Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 18, 2022

CLAIM NO. 202001686, 202001685 & 202001684

MURRAY ENERGY PETITIONER

VS. **APPEAL FROM HON. R. ROLAND CASE, ADMINISTRATIVE LAW JUDGE**

DALTON RENFROW
and HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

STIVERS, Member. Murray Energy ("Murray") appeals from the October 28, 2021, Opinion, Award, and Order and the November 16, 2021, Order ruling on the Petition for Reconsideration of Hon. R. Roland Case, Administrative Law Judge ("ALJ"). In the October 28, 2021, decision, the ALJ dismissed Dalton Renfrow's ("Renfrow") alleged claims for occupational hearing loss, an acute right shoulder injury occurring on February 26, 2020, and injuries to his right shoulder, right knee,

and neck due to cumulative trauma occurring at work. The ALJ awarded permanent partial disability ("PPD") benefits with credit for any temporary total disability benefits paid, and medical benefits for injuries to Renfrow's left shoulder and left knee arising from cumulative trauma at work.

On appeal, Murray asserts the ALJ erroneously concluded Renfrow sustained his burden of proving causation of the alleged cumulative trauma left shoulder and left knee injuries. Murray also argues the ALJ erred by awarding benefits for Renfrow's alleged left knee injury. Finally, Murray alleges the ALJ committed an abuse of discretion by enhancing the award via the three-multiplier pursuant to KRS 342.730(1)(c)1.

BACKGROUND

Renfrow filed his Form 101 in Claim No. 202001685 on November 30, 2020, alleging work-related injuries to his neck, shoulders, and right knee due to cumulative trauma with a last day of exposure occurring on February 27, 2020.

Renfrow filed his Form 101 in Claim No. 202001684 on November 30, 2020, alleging a work-related injury to his right shoulder on February 26, 2020, in the following manner: "Experienced pain in right shoulder after lifting battery lid."

Renfrow filed his Form 103 in Claim No. 202001686 on November 30, 2020, alleging work-related hearing loss due to "repetitive exposure to loud noise in the workplace." Renfrow's last date of exposure was alleged to be February 27, 2020. By Order dated February 1, 2021, the ALJ consolidated the claims.

On May 14, 2021, Renfrow filed a "Motion to Amend" to include an injury to his left knee arising out of cumulative trauma. By Order dated May 17, 2021, the ALJ sustained Renfrow's motion.

Renfrow was deposed on February 22, 2021. He testified concerning his job duties as follows:

> A: Okay. I spliced belts and I changed some rollers, and then I helped with installing belt. It was all – this is all third shift work when the mines wasn't running coal, we had to do all this to keep – you know –
>
> Q: Yeah.
>
> A: - all this had to be done. And I dusted belts; I run scoop and I ran battery hauler last three years I worked there. And I helped with installing belts. I don't know if you know what that is. That's carrying rollers and structure and pulling on belt. And I also hauled batteries. Like I say, that was last three – three years I worked I hauled batteries. I worked about three years dusting belts between that time, but the last job I had I hauled batteries.

Renfrow was asked if he could return to the same type of work he performed at the time of his injuries. He testified as follows:

> A: No, I couldn't lift the battery lids or anything like that. No, I mean, my shoulders – I'd love to be able to, but I can't do what I used to do. My shoulders and my knees, you know, don't let me, won't let me do it like I used to do it.
>
> Q: Okay.
>
> A: I'm not – I'm really not able to – I'm not able to work. You know, I hate to admit it, but I'm not able to get out there like –
>
> Q: Why?

> A: Why? Because my knees, my shoulder, my neck and, you know, I have to take muscle relaxer for my neck and my shoulder sometimes. And I can't stand very long because my knee – my knees hurt me all the time. I think they're swollen a little bit, but…and I don't know whether they're going to get worse or get better. I don't look for them getting better really, my luck.

