

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 22, 2019

CLAIM NO. 201900014, 201801727 & 201801726

NALLY & HAMILTON ENTERPRISES

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

DARYOL SMITH
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

STIVERS, Member. Nally & Hamilton Enterprises (“Nally & Hamilton”) appeals from the June 24, 2019, Opinion, Order, and Award and the July 18, 2019, Order of Hon. Grant S. Roark, Administrative Law Judge (“ALJ”). The ALJ awarded Daryol Smith (“Smith) permanent total disability benefits and medical benefits for his work-related lower back injury. The ALJ also awarded medical benefits for Smith’s work-related hearing loss condition.

On appeal, Nally & Hamilton assert two arguments. First, it contends Smith pled an acute lumbar spine injury, not a cumulative trauma lumbar spine injury, and the ALJ erred by relying upon Dr. John Gilbert's opinions regarding the cumulative trauma lumbar spine injury. Next, Nally & Hamilton maintains the ALJ erred by finding Smith is permanently totally disabled due to his lumbar spine injury alone.

BACKGROUND

The Form 103 in Claim No. 201801726, filed in the record on December 12, 2018, alleges Smith sustained work-related hearing loss due to “[r]epetitive exposure to loud noise in the work place.” The Form 103 alleges Smith's last date of exposure was May 9, 2018.

On the same day, Smith filed a Form 101 (Claim No. 201801727), alleging he sustained work-related cumulative trauma injuries to his neck and back culminating on May 9, 2018.

The Form 101 in Claim No. 201900014, filed on January 7, 2019, alleges Smith sustained work-related injuries to his “low back area (inc. lumbar and lumbo-sacral)” on May 23, 2017, in the following manner: “Plaintiff was working on a boom when he twisted and experienced pain in his back.” By order dated April 2, 2019, the ALJ consolidated Claim Nos. 201801727 and 201801726, to be referenced collectively as Claim No. 201801727.

Smith was deposed on February 1, 2019. He started working for Nally & Hamilton in December 1979 and ceased working for it on May 9, 2018, due to back problems. He held several different positions during his employment at Nally &

Hamilton, the last being moving heavy equipment. “I drove a truck, moved the equipment from job site to job site.”

Smith testified that his low back initially started bothering him on May 23, 2017. He explained as follows:

Q: When did your back first start bothering you?

A: 2017, May 23rd I think.

Q: What caused your back to start bothering you at that time?

A: I had – I was – took a boom truck to move a [sic] object from a tipple and...

Q: You took a boom truck to do what, I’m sorry?

A: Move a [sic] object, it was called a coal sampler.

...

Q: You also filed a claim for that injury as well, is that correct?

A: Yes.

Q: As far as that incident, you were just describing that to me, that you were using a boom truck and you were going to move a coal sampler, is that correct?

A: Yes.

Despite the pain getting worse, Smith did not miss work after the May 23, 2017, incident.

Smith also testified regarding his cumulative trauma back injury:

Q: You filed a claim alleging you’ve had a cumulative trauma injury as a result of your work, and what parts of your body is it that you’re having trouble with...

A: My back.

Q: ...that you maintain are due to your work?

A: My back.

Q: And what part of your back is it that's bothering you?

A: Well, it's my lower back and my right hip.

He first saw a doctor for low back pain in May 2018. Up to that point, Smith had missed no work.

Q: Then you said as far as seeing Dr. Ulrich, you saw him in May of 2018. Was that the first time you ever saw anybody for your back?

A: Yes, ma'am.

Q: So from the date of this incident in May of 2017, no treatment until then?

A: Right.

Q: Were you ever off work two consecutive weeks as a result of this incident?

A: No.

Q: Did you miss any work?

A: No.

Q: Okay, so you showed up every day after that and you continued doing the job you told me about?

A: Yes, ma'am.

Q: And didn't miss any work?

A: No.

Q: So in May of 2018 you decided to go see Dr. Ulrich. What did you have going on at that point that made you decide I'm going to the doctor now?

A: Well, I couldn't hardly put my clothes on in the morning. It got so bad that I couldn't.

Q: Did anything new or different happen to you during the time frame from this incident in May of 2017 up till you decided to go to Dr. Ulrich?

A: No, ma'am.

...

Q: You just felt like you kept continuing to get worse?

A: Yes.

Q: So by the time you went to see Dr. Ulrich in May of 2018 were your complaints still just in your low back or had they moved anywhere else?

