Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 5, 2021

CLAIM NO. 201901253

NICHOLAS MORRIS PETITIONER

VS. **APPEAL FROM HON. MONICA RICE-SMITH, ADMINISTRATIVE LAW JUDGE**

CENTURY ALUMINUM OF KY
and HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * * *

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

STIVERS, Member. Nicholas Morris ("Morris") appeals from the June 25, 2021, Opinion and Order and the June 30, 2021, Order of Hon. Monica Rice-Smith, Administrative Law Judge ("ALJ"). The ALJ dismissed Morris' occupational disease claim against Century Aluminum of KY ("Century") after finding his employment with Century did not *cause* his kidney condition. The ALJ also

determined any potential liability would fall on the subsequent employer (i.e. Alcoa) and not Century.

On appeal, Morris asserts the ALJ erred in finding Century is not the liable employer. Morris also argues the ALJ erred in finding he had a pre-existing active kidney condition at the time he started working for Century.

BACKGROUND

The Form 102-OD, filed on October 15, 2019, alleges Morris sustained a work-related occupational disease while in the employ of Century which he identified as: "Kidney/urinary stones & nephrolithiasis." Morris alleges his date of last exposure is November 12, 2018. Attached to the Form 102-OD is the Form 104 which indicates Morris worked at Century, an aluminum plant, from June 2016 through November 12, 2018. After leaving Century, Morris worked at W. Rogers Company, a utility contractor, from December 2018 through August 2019. Finally, Morris worked at Alcoa, an aluminum plant, from September 2019 through October 2019.

Attached to the Form 102 is Dr. Corey Johnson's letter to Century dated October 18, 2018, which states, in relevant part, as follows:

> Your employee, Nicholas Morris, has been under my medical care for the treatment of urinary stones since December 2016. The frequency Mr. Morris produces urinary stones has increased dramatically and is a direct result of continuous extreme heat resulting in chronic dehydration at his current position with your company. Mr. Morris has implemented aggressive re-hydration therapy to help decrease the effect of the continuous dehydration which results in urinary stones, but it continues to be unsuccessful and he continues to produced urinary stones on a weekly basis.

> I feel it is imperative actions are taken for Mr. Morris to relocate to another position/department within your company that does not have the continuous extreme heat to help him maintain adequate hydration which will decrease the production of urinary stones.

Morris' January 14, 2020, deposition was filed in the record. He testified that in November 2018 he was laid off by Century. Afterwards, he worked at W. Rogers Company from December 2018 to August 2019. After leaving W. Rogers Company, he immediately went to work at Alcoa. He described his job duties at Alcoa:

> Q: Okay. And you were able to get the job at Alcoa without any physical restrictions?
>
> A: Right.
>
> Q: And you were [sic] a carbon filter at Alcoa?
>
> A: Carbon setter.
>
> Q: Okay. So when you were working in that job are you – is that a smelter?
>
> A: It is a smelter.
>
> Q: And you were working in the pot rooms?
>
> A: Yes.
>
> Q: Okay. Which is basically the same job – not the same job, but it was –
>
> A: Different job.
>
> Q: Different job, but same kind of area –
>
> A: Same type of area, yeah.
>
> Q: - that you were working for Century?

A: Right. The only difference in this job and the job that I had before, one was maintenance and this one right here – so when you do carbon setting you work on a team. You will have one guy go up and do his job. Then you come back down and you sit down and cool off. Another guy goes up, does his job. He comes down and sits down and cools off. Another guys goes up. He goes up there and does his job. He comes back down and cools off. It's your turn again. You go back up there. So you got plenty of time to cool yourself off, you know.

Q: But your – your work at both Century and Alcoa you're working in a pot room around –

A: Around pots, yeah.

Q: Around pots that are very –

A: Hot. Extremely hot.

Q: Yeah, okay. You were exposed to high heat at both Century and Alcoa?

A: Yes. For a short period of time at Alcoa I didi [sic]–

Q: I mean, it looks like for a month.

A: Well, technically it was 16 days.

Q: Okay.

A: It was a month, but 16 days of work.

Morris also testified at the April 19, 2021, hearing. Regarding his employment at Alcoa, he testified as follows:

Q: And your job at Alcoa Aluminum was in the pot room?

A: Yes, sir.

Q: So I assume that the pot room at the Alcoa smelter is similar as the pot room in Century Aluminum in that you're working around hot, molten aluminum?

A: Yes, sir. I was actually going to, I was going to be hired as a maintenance, like the man – they do like what's called a plant maintenance. What they do is they go outside and they fix the outside, like –

Q: My question, Mr. Morris, is –

A: Yes, I worked in the pot lines.

Q: Yes.

A: Yeah.

Q: At Century, you worked in the pot lines and were exposed to high heat; is that right?

A: Yes, sir.

Q: And you attribute that high heat to the increased frequency of the development of kidney stones, right?

A: Yes.

Q: Then subsequently, you went to work at Alcoa in their smelter at the pot room and you were exposed to similar high heat and molten metal?

A: Yes, sir, it was similar. Yes.

Morris was never overcome with heat exposure at Alcoa to the point where he had to go to the emergency room.