Renfrow also testified at the August 25, 2021, hearing. He provided additional details regarding the tasks he performed:

> A: For Murray Energy, I – we built a slope to start with. And I worked on the slope. And there's a lot of steel work, concrete, some was concrete work. And I had to walk up and down the slope, a lot of mud. And like, you know, everyone else that was there – it was a lot of hard work. Just everything is like that. And I build brattishes, a lot of brattishes. I helped build those. Installed belt with the iron structure. And if you know anything about coal mines, it's all hard work. But any way, the last three years, I hauled batteries with a battery hauler. And you had to put the batteries on charge by raising the heavy lids and – and bumping up and down the road. And then I watered roads all night after I got all the batteries hauled in for the – for the cars up on the unit.
>
> Q: Okay. Now, let's break this down just a bit more, okay? You said you were building a slope. As I understand it, what you're describing is an entryway into the coal mines, correct?
>
> A: Yes, sir.
>
> Q: And approximately how long a distance did you-all have to construct this slope to make sure that you could get to the coal seam?
>
> A: It was 1200 feet at an eight-degree angle.
>
> Q: When you're building this slope, are you using beams, iron beams and brattishes and timbers and things to solidify the roof so there's no danger of men going in and out of the mines?

A: Yes. Yes, we – we built so far down and then they would pour the concrete on top and – and on – and the slope that you actually went down in. And you had a belt over your head and – yes, just – just built the slope. The first –

Q: (Interrupting) Was this the – was this the easiest job you had in the mines or the most difficult?

A: It was – it wouldn't be the most difficult. The most difficult was installing belt lays and building brattishes.

Q: Why – and you did those jobs as well, correct?

A: Yes, sir. I worked third shift. And whatever –

Q: (Interrupting) And why was building the brattishes so difficult?

A: Well, you – you use concrete blocks. And on the main – main lines, we use solid blocks. And I worked – worked building brattishes and installing belts a lot – a lot of it and I did different things, too. I did a lot of rock dusting. And had to crawl on my hands and knees a lot of times, dragging the hose back to the belt line. And a lot of times, I run the duster, you know – but just different thing. Crawling over belts, but whatever – whatever –

Renfrow testified he is five feet, six inches tall, and worked in a five-foot coal seam.

He testified he could not return to the type of work he was performing at Murray explaining:

A: No. No, I couldn't. No, sir.

Q: Now, when you were asked that question at deposition, you said you thought you could do a job around the mines. Would you explain to the Administrative Law Judge what you meant by that?

A: Well, what I really meant, I was talking to a doctor. I thought maybe if he could get me surgery and get me

> back like I used to be, you know, with everything not hurting and get my legs where I could bend them like they used to, yeah, I could go back to work. But I can't – you know, he hasn't done that; so, no, I couldn't go back to work and do what I used to do.

Renfrow explained when his left knee started bothering him:

> A: That's a good question. Well, it bothered me under ground. Sitting in a battery hauler, when you get in and out, you got to reach in and hold that little handle and pull yourself up, up out of it and then step over it. And sometimes you'll twist it, and that's when it would hurt. But as far as swelling up, I hurt my right knee underground and I had to work six months with it swollen. I couldn't get in and out of the ride too easy, but had to keep doing my regular job. But my right knee is – is better now because I went to Dr. Martin in Owensboro and he did surgery on that knee and –

Renfrow testified his left knee condition has worsened since leaving the mines. At the time of the hearing, Renfrow was only receiving treatment on his left knee.

In lieu of a Benefit Review Conference, the stipulations and contested issues were articulated at the August 25, 2021, hearing. The contested issues, as stated for the record, are as follows: benefits per KRS 342.730, including multipliers; benefits pursuant to KRS 342.730(5); temporary total disability benefits; medical benefits; preexisting active; work-relatedness; statute of limitations/repose; and injury as defined by the Act.