A: No, just my back.

Smith believes he could not return to his work at Nally & Hamilton. His reasoning is as follows:

Q: Do you feel like you could do the job you had at Nally and Hamilton?

A: Now?

Q: Uh-huh.

A: No.

Q: What kind of trouble would you have to go back and do the job that you had with them?

A: I can't hear you.

Q: What kind of trouble would you have with going back and doing the job you had with them?

A: Oh, my back.

Q: What kind of things in your job that you did at Nally & Hamilton would your back get in the way of?

A: Everything.

Q: Tell me about it.

A: Okay, you boom equipment, well, bind, binding equipment; crawling in and out of the trucks, crawling in and out of the equipment. You know, I went as far as I could go.

Smith also testified at the April 23, 2019, hearing. No new testimony was given relevant to the issues on appeal.

Smith filed the January 17, 2019, Form 107 Medical Report of Dr. Gilbert. After performing a physical examination and medical records review, Dr. Gilbert set forth the following diagnoses:

Multilevel lumbar stenosis with degenerative disc disease, spondylosis. Bilateral chronic lumbar radiculopathy with some degree of chronic permanent lumbosacral nerve root injury with tears, protrusions, osteophytes, pain, numbness and weakness in the legs and the dermatomal, myotomal type distribution. Cervical degenerative disc disease, spondylosis and intermittent bilateral cervical radiculopathy and pain with muscle spasms. Gait and station disorder. All due to cumulative trauma.

Dr. Gilbert attributed Smith's injuries to his employment as a surface miner and assessed a 27% whole person impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Of the 27% impairment rating, 13% was attributed to Smith's lumbar spine condition pursuant to Chapter 15, Table 15(3), page 384 of the AMA Guides. Dr. Gilbert opined Smith does not retain the ability to return to the type of work he was performing at the time of his injury stating as follows: "Dr. Brooks, a neurosurgeon who [sic] has opined that he should not continue in that type of work because of the increased risk of the need for surgery. I agree with his opinion. His

lumbar and cervical radiculopathy and degenerative disc disease and symptoms preclude that type of activity.” Dr. Gilbert imposed the following restrictions: “He should do no lifting over 10 or 20 pounds, no repetitive stooping, crawling, crouching, no operating vibratory equipment, no heavy manual labor. He should not be at unprotected heights or in hazardous situations. He is occupationally disabled.”

Smith filed Dr. William Brooks’ April 21, 2018, medical record. After Dr. Brooks examined Smith and reviewed the findings from a lumbar spine MRI, he set forth the following assessment: “Symptomatic advanced and diffused degenerative osteoarthritis of the lumbar spine.” He further opined:

The symptoms that he has are related to degenerative osteoarthritis which has progressed and is progressive. I have given him a prescription of Relafen 750 mg twice a day and Robaxin 750 mg at night.

There is no operation for his condition. Indeed that there is little to be done other than pain management. There are things that can be done to lessen the progression which include weight reduction and cessation of tobacco abuse.

In my opinion the issues that he has given that they are nonsurgical do have occupational ramifications. To continue to work as a heavy equipment mechanic and on heavy equipment we’ll [sic] increase the risks of progression and subsequent necessity for surgical intervention. I have suggested he consider M [sic] medical retirement predicated on the type of work that he does and the degenerative changes in the lumbar spine. Unfortunately I don’t think there is a good solution to the problem short of altering his lifestyle which includes work, weight reduction, cessation of tobacco. If I can help further do not hesitate to contact me.

The April 10, 2019, Benefit Review Conference Order and Memorandum in Claim No. 201801727 lists the following contested issues: benefits per KRS 342.730/.7305, work-relatedness/causation, notice, unpaid or contested

medical expenses, exclusion for pre-existing disability/impairment, joinder, and application of House Bill 2.

At the April 23, 2019, hearing, the following discussion took place regarding the contested issues:

ALJ: All right. I was just going to get to that. In the BRC that we had in the two cases that I currently have, on April 10, 2019 we listed the contested issues as any benefits under KRS 342.730 and 7305, causation/work relatedness, notice, unpaid or contested medical expenses, exclusion for any pre-existing disability impairment, joinder, application of House Bill 2. And once we have the 2019 claim number assigned to us, you're telling me that you also want to add as issues for that injury under the act and you're not stipulating there was actual injury on May 23, 2017 so it would be alleged injury. And were there any other issues specific to that claim?

