35, page 549, Dr. Burke stated, "this patient has a score of 76 points for the right knee and 71 points for the left knee, which results in a fair result bilaterally. This patient is, therefore, awarded 20% whole person impairment for the right knee and 20% impairment for the left knee. These values are combined and result in 36% total whole person impairment."

Dr. Rick Lyon evaluated Gosper on September 24, 2019 at LFUCG's request. He reviewed medical records, performed an examination, and diagnosed bilateral knee osteoarthritis post bilateral knee arthroplasties. Dr. Lyon noted Gosper has a chronic history of genu varus, a congenital/developmental deformity,

which is a significant risk factor for developing arthritis. Dr. Lyon noted the previous 2007 meniscectomy also significantly increases the risk of arthritis.

Dr. Lyon opined Gosper's occupation as a firefighter neither caused nor worsened his left knee osteoarthritis. Dr. Lyon opined the 2007 work-related meniscal injury increased the risk of osteoarthritis of the right knee. Therefore, Dr. Lyon he found no portion of the left knee osteoarthritis resulted from Gosper's work, but he found 50% of the right knee osteoarthritis is due to the prior meniscectomy and subsequent traumatic arthritis. Dr. Lyon found Gosper attained MMI on December 19, 2018. Pursuant to the AMA Guides, Dr. Lyon assessed a 15% impairment rating for the right knee, attributing 8% to Gosper's work. Dr. Lyon assessed a 15% impairment rating for the left knee unrelated to Gosper's work. Dr. Lyon restricted Gosper to sedentary work and stated he is unable to return to his former job as a firefighter.

In the July 25, 2020 opinion, the ALJ found Gosper's knee injuries caused by cumulative trauma manifested on December 17, 2017, and he provided timely notice to his employer pursuant to KRS 342.185. The ALJ found as follows, *verbatim*, regarding causation and proper application of the AMA Guides:

**Benefits Per KRS 342.730/Work-Relatedness and Causation**

**Proper Application of the AMA Guides**

16. Causation in cumulative trauma was squarely addressed in *Haycraft v. Cohart Refractories Co.*, 544 S.W.2d 222 (Ky. 1976). The test is whether the nature and duration of the work aggravated a degenerative condition into an active physical impairment sooner than would have been the case had the work been less strenuous. *Id.*

17. The ALJ finds that the Plaintiff presented exceptionally credible testimony in this matter and his testimony is given significant weight herein. The Plaintiff credibly presented testimony that the repetitive nature of his job duties performed over a period of 19 years caused a gradual and progressive deterioration of his knee joints.

18. The ALJ is also persuaded by the consensus of opinion regarding causation reached by Drs. Balthrop, Burke, and Prince.

19. Dr. Balthrop credibly stated that the Plaintiff had osteoarthritis, which had worsened due to repetitive activity from work. Dr. Balthrop agreed that the Plaintiff's occupation over 19 years had accelerated his degenerative changes in excess of what would otherwise be expected.

20. Dr. Prince credibly opined that without the work-related components, the Plaintiff likely would not have needed knee replacement at his age and agreed that the Plaintiff's pre-existing degenerative changes were dormant until December of 2017.

21. Dr. Burke concluded that the Plaintiff had an aggravation of osteoarthritis due to cumulative and repetitive trauma from work. These credible objective medical opinions have convinced the ALJ and the ALJ therefore finds that the nature and duration of the Plaintiff's work with the Defendant aggravated a degenerative condition into an active physical impairment sooner than would have been the case had the work been less strenuous.

23. The ALJ is most persuaded by the impairment rating issued by Dr. Burke as his opinion is based squarely upon the objective medical evidence available and because his opinion is most consistent with the credible testimony of the Plaintiff.