In the October 28, 2021, decision, the ALJ furnished the following findings of fact and conclusions of law which are set forth *verbatim*:

ANALYSIS AND CONCLUSIONS
OCCUPATIONAL HEARING LOSS CLAIM

KRS 342.7305(2) holds income benefits payable for occupational hearing loss shall be as provided in KRS 342.730, except income benefits shall not be payable for binaural hearing impairment converted to impairment of the whole person that results in an impairment of less than 8%. No impairment percentage of tinnitus shall be considered in determining impairment to the whole person. Dr. Brose assessed 0% occupational hearing loss and recommended hearing aids. Therefore, Renfrow's claim for income benefits related to occupational hearing loss is Dismissed as the impairment rating falls under the 8% threshold of KRS 342.730. However, Renfrow will be entitled to reasonable and necessary medical expenses related to the treatment of his occupational hearing loss.

TEMPORARY TOTAL DISABILITY

Temporary total disability is defined in KRS 342.001(11)(a) as the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement which would permit a return to employment. The Courts have noted that in order for temporary total disability benefits to be payable the Plaintiff must not have reached maximum medical improvement and must not have reached a level of improvement that would permit a return to employment. Magellan Health v. Helms, 140 SW2d 579 (Ky. App. 2004).

The Defendant paid no temporary total disability benefits to Renfrow and no medical expenses on his behalf. Renfrow worked until he was laid off on February 27, 2020. There is no indication that he could not have continued working following that date. Additionally, Renfrow was essentially MMI at that time due to the cumulative nature of his injuries. The ALJ is persuaded Renfrow is not entitled to any temporary total disability benefits.

BENEFITS UNDER KRS 342.730

The issue of benefits under KRS 342.730 involves the determination of whether Renfrow has a permanent disability and if so whether it is total or partial in nature. In this case, the ALJ finds Renfrow is not totally disabled.

Renfrow's disability must be considered partial in nature. This begins with the determination of the appropriate impairment rating under the AMA Guides. Jones v. Brash-Barry General Contractors, 189 SW3d 149 (Ky. App. 2006).

In this case, Dr. Farrage assigned 16% whole person impairment while Dr. O'Brien assessed 0% impairment for the cervical spine, 6% pre-existing and non-work-related impairment of the right shoulder and 2% pre-existing and non-work-related impairment of the right knee.

Concerning the alleged acute injury, the ALJ is persuaded by and relies on the opinion of Dr. O'Brien to find no permanent injury or permanent impairment due to the alleged acute injury. The claim for the acute injury of February 26, 2020 will be dismissed.

Concerning the cumulative trauma claims, the ALJ is persuaded Renfrow sustained cumulative trauma to his left knee and left shoulder. The ALJ relies on the opinion of Dr. O'Brien to find no cumulative trauma to the right knee or right shoulder and finds any impairment to those body parts to be due to pre-existing active surgery to both areas. Concerning the cervical area, the ALJ notes Renfrow indicated the neck doesn't cause him a lot of pain and he is under no treatment for same. The ALJ is persuaded by the opinion of Dr. O'Brien that Renfrow sustained no cumulative trauma to the cervical area. The ALJ is persuaded by the opinion of Dr. Farrage that Renfrow sustained cumulative trauma to the left knee and to the left shoulder. The ALJ adopts the impairment rating of 6% for the left shoulder and 3% for the left knee for a total of 9% due to work-related cumulative trauma to the left knee and left shoulder.

The ALJ has reviewed the medical records along with the arguments of the parties presented in their briefs as well as the AMA Guides. The ALJ feels the 9% is an adequate representation of Renfrow's impairment based on the AMA Guides.

In this case the ALJ finds Dr. Farrage correctly indicated Renfrow would have 9% impairment which carries a multiplication factor of .85 for a 7.65% permanent partial disability under KRS 342.730(1)(b).

However, the analysis does not end there as the ALJ must also determine whether the provisions of KRS 342.730(1)(c)1 or 2 apply. Subparagraph one applies when the Plaintiff lacks the physical capacity to return to the type of work he was performing at the time of his injury and has not returned to earning same or greater wages. If the Plaintiff is earning same or greater wages a determination must be made as to whether the Plaintiff will be able to continue doing so for the indefinite future. If employment is found to be not likely then the three multiplier would apply. See Fawbush v. Gwynn, 103 SW3d 5 (KY 2003).