Counsel for employer: Prior active disability would also apply to that. Thank you.

ALJ: Any other issues other than [sic] we've discussed?

Counsel for claimant: Judge, with your order on joining that other case there's no longer a contested issue of joinder. Is that correct?

Counsel for employer: That would be correct.

By order dated April 24, 2019, all claims were consolidated designated as Claim No. 201900014.

In the June 24, 2019, Opinion, Order, and Award, the ALJ set forth the following findings of fact and conclusions of law:

Causation/Work Relatedness/Injury under the Act

As a threshold issue, the defendant maintains plaintiff suffered no permanent injuries to his neck or lower back as a result of the alleged specific event on May

23, 2017, or due to cumulative trauma from his job duties over the years culminating on May 9, 2018. In support of its position, he [sic] relies on the medical evaluation report from Dr. Primm and its records review report from Dr. Travis. They each concluded treatment records and Dr. Primm's evaluation revealed no evidence of any acute injury or pathology that could be related to a specific event in May, 2017 or due to cumulative trauma sustained over the course of plaintiff's employment with the defendant. Dr. Primm and Dr. Travis also indicated plaintiff did not have any lumbar or cervical degenerative changes in excess of what would be expected for someone of plaintiff's age, regardless of occupation. They therefore concluded plaintiff suffered no cervical or lumbar injury as a result of cumulative trauma sustained at work.

However, having reviewed the evidence of record, the Administrative Law Judge is more persuaded by the opinions of Dr. Brooks and Dr. Gilbert in this instance. Dr. Brooks examined plaintiff as part of a neurosurgical consultation due to his progressing lower back complaints. He examined plaintiff for treatment purposes and was not a retained expert for purposes of litigation. His review of the lumbar MRI revealed "severely advanced and diffused degenerative disc disease facet arthrosis shortened pedicles and spinal stenosis throughout the entire lumbar spine." He therefore diagnosed symptomatic advanced and diffused degenerative osteoarthritis of the lumbar spine. Dr. Brooks also touched upon the difficulties plaintiff had in his job with his lumbar condition:

The symptoms that he has a [sic] related to degenerative osteoarthritis which has progressed and is progressive. I have given him a prescription Relafen 750 MG twice a day and Robaxin 750 MG at night.

There is no operation for his condition. Indeed that there is little to be done other than pain management. There are things that can be done to lessen the progression which include weight reduction and cessation of tobacco abuse. In my opinion the issues that he has given that they are nonsurgical do have occupational ramifications. To continue to work as a

heavy equipment mechanic and on heavy equipment will increase the risks of progression and subsequent necessity for surgical intervention. I have suggested he consider medical retirement predicated on the type of work that he does and the degenerative changes in the lumbar spine. Unfortunately I don't think there is a good solution to the problem short of altering his lifestyle which includes work, weight reduction, cessation of tobacco. If I can help further do not hesitate to contact me.

The ALJ's interpretation of Dr. Brooks' statements is that Dr. Brooks believed plaintiff has severe, advanced lumbar degenerative changes, which he does not specifically indicated [sic] were caused or made worse by his work duties over the years, but he recognizes that plaintiff's work duties as a heavy equipment mechanic can cause progression of his degenerative condition.

Dr. Brooks' report is also significant for the fact that it contradicts both Dr. Primm's and Dr. Travis' conclusions that plaintiff does not have advanced degenerative changes of the lumbar spine. For these reasons, the ALJ is more persuaded by Dr. Gilbert's specific conclusion that plaintiff's lumbar spinal stenosis and degenerative osteoarthritis represent advanced degenerative changes that were caused by late [sic] if's [sic] work activities for the defendant employer. Dr. Gilbert's opinions in this regard are more consistent with the opinions of the treating physician, Dr. Brooks, and with plaintiff's credible testimony describing how his lumbar symptoms have progressed over the last nine years of his employment to the point they became so significant that he had to stop working in May, 2018. For these reasons, it is determined plaintiff's claim for a document [sic] of trauma injury to the lumbar spine culminating on May 9 [sic], 2018 is work-related and compensable. Moreover, for the same reasons, the ALJ is not persuaded plaintiff's lumbar problems are due to the specific incident alleged on May 23, 2017. Therefore, plaintiff's May 23, 2017 claim is dismissed.