24. Dr. Burke credibly assessed a 20% impairment for the right knee and a 20% impairment for the left knee resulting in a 36% total whole person impairment. Dr. Burke referenced Table 17-35 on page 549, the Fifth Edition of the Guides to the Evaluation of Permanent Impairment, AMA Guides and the ALJ finds that the impairment rating issued falls within the range cited therein. The ALJ is convinced by this opinion and finds that the opinion of Dr. Burke was rendered in accordance with the AMA Guides, that the Plaintiff sustained a 36% whole person impairment, and that the mechanism of injury was cumulative trauma.

The ALJ found Gosper does not retain the physical capacity to return to the same type of work, thus entitling him to the three multiplier pursuant to KRS 342.730(1)(c)1.

LFUCG filed a Petition for Reconsideration raising the same issues it now raises on appeal, and requested the ALJ to either reconsider his determinations, or to provide more specific findings of fact. In the Order rendered August 20, 2020, the ALJ overruled the petition since it failed to point out any patent error.

On appeal, LFUCG argues the ALJ erred by indicating he was persuaded by the consensus opinions of Drs. Balthrop, Burke, and Prince regarding causation. LFUCG asserts there was no consensus on causation. It additionally asserts Dr. Burke's causation opinion cannot constitute substantial evidence due to several errors contained within his report. LFUCG points to the fact Dr. Burke reported an incorrect date of surgery to repair Gosper's meniscal tear. LFUCG also notes Dr. Burke referenced a slip and fall in December 2017 and a second injury in February 2018. LFUCG asserts Dr. Burke mixed up the findings relating to

Gosper's December 21, 2005 work injury with meniscal tear with his condition in December 2017.

LFUCG argues the ALJ erred in adopting the impairment rating assessed by Dr. Burke since Gosper had an excellent result from the knee replacement surgeries. LFUCG points to the findings by Drs. Prince, Lyon and Balthrop, as well as Gosper's testimony indicating his knees are now pain free.

LFUCG argues Dr. Burke's impairment assessment is "seemingly arbitrary and erroneous." It also argues Dr. Burke did not explain how he arrived at his totals in calculating the impairment rating. LFUCG asserts that Dr. Burke's opinion "is a complete departure from the other medical evidence of record and Gosper's consistent testimony, it is not sufficient for the ALJ to simply state that he relied on Dr. Burke's opinion without anything further to substantiate it."

As the claimant in a workers' compensation proceeding, Gosper had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Gosper was successful in his burden, we must determine whether substantial evidence of record supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable

inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made 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). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Dr. Burke's causation opinion, alone or in conjunction with the opinions of Drs. Balthrop and Prince, constitutes substantial evidence upon which the ALJ could rely. Causation is a factual issue that must be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scarce, 896 S.W.2d 7 (Ky. 1995). When the question of causation involves a medical relationship not apparent to a layperson, the issue is properly within the province of

medical experts. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184, 186-187 (Ky. App. 1981). Medical causation must be proven by medical opinion within “reasonable medical probability.” Lexington Cartage Company v. Williams, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work-related causation is insufficient. Pierce v. Kentucky Galvanizing Co., Inc., 606 S.W.2d 165 (Ky. App. 1980). While objective medical evidence must support a diagnosis of a harmful change, it is not necessary to prove causation of an injury through objective medical findings. Staples, Inc. v. Konvelski, 56 S.W.3d 412 (Ky. 2001).

The ALJ considered and weighed the evidence of record, and exercised his discretion in finding Dr. Burke’s impairment rating most persuasive. Dr. Burke found Gosper progressively developed osteoarthritis in both knees, which “contributed to significantly by work-related injuries, well documented on the right knee, but both knees involved over an extensive career of firefighting.” He noted Gosper frequently wore 50 to 80 pounds of firefighting equipment, as well as pulling and applying over 100 pounds of additional force. Dr. Burke opined the nature and the duration of Gosper’s work contributed to the development of progressive knee osteoarthritis, resulting in bilateral total knee arthroplasties. He also opined the application of additional and chronic force to the knees through use and the physical activities of his work accelerated the progression of his arthritis. He noted Gosper’s job as a firefighter required walking, standing, squatting, stooping, climbing, bending, lifting, carrying, stair climbing, and twisting. Those impact-loading activities exerted repeated local stresses to his lower extremities. Dr. Burke opined,