In this particular case, Renfrow has not returned to work at equal or greater wages. The issue is whether or not Renfrow retains the physical capacity to return to the type of work performed at the time of his injuries.

Dr. O'Brien opined Renfrow was fully capable of working at full duty as an Outby/utility operator. He noted Renfrow's complaints are significantly out of proportion to the objective findings and further notes Renfrow was able to turkey hunt and carryout his normal job duties without restrictions until he was laid off despite rating his pain 10/10 on the pain scale. Dr. Farrage opined Renfrow fit the guidelines for light to medium occupations with lifting and carrying of no more than 30 pounds on occasion and 15 pounds frequently. He recommended avoidance of repetitive bending, stooping or extremes in cervical rotation as well as above shoulder level activity and no ladder climbing or working from unprotected heights.

The ALJ finds Renfrow to be a very credible witness. In fact, some of his testimony hurt his case rather than enhancing it. He indicated the neck doesn't cause him a

lot of pain and his right shoulder is fine. However, he indicated he has problems with the left shoulder and left knee. He takes pain relievers and sees Dr. Mills every two months and has had shots in both knees. He indicated he could not return to work. The ALJ specifically notes the records of Dr. Mills, who indicates the left knee pain has worsened to the point Renfrow is using crutches when walking. Swelling was also noted in the left knee and an injection was given to the left knee. Considering the testimony of Renfrow, corroborated by the records of Dr. Mills, and the report of Dr. Farrage, the ALJ is persuaded Renfrow could not return to the work he was doing when he last worked for the employer.

In this particular case, the ALJ is persuaded that Renfrow does not have the physical capacity to return to the work being performing at the time of the injuries and has not returned to earning same or greater wages. Renfrow will therefore be entitled to the 3 factor. Additionally, since he was 63 years old at the time he last worked, he is entitled to the .6 factor.

Therefore, based on Renfrow's credible testimony corroborated by the opinion of Dr. Farrage, it is found Renfrow cannot to the occupation being performed at the time of the injury and therefore Renfrow is entitled to the 3.6 factor. Renfrow will be entitled to 9% impairment rating multiplied by .85 multiplied by 3 multiplied by $734.25 or the sum of $202.21 for a period of 425 weeks. The appropriate award will be entered.

MEDICAL BENEFITS

KRS 342.020 provides that it is the responsibility of the Defendant-employer to pay for the cure and relief from the effects of an injury or occupational disease, all medical, surgical, hospital treatment, including nursing, medical and surgical supplies and appliances as may be reasonably be required at the time of the injury and thereafter during disability. However, treatment which is shown to be unproductive or outside the type of treatment generally accepted by the medical profession is deemed unreasonable and non-compensable. This finding is made by the ALJ based upon the facts and circumstances surrounding each case. Square D Company v. Tipton, 862 SW2d 308 (Ky. 1993).

> Renfrow will be entitled to medical benefits for treatment for his occupational hearing loss, left knee and left shoulder only. The claim for the neck, right shoulder and right knee will be dismissed.

Murray filed a Petition for Reconsideration asserting the same arguments it now makes on appeal. In the November 16, 2021, Order, the ALJ overruled Murray's Petition for Reconsideration and provided additional findings which are set forth *verbatim*:

> …
>
> Initially, the ALJ would note the petition is nothing more than an attempt to reargue the merits of the claim. The petition raises no new issues not already decided by the ALJ.
>
> The employer argues Renfrow failed to prove causation. However, the opinion of Dr. James Farrage clearly establishes causation of the cumulative trauma in the left shoulder and left knee. The ALJ was persuaded by and relied on the opinion of Dr. Farrage to find causation.
>
> Next, the employer asserts Renfrow is not entitled to the 3 factor. A worker's testimony is competent evidence in answering questions regarding extent of disability. See Hush vs. Abrahams, 584 SW2d 48 (Ky. 1979). Attention is directed to the following testimony of Renfrow at his hearing:
>
> > 30 Q: Knowing your body as you know it, Dalton, not as some doctor has told you, but just knowing your body as you know it, could you go back and do the job you was doing before you were laid off, in your opinion?
> >
> > A: No. No, I couldn't. No, sir.
>
> Additionally, attention is directed to Question 21 on cross-examination:
>
> > 21 Q: Okay. And you weren't planning on quitting at that time; were you?