The March 30, 2021, Benefit Review Conference Order and Memorandum ("BRC Order") lists the following contested issues: benefits per KRS 342.730; work-relatedness/causation; unpaid or contested medical expenses, and temporary total disability ("TTD"). Under "other" is the following: "Disputed last exposure with the defendant/employer; TTD claim only no permanent benefit claim."

In the June 25, 2021, Opinion and Order, the ALJ provided the following findings of fact and conclusions of law which are set forth *verbatim*:

…

> **2. Whether Last exposure with the Defendant/ Employer**
>
> The ALJ finds that Century Aluminum is not the appropriate defendant. Although Morris is not requesting permanent disability benefits, the statute is very clear, as to who the responsible employer is in an occupation disease claim. KRS 316(1)(a) states the employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazards of the occupational disease. Further, KRS 316(10) provides that when an employee has an occupational disease, the employer in whose employment he or she was last injuriously exposed to the hazard of the disease and the employer's insurance carrier, at the time of the exposure, shall alone be liable therefore, without right to contribution from any prior employer or insurance carrier. It is undisputed that Morris worked at Alcoa Aluminum after leaving Century Aluminum. He testified to also working in the smelter pot room at Alcoa, which involves the same extreme heat as Century. After leaving Century, Morris worked in extreme heat at Alcoa.
>
> **3. Work-relatedness/causation**
>
> "Occupational disease" is statutorily defined in KRS 342.0011(2) as a disease arising out of and in the course of the employment. The disease shall be deemed to arise out of the employment if there is apparent to the rational mind a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. KRS 342.0011(3). "Objective medical findings" is defined by KRS 342.0011(33) as information gained through direct

observation and testing of the patient, applying objective or standardized methods.

In *Champion v. Beale* 833 S.W.2d 799 (KY 1992), the Court refused to extend its findings in *Princess Manufacturing Co. v. Jarrell* (465 S.W.2d 45 (KY 1971) and *Dealers Transport Co. v. Thompson*, 593 S.W.2d 84 (KY 1979) to include the proposition that the work-related aggravation of an underlying, non-compensable disease is compensable. Under Princess, an occupational disease may be found if there is substantial evidence that either employment conditions specifically affected the employee in a manner resulting in contraction of disease, or employment conditions generally can cause a particular disease or condition in a given class of workers.

The ALJ finds Morris failed to establish his employment conditions at Century specifically affected him in a manner resulting in contraction of disease, or caused a particular disease or condition in a given class of workers. Morris' condition is pre-existing and continues after his Century employment.

It is uncontested Morris has a pre-existing active condition causing the development of kidney stones. After starting work at Century, the frequency and severity of the stones increased. Per Dr. Johnson, the extreme heat Morris worked in at Century aggravated his condition resulting in an increase in the frequency of his stone development. Although his work temporarily aggravated his stone development, it did not result in his contracting nor cause his condition. Morris' condition for developing stones existed prior to his work at Century. Dr. Johnson's records indicate even indicate the aggressive hydration therapy was unsuccessful at curtailing Morris' stone development. Although the records seem to indicate some improvement in Morris' condition after leaving Century, he continues to develop stones. He admitted he continues to pass stones weekly and takes medication for the condition. Based on the foregoing, the ALJ finds that Morris' did not sustain a work-related occupational disease due to his work at Century.

Morris' Petition for Reconsideration made the same arguments put forth on appeal. By order dated August 2, 2021, the ALJ overruled Morris' Petition for Reconsideration.

Morris first asserts the ALJ erred in finding Century is not the liable employer. We vacate the decision and remand for additional findings.

The statutory provision pertinent to the issues on appeal is KRS 342.316(1)(a) which reads, in full, as follows:

> The employer liable for compensation for occupational disease shall be the employer *in whose employment the employee was last exposed to the hazard of the occupational disease*. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator. (Emphasis added).

In Begley v. Mountain Top Inc., 968 S.W.2d 91, 95 (Ky. 1998), the Kentucky Supreme Court indicated that, in cases of consecutive employers, the appropriate inquiry is whether the exposure during the employment at issue "would have eventually resulted in contraction of the disease, in other words, that it was injurious. [citations omitted]." The Court continued as follows: "[L]iability is based on the character of the exposure, not on its duration and not on whether it was the particular exposure associated with the first diagnosis of the disease or with the

progression of the disease from one category or degree of respiratory impairment to another." Id.