With respect to plaintiff's cervical condition, the ALJ is not persuaded plaintiff has any work-related injury. Dr. Primm pointed out he specifically asked

plaintiff what areas he believed were injured as a result of his cumulative trauma and he only indicated lower back complaints. He never mentioned cervical problems. Similarly, when plaintiff was referred for a neurosurgical evaluation with Dr. Brooks, no cervical symptoms were mentioned at that time. In this regard, the ALJ relies on Dr. Primm's findings to conclude plaintiff has not carried his burden of proving he suffered any permanent cervical injury as a result of cumulative trauma sustained at work. Accordingly, plaintiff's cervical claim is dismissed, with prejudice.

Benefits Per KRS 342.730/7305

The next issue becomes the extent of plaintiff's impairment/disability. He maintains the combined effects of his injury, considered within the context of his age, education and work experience, render him permanently and totally disabled. Conversely, the defendant maintains plaintiff has no restrictions and warrants no permanent impairment rating and, as such, is not entitled to any award of income benefits.

Having dismissed plaintiff's cervical condition, only the disabling effects, if any, of plaintiff's lumbar condition may be considered in determining whether plaintiff is totally disabled. On this issue, it is first noted that plaintiff has only a 10th grade education and his entire work history has been in the mining industry for the defendant employer other than about six months before he began with the defendant when he worked for a company laying pipeline. He also hauled coal for Sandy Fork Mining for a six-month period of time when he was laid off from the defendant. Thus, all of plaintiff's employment history has been in heavy labor, either laying pipeline or hauling/operating heavy equipment or coal. Plaintiff described his duties as an equipment hauler, which required him to secure equipment to trailers, drive equipment, grease his truck, change his tires, and adjust his own brakes and perform general maintenance on the truck. He also testified that he operated a grader for approximately 10 years for the defendant.

Also relevant to this issue is Dr. Brooks' opinion that plaintiff is not capable of continuing his employment in the mining industry. The ALJ has already found Dr. Brooks' opinion most persuasive in regards to plaintiff's

lumbar condition. The ALJ is similarly persuaded by Dr. Brooks' opinion that plaintiff cannot return to his previous work in the mining industry. Given that virtually all of plaintiff's work history has been in the mining industry and that plaintiff has only a 10th grade education and is currently 57 years of age, the ALJ is persuaded it is very unlikely plaintiff will be able to return to and maintain gainful employment on a regular and sustained basis. As such, it is determined plaintiff has a 13% lumbar impairment as assigned by Dr. Gilbert and is permanently and totally disabled. His award of benefits is calculated as follows:

$$\$1,020.58 \times 2/3 = \$680.39 \text{ per week.}$$

Nally & Hamilton filed a petition for reconsideration asserting an error regarding Smith's average weekly wage ("AWW") and requesting several additional findings of fact.

In the July 18, 2019, Order, the ALJ corrected Smith's AWW and rendered the following additional findings:

This matter comes before the Administrative Law Judge pursuant to the defendant's petition for reconsideration of the Opinion, Order & Award rendered in this matter on June 24, 2019. In its petition, the defendant pointed out the plaintiff's average weekly wage was incorrectly listed as \$1020.58 but the correct average weekly wage was \$1020.38, and requests this be corrected. The ALJ agrees this was a patent error and sustains defendant's petition and amends the Opinion to reflect an average weekly wage of \$1020.38 and the award of permanent, total disability benefits is therefore recalculated as follows:

$$\$1020.38 \times 2/3 = \$680.25 \text{ per week.}$$

Based on the foregoing, plaintiff's award of benefits is amended to reflect that, for permanent, total disability for his May 9, 2018 claim, plaintiff shall receive from the defendant the sum of \$680.25 per week beginning May 9, 2018 and continuing until plaintiff reaches age 70, with interest at 6% on all past due amounts.

The defendant also requests additional findings relative to the weight afforded Dr. Brooks, Dr. Gilbert, Dr. Prem [sic], and Dr. Travis. The defendant's petition in this regard is merely a re-argument of the merits of the claim which have already been decided or requests findings which are not necessary and is, therefore, overruled.