> A: No, I had to work. But it -- that ain't saying that my knees and shoulders wasn't giving me problems. But when a man has got to work to support, you know, my family, you know, I -- I got to work.

> Renfrow also notes his condition has gotten worse since he left the mines. The basis for the 3 factor was discussed on Page 9 of the original Opinion wherein the ALJ noted Dr. Farrage opined Renfrow fit the guidelines for only light to medium occupations. Dr. Mills indicated the left knee pain had worsened to the point Renfrow was using crutches when walking. The credible testimony of Renfrow is corroborated by the records of Dr. Mills and the report of Dr. Farrage and the ALJ remains persuaded Renfrow does not have the capacity to return to the type of work he was performing at the time he last worked.

ANALYSIS

Murray first argues the ALJ erroneously concluded Renfrow successfully established causation for his alleged left shoulder and left knee injuries. On this issue, we affirm.

Renfrow bore the burden of proving each of the essential elements of his claim including causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Renfrow was successful before the ALJ regarding his left shoulder and left knee injuries, we must determine whether substantial evidence supports his 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 is no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Important to the case *sub judice* is the fact that the ALJ is vested with the authority to weigh the medical evidence, and if "the physicians in a case genuinely express medically sound but differing opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). 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). The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings 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).

In finding Renfrow sustained injuries to his left shoulder and left knee, the ALJ relied upon the opinions of Dr. James Farrage. Dr. Farrage's April 15, 2021, report, reveals that after performing a physical examination and medical records review, he diagnosed, in relevant part, as follows:

> He also has the sequelae of cumulative trauma/ repetitive use disorder involving the cervical spine, left shoulder, and bilateral knees resulting in accelerated degenerative changes which have brought the underlying diagnoses of cervical spondylosis with non-verifiable radicular symptoms, left shoulder osteoarthritis, and bilateral knee degenerative joint disease into disabling reality resulting in chronic pain, restricted range of motion, reduced endurance, and impaired functional capacity.

Regarding causation, Dr. Farrage opined "[i]t is within a reasonable degree of medical probability that the aggregate work activities were the major (greater than 50%) contributor to the current burden of the physical impairment for the identified diagnoses in this individual." Dr. Farrage assessed a 16% total impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, "**as it pertains to the repetitive work-related activities reported on 02/27/20.**" (emphasis added.) Of the 16% total impairment rating, Dr. Farrage assessed a 6% impairment rating for the left shoulder condition and a 3% impairment rating for the left knee condition.

While there are medical opinions in the record which cut against the ALJ's determination regarding causation, this merely represents conflicting evidence supporting a different outcome. However, evidence contrary to the ALJ's decision is inadequate to require reversal on appeal. In order to reverse the decision of the ALJ, it must be shown substantial evidence of probative value does not support his

decision. Special Fund v. Francis, supra. As Dr. Farrage's opinions and impairment ratings constitute substantial evidence in support of the ALJ's decision, we must affirm.

Murray next asserts the ALJ erred in awarding benefits for Renfrow's alleged left knee injury because Renfrow failed to assert this injury until after Dr. Farrage's April 14, 2021, examination. It labels Renfrow's alleged left knee injury as "an afterthought." We disagree and affirm on this issue.

We acknowledge Renfrow's Form 101, in Claim No. 202001685, alleges a right knee injury and not a left knee injury. However, at Dr. Farrage's April 14, 2021, examination, he diagnosed left knee osteoarthritis attributable to work-related cumulative trauma for which he assessed a 3% impairment rating. *On the same day* of Dr. Farrage's examination, Renfrow filed a Motion to Amend his Form 101 to include a left knee injury due to cumulative trauma. This is procedurally sound and provided Murray with notice consistent with the amended version of KRS 342.185(3) and Anderson v. Mountain Comprehensive Health Corporation, 628 S.W.3d 10 (Ky. 2021). Renfrow is not precluded from amending his Form 101 to include an injury diagnosed as work-related by a physician simply because the injury was diagnosed five months after the Form 101 was filed. This is precisely what a Motion to Amend permits.