“Because his job requires him to do these activities every day, the progression of cumulative damage is accelerated and the activities will continue to aggravate the condition.” He further stated:

This patient had a contributory work injury history with the need for an arthroscopy and partial medial meniscectomy, following a work injury with a slip and fall. This injury probably damaged the cartilage in his right knee. Both knees, however, sustained multiple injuries in the form of slips, falls, blows, and repeated injuries as a firefighter. Although he had ongoing osteoarthritis before 12/17 he was always able to return fully to regular duty, he had an aggravation of this osteoarthritis because of his work usage and cumulative/repetitive trauma from this point.

The alleged deficiencies in Dr. Burke’s opinion by LFUCG go to the weight of the evidence, and do not establish an adequate basis to reverse on appeal. We also note Dr. Burke stated he reviewed Dr. Prince’s February 21, 2019 report containing a detailed timeline and summary of the medical records from 2006 through 2018. The ALJ explained why he found Dr. Burke’s opinion most persuasive. Dr. Burke’s opinion constitutes substantial evidence supporting the ALJ’s determination. We likewise find no error in the ALJ indicating there was a consensus opinion regarding causation among Dr. Burke, Dr. Prince and Dr. Balthrop. All of the physicians acknowledged Gosper’s job duties accelerated or aggravated his knee condition to some degree. LFUCG essentially requests this Board to re-weigh the evidence, and substitute its opinion for that of the ALJ, which we cannot do. Whittaker v. Rowland, *supra*. It was the ALJ’s prerogative to rely upon Dr. Burke. Since the ALJ’s decision is supported by the record, we affirm.

Likewise, Dr. Burke's impairment assessment constitutes substantial evidence upon which the ALJ could reasonably rely in arriving at his decision. Chapter 342 requires a permanent impairment rating produced by a work-related injury to be determined pursuant to the AMA Guides. The proper interpretation of the AMA Guides is a medical question solely within the province of the medical experts. Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003); *See also* Lanter v. Ky. State Police, 171 S.W.3d 45, 52 (Ky. 2005) ("The proper interpretation of the *Guides* and the proper assessment of impairment are medical questions.") However, the ALJ has discretion to choose the rating used as the basis for an award of permanent partial disability benefits. Pella Corp. v. Bernstein, 336 S.W.3d 451, 453 (Ky. 2011). Where opinions from medical experts conflict regarding the appropriate percentage, it is the ALJ's function as fact-finder to weigh the evidence and select the rating upon which permanent disability benefits, if any, will be awarded. Knott County Nursing Home v. Wallen, 74 S.W.3d 706 (Ky. 2002). In George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004), the Court further held that, while an ALJ is not authorized to independently interpret the AMA Guides, as fact-finder, he or she may consult them in the process of assigning weight and credibility to evidence.

Dr. Burke cited to the AMA Guides; Table 17-35, page 549. He stated Gosper scored 76 points for the right knee and 71 points for the left knee, which results in a fair result bilaterally. Therefore, Dr. Burke assessed a 20% impairment rating for each knee, combining for a total of 36%. Dr. Burke asserted the impairment rating he assessed was in accordance with the AMA Guides. Dr. Burke

was not cross-examined on that point. We note no other physician of record opined Dr. Burke's assessment of impairment was not in conformity with the AMA Guides. Dr. Burke's opinion constitutes substantial evidence supporting the ALJ's determination of Gosper's impairment rating. The ALJ acted well within his discretion in adopting Dr. Burke's assessment of impairment and it is not the function of this Board to disturb his conclusions.

Accordingly, the July 25, 2020 Opinion and Order and the August 20, 2020 Order on Petition for Reconsideration by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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