However, the defendant also points out, correctly, and its petition that the Opinion did not specifically include a total disability analysis as set forth in *City of Ashland v. Stumbo*, 461 S.W.3d 392 (Ky. 2015). The defendant's petition in this regard is, therefore, sustained and the ALJ specifically finds as follows:

In *Stumbo*, the Kentucky Supreme Court laid out a five-step analysis which the ALJ must utilize in determining entitlement to permanent total disability. Initially, the ALJ must determine if the claimant suffered a work related injury. Next, the ALJ must determine plaintiff's permanent impairment, if any. Third, the ALJ must determine plaintiff's permanent disability rating. Then, the ALJ must make a determination the claimant is unable to perform any type of work. Finally, the ALJ must determine the total disability is the result of the work injury.

As applied to the present case, the ALJ has already concluded plaintiff suffered a work-related lumbar injury, and no additional findings are necessary on that point. The ALJ now specifically states he was persuaded plaintiff as a 13% impairment rating for his compensable lower back condition. In reaching this conclusion, the ALJ found Dr. Gilbert's impairment rating most persuasive because it most accurately reflects plaintiff's severe lumbar degenerative condition as noted by the treating physician, Dr. Brooks. Again, the ALJ rejected Dr. Prem's [sic] and Dr. Travis' opinions that plaintiff did not have a compensable lower back injury and, for the same reasons, rejected their opinions that he had no impairment rating. Dr. Gilbert's 13% lumbar impairment rating was the only rating of record to account for plaintiff's compensable lumbar injury.

Next, plaintiff's disability rating would also be 13% as his impairment rating is multiplied only by the 1.0 grid factor in KRS 342.730(1)(b) to produce a permanent

disability rating of 13%. The next *Stumbo* factors -- a finding that plaintiff is unable to return to any employment and that the inability to return to work is due to the compensable work injury -- were already addressed in the June 24, 2019 Opinion and no additional findings are necessary for those factors. Suffice to say the ALJ remains persuaded plaintiff is not capable of returning to any gainful employment on a regular and sustained basis. *Osborne v. Johnson*, Ky., 432 S.W.2d 800 (1968) and *Ira A. Watson Dept. Store v. Hamilton* , 34 S.W.3d 48, 51 (Ky. 2000).

In all other respects, the June 24, 2019 opinion remains unchanged.

Nally & Hamilton first asserts Smith testified that he sustained an acute lumbar spine injury rather than a cumulative trauma lumbar spine injury; consequently, the ALJ erred by relying upon Dr. Gilbert's opinions in concluding Smith sustained a cumulative trauma lumbar spine injury. Nally & Hamilton also asserts the ALJ "breached his duty of explanation by failing to explain why he credited Dr. Gilbert's opinions over the other contradictory evidence in the record." We affirm on this issue.

ANALYSIS

As the claimant in a workers' compensation proceeding, Smith bore the burden of proving each of the essential elements of his cause of action. *Snawder v. Stice*, 576 S.W.3d 276 (Ky. App. 1979). Since Smith was successful in that burden, the question on appeal is whether there was substantial evidence of record to support 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 that would have supported a different outcome than that 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).

That said, 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 that 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).

We are unconvinced by Nally & Hamilton's first argument as we believe substantial evidence supports the ALJ's finding of a cumulative trauma lumbar spine injury. Smith testified regarding a specific incident occurring on May 23, 2017, and

filed a Form 101 alleging an acute lumbar spine injury. However, Smith also testified concerning a cumulative trauma lower back injury, *and* filed a Form 101 alleging he sustained cumulative trauma injuries to both his neck and back culminating on May 9, 2018. The ALJ ultimately dismissed Smith's acute lumbar spine injury claim. Instead, the ALJ relied upon the medical opinions of Drs. Brooks and Gilbert in concluding Smith sustained a cumulative trauma injury to his lumbar spine due to his work. These doctors' medical opinions comprise substantial evidence in support of the ALJ's ultimate conclusion.

In his April 21, 2018, medical record, Dr. Brooks diagnosed a progressive and degenerative condition of the lumbar spine. While Dr. Brooks did not specifically opine Smith's lumbar spine condition was caused by his employment at Nally & Hamilton, he did recognize Smith's "work as a heavy equipment mechanic and on heavy equipment we'll [sic] increase the risks of progression and subsequent necessity for surgical intervention." In Dr. Gilbert's January 17, 2019, report, upon which the ALJ also relied, he opined Smith's lumbar spine condition is due to cumulative trauma, attributable to his work at Nally & Hamilton. As noted by the ALJ, Dr. Gilbert's opinions are harmonious with those of Dr. Brooks. The weight to be accorded the evidence is within the discretion of the ALJ. This Board has no authority to usurp the great weight accorded to both doctors' medical opinions. Magic Coal Co. vs. Fox, 19 S.W.3d 88 (Ky. 2000). As substantial evidence supports the finding that Smith sustained a cumulative trauma lumbar spine injury, we are compelled to affirm this finding.