Further, the record reveals Murray did not file an objection to the admission of Dr. Farrage's May 14, 2021, report, Renfrow's May 14, 2021, Motion to Amend, or the ALJ's May 17, 2021, Order sustaining the motion. Further, the record contains the May 15, 2021, supplemental report of Dr. Thomas O'Brien

which directly addresses Dr. Farrage's May 14, 2021, report. We also note the issue of the left knee injury not being alleged in Renfrow's original application for benefits was not specifically listed as a contested issue at the August 25, 2021, hearing. *See* 803 KAR 25.010 §13(12).

Finally, Murray asserts enhancement of the PPD benefits by the three-multiplier constitutes an abuse of discretion. In Murray's view, the ALJ erred in relying upon Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979), as Renfrow testified that he was able to perform his job at the time he was laid off from Murray. On this issue, we affirm.

KRS 342.730(1)(c)1 states, in relevant part, as follows:

> If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection.

The ALJ relied upon three pieces of evidence in finding the three-multiplier applicable – Dr. Farrage's restrictions as set forth in his May 14, 2021, report, Renfrow's testimony regarding his ability to return to work, and Dr. Steven R. Mills' March 2, 2021, medical record. Dr. Farrage assessed the following restrictions:

> Mr. Renfrow satisfies the Department of Labor Guidelines for a 'light to medium' occupation with a lifting and carrying capacity of no more than 30 lbs on an occasional basis and up to 15 lbs on a frequent basis. He can push and pull up to 50 lbs on occasion. He should avoid extended standing and walking. He should avoid repetitive bending, stooping, or extremes in cervical motion. He can negotiate one flight of stairs on occasion. He should avoid above shoulder level activity.

> No ladder climbing or working from unprotected heights. He has difficulty with uneven terrain, squatting, kneeling, crawling, and running. No driving restrictions are imposed.

Dr. Farrage ultimately concluded Renfrow "does not retain the physical capacity to return to his previous job description."

Renfrow testified during his deposition and at the hearing he is incapable of returning to his pre-injury job at Murray. Compelling to the ALJ was Renfrow's testimony indicating he takes pain relievers, sees Dr. Mills every two months, and has received two shots in his knees. Regarding the March 2, 2021, medical record, the ALJ stated as follows: "The ALJ specifically notes the records of Dr. Mills, who indicates the left knee pain has worsened to the point Renfrow is using crutches when walking. Swelling was also noted in the left knee and an injection was given to the left knee." This Board's review of Dr. Mills' March 2, 2021, medical record confirms these findings.

Contrary to Murray's argument on appeal, the ALJ is free to rely upon Renfrow's testimony, particularly his testimony regarding his ability to return to the type of work he was performing at the time he left his employment at Murray. *See* Hush v. Abrams, supra. Abuse of discretion has been defined, in relation to the exercise of judicial power, as that which "implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." Kentucky Nat. Park Commission, ex rel. Comm., v. Russell, 301 Ky. 187, 191 S.W.2d 214 (Ky. 1945). As substantial evidence supports the ALJ's determination Renfrow is unable to return to the job he was performing at the time

that he left his employment at Murray, we find no abuse of discretion and affirm the application of the three-multiplier.

Accordingly, on all issues raised on appeal, the October 28, 2021, Opinion, Award, and Order and the November 16, 2021, Order ruling on the Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

HON DONNIE NIEHAUS **LMS**
P O BOX 22610
LEXINGTON KY 40522

COUNSEL FOR RESPONDENT:

HON MCKINNLEY MORGAN **LMS**
921 S MAIN ST
LONDON KY 40741

ADMINISTRATIVE LAW JUDGE:

HON R ROLAND CASE **LMS**
MAYO-UNDERWOOD BUILDING
500 MERO ST 3RD FLOOR
FRANKFORT KY 40601