Further, an ALJ is required to provide a sufficient basis to support his or her determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's 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). This Board is cognizant of the fact that an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his or her reasoning in reaching a particular result; however, the ALJ must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

Here, the ALJ failed to adequately analyze the issue of which employer bears potential liability. In the June 25, 2021, decision the ALJ set forth limited findings of fact purportedly supporting her conclusion Alcoa bears all liability. Important to the ALJ is Morris' testimony that he worked in the smelter room at Alcoa in which he was exposed to heat similar to that at Century. However, the ALJ failed to conduct an analysis, pursuant to Begley v. Mountain Top Inc., supra, in order to determine whether Morris' exposure at Alcoa "would have eventually resulted in contraction of the disease, in other words, that it was injurious. [citations omitted]." Id. at 95. This is particularly important in light of the fact that Morris testified one of the major differences between his work at Century and his

work at Alcoa is that he worked on a team at Alcoa *which afforded him opportunities to cool off.*

On remand, the ALJ must set forth an analysis pursuant to Begley, supra. Should the ALJ conclude that Morris sustained injurious exposure at Alcoa, she must cite the medical evidence supporting this conclusion. *A blanket statement that Morris' testimony that he was exposed to extreme heat at Alcoa is insufficient*. *Alcoa's liability is not mandatory simply because it is Morris' last employer.* There must be medical evidence supportive of the finding Morris sustained "injurious exposure" to extreme heat and dehydration at Alcoa as defined by relevant statutory and case law. If there is no medical evidence in the record which supports the conclusion Morris sustained "injurious exposure" to heat and dehydration at Alcoa, the ALJ cannot once again find Alcoa is the liable employer.

Morris next asserts that the ALJ erred by finding Morris' kidney condition and resultant kidney stones were pre-existing active conditions before his employment at Century. We vacate this finding and remand for additional findings on this issue as well as a separate issue not raised on appeal.

Despite Morris' arguments to the contrary, Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007), is not applicable. Finley v. DBM Technologies, supra, only applies after it has been determined a claimant sustained a permanent, work-related injury. Only then does the burden fall upon the Employer to prove a pre-existing condition was symptomatic and impairment ratable prior to the work injury for the purposes of a "carve-out" of the award. Here, Morris was not

alleging entitlement to income benefits based upon a permanent impairment rating; therefore, Finley is inapplicable.

That said, regardless of whether there is a carve-out pursuant to Finley, the ALJ is still free to find Morris had a pre-existing active kidney condition at the time of his employment with Century. However, she must cite the medical evidence supporting this conclusion. The ALJ failed to provide a summary of the medical evidence in the June 25, 2021, Opinion and Order, and more importantly, the medical evidence persuading her to find Morris had a pre-existing kidney condition at the time he was first employed by Century. A blanket statement that "[i]t is uncontested Morris has a pre-existing active condition causing the kidney stones" is inadequate. The March 30, 2021, BRC Order reveals no such stipulation was entered into between the parties.

On remand, the ALJ must cite the medical evidence supporting her determination that Morris had a pre-existing active condition which caused his kidney stones at the initiation of his employment with Century. If the ALJ is unable to furnish medical evidence supporting such a conclusion, she cannot reach this conclusion on remand. Morris, in his brief, requests the Board direct there is no medical testimony indicating his kidney condition was a pre-existing active condition at the time he was employed by Century. Since the Board has no fact-finding authority, we decline the request. This Board is not a fact-finding tribunal but it may *sua sponte* request additional findings even if not requested by the parties on appeal. KRS 342.285(2)(c); KRS 342.285(3); George Humfleet Mobile Homes v. Christman,

125 S.W.3d 288 (Ky. 2004). Consequently, on remand, the ALJ must supply the additional findings of fact.

Once the ALJ renders additional findings concerning the pre-existing condition, she must then resolve the issue of Morris' entitlement to TTD benefits and medical benefits. In the June 25, 2021, Opinion and Order, relying upon Dr. Johnson, the ALJ concluded that Morris' work at Century aggravated his kidney condition and caused an increase in kidney stones. Indeed, in the October 18, 2018, letter to Century, Dr. Johnson noted that the frequency of Morris' kidney stones "increased dramatically and is a direct result of continuous extreme heat resulting in chronic dehydration at his current position with your company." We emphasize Morris is not seeking permanent income benefits. Rather, he seeks TTD benefits and medical benefits spanning a specific period. Consequently, a complete dismissal of Morris' claim in the event the ALJ once again determines Morris' work at Century did not *cause* his kidney condition is inappropriate. Rather, the issue to be resolved is Morris' entitlement to TTD and medical benefits during his tenure at Century based upon Dr. Johnson's opinion that Morris' kidney stones "increased dramatically" during his employment therein. Moreover, the ALJ may not dismiss Morris' claim for TTD benefits and medical benefits while simultaneously relying upon Dr. Johnson's medical opinions, as Dr. Johnson's opinions prove, at a minimum, that Morris suffered an exacerbation of his pre-existing condition during his employment at Century for which he may be entitled to TTD benefits and medical benefits.

While this Board may not usurp the ALJ's role as fact-finder by superimposing our own appraisals as to weight and credibility of the evidence, we

believe the ALJ must attribute the appropriate weight to Dr. Johnson's unequivocal opinions regarding the worsening or exacerbation of Morris' kidney condition and kidney stones which developed during his employment at Century. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Accordingly, to the extent the ALJ determined Alcoa is the responsible employer and Morris suffered from a pre-existing active kidney condition, the June 25, 2021, Opinion and Order and the June 30, 2021, Order are **VACATED**. This claim is **REMANDED** for additional findings consistent with the views set forth herein. Further, the claim is **REMANDED** to the ALJ for additional findings concerning the issue of Morris' entitlement to TTD and medical benefits due to a worsening of his kidney condition during his employment at Century.

ALL CONCUR.

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