We find no merit in Nally & Hamilton's assertion the ALJ did not set forth sufficient findings in support of his reliance upon Dr. Gilbert's opinions. While authority generally establishes that an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, he is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. In reaching a determination, the ALJ must only provide findings sufficient to inform the parties of the basis for the decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). The ALJ adequately informed all parties of the basis for his reliance upon Dr. Gilbert, and this Board will not disturb the ALJ's discretion in relying upon Dr. Gilbert or remand for additional findings when none are necessary.

Nally & Hamilton next asserts substantial evidence does not support a finding Smith is permanently totally disabled solely as a result of his lumbar spine injury. We affirm on this issue.

Permanent total disability is the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of the injury. KRS 342.0011(11)(c). In determining whether a worker is totally disabled, the ALJ must consider several factors including the workers' age, educational level, vocational skills, medical restrictions, and the likelihood he can resume some type of work under normal

employment conditions. Ira A. Watson Dept. Store v. Hamilton, *supra*. The ALJ enjoys wide discretion in determining whether a claimant is permanently totally disabled. Coldwell v. Dresser Instrument Div., 217 S.W.3d 213 (Ky. 2006). Our review of the record reveals substantial evidence upon which the ALJ could reasonably conclude Smith is not capable of performing work on a regular and sustained basis in a competitive economy due to the effects of his lumbar spine injury *alone*. KRS 342.0011(11)(c).

As an initial matter, the ALJ demonstrated an understanding of the definition of permanent total disability in both orders, particularly the July 18, 2019, Order in which he set forth additional findings on this issue. Importantly, in the June 24, 2019, Opinion, Order, and Award, the ALJ also correctly articulated that, because he dismissed Smith's cervical spine injury claim, "only the disabling effects, if any, of plaintiff's lumbar condition may be considered in determining whether plaintiff is totally disabled."

In his analysis of this issue, the ALJ relied upon the 13% whole person impairment rating assessed by Dr. Gilbert which he attributed solely to Smith's work-related lumbar spine condition. Further, as initially discussed in the June 24, 2019, Opinion, Order, and Award and further elaborated upon in the July 18, 2019, Order, the ALJ was persuaded by Dr. Brooks' opinion that Smith "cannot return to his previous work in the mining industry." Dr. Brooks, who diagnosed only a lumbar spine condition, opined Smith's continued work with heavy equipment will increase the risk of progression of his lumbar spine condition and bring about a need for surgical intervention. As he stated in the April 21, 2018, medical record, Dr. Brooks

recommended “**medical retirement** predicated on the type of work that he does and the degenerative changes in the lumbar spine.” (emphasis added). Since Dr. Brooks diagnosed only a degenerative and progressive condition of Smith’s lumbar spine, the ALJ could reasonably infer his recommendations regarding Smith discontinuing his employment are attributable only to his work-related lumbar spine condition.

Significantly, Dr. Gilbert, in his report, interpreted Dr. Brooks’ opinions on this issue as recommending Smith discontinue his work at Nally & Hamilton by stating as follows: “Dr. Brooks, a neurosurgeon who has opined that he should not continue in that type of work because of the increased risk of the need for surgery.” This is consistent with the ALJ’s interpretation of Dr. Brooks’ opinions.

Further, while the ALJ did not specifically rely upon Smith’s testimony regarding his ability to return to his pre-injury job at Nally & Hamilton, Smith’s deposition testimony, in which he testified he could not return to his pre-injury job because of his “back” (versus his neck), bolsters the ALJ’s ultimate determination Smith is permanently totally disabled due solely to his cumulative trauma lumbar spine work injury. See Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979).

Because the above-cited evidence, when viewed as a whole, constitutes substantial evidence supporting the ALJ’s determination Smith is permanently totally disabled as a result of his cumulative trauma lumbar spine injury, we have no authority to disturb this determination.

Accordingly, on all issues raised on appeal, the June 24, 2019, Opinion, Order, and Award and the July 18, 2019, Order are hereby **AFFIRMED**.

ALL CONCUR.

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