

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: May 20, 2022

CLAIM NO. 202000989 & 202000672

NOVELIS CORPORATION

PETITIONER/  
CROSS-RESPONDENT

VS.

APPEAL FROM HON. TONYA M. CLEMONS,  
ADMINISTRATIVE LAW JUDGE

RANDALL LAINHART  
and  
HON. TONYA M. CLEMONS,  
ADMINISTRATIVE LAW JUDGE

RESPONDENT/  
CROSS-PETITIONER  
  
RESPONDENT

OPINION  
AFFIRMING  
ON APPEAL AND CROSS-APPEAL

\* \* \* \* \*

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

**ALVEY, Chairman.** Novelis as Petitioner/Cross-Respondent (“Novelis”) and Randall Lainhart (“Lainhart”) as Respondent/Cross-Petitioner appeal from the Opinion, Award and Order rendered July 16, 2021 by Hon. Tonya M. Clemons, Administrative Law Judge (“ALJ”). The ALJ determined Lainhart contracted occupational asthma due to his work at Novelis. The ALJ awarded Lainhart

permanent partial disability (“PPD”) benefits with the application of the 3.6 multiplier contained in KRS 342.730(1)(c)1 and (1)(c)3, at the rate of \$386.90 per week. The ALJ also found Lainhart suffered a compensable hearing loss but he is not entitled to income benefits pursuant to the 8% threshold set forth in KRS 342.7305. The ALJ awarded medical benefits for both conditions in accordance with KRS 342.020. Both parties also appeal from the August 13, 2021 Order denying their Petitions for Reconsideration.

On appeal, Novelis argues the ALJ erred in determining Lainhart suffered an injurious exposure during his employment because he failed to identify exposure to a specific occupational hazard. On cross-appeal, Lainhart argues the ALJ erred in basing his award on the lower impairment rating assessed by Novelis’ medical expert. He argues the ALJ failed to provide an adequate analysis or justification to overcome the presumptive weight afforded the University Evaluator’s (“UE”) opinion. We will not address evidence related to the hearing loss claim since that determination was not appealed. We determine the ALJ properly exercised her discretion. We likewise determine her decision is supported by substantial evidence, and a contrary result is not compelled. Therefore, we affirm.

Lainhart filed a Form 102 on May 13, 2020 in Claim Number 2020-00672 alleging he contracted an occupational disease resulting from “chronic exposure to chemicals, dusts & fumes including silica, hot metals including magnesium, manganese, aluminum, organic compounds and paint.” He listed a last injurious exposure date of April 5, 2019, which was the last day he worked for Novelis. In support of the Form 102, Lainhart filed the April 30, 2019 medical

report of his treating nurse practitioner, Donna Isfort, APRN, (“APRN Isfort”) ordering him off work for one month due to “shortness of air and exposure to dust and chemicals.” A follow-up report dated April 30, 2019 from APRN Isfort indicated Lainhart was to remain off work through June 28, 2019.

Lainhart subsequently filed a Form 103 in Claim Number 2020-00989 alleging he sustained an occupational hearing loss due to “chronic exposure to loud noises at work.” He supported that claim with a July 14, 2020 hearing test from Beltone. The claims were consolidated by Order dated November 13, 2020.

Lainhart was born on April 8, 1957 and resides in Irvine, Kentucky. He was deposed on September 29, 2020 and testified via Zoom at the hearing held May 19, 2021. Lainhart completed the 11<sup>th</sup> grade, and later obtained a GED. His first job was at a farm store in the late 1970s. He worked in the construction industry for the next few years, until 1985. Lainhart had a gap in his work history when he first had children, but later sought employment in order to provide insurance for his family. He began working for Novelis at its aluminum recycling plant in Berea, Kentucky, in August 1989, where he worked steadily for nearly 30 years, until April 5, 2019.

Lainhart testified the Novelis plant in Berea brought in used aluminum cans and other types of aluminum scrap from different plants around the country. The aluminum first went through a debaling process. The aluminum next went through a shredder system, then through a decoding system, and eventually into molten metal furnaces. From there, it went to the blasting pit where ingots are cast.

The ingots were then shipped to Logan County, Kentucky to make stock for new cans.

Lainhart worked in the hot metal area during the entirety of his nearly 30-year employment with Novelis. His first role at Novelis was running a melt post, which he did for approximately 24 years. Lainhart testified a normal day involved monitoring equipment and the flow of materials, adding flux to aluminum, skimming impurities of copper and aluminum, and checking alloy to bring the aluminum up to specifications. In 2010, he was temporarily promoted to “hot metal area leader”. This role became permanent in 2011 and he continued working in that position until his last day of work. Although he was in a leadership role, Lainhart was required to perform the basic parts of his prior job, but was also responsible for ensuring the aluminum was “on spec,” and production was maintained. He was no longer just at the melters; he took samples to the lab to determine the ratio of elements in the mix and he applied additives to bring up the specifications to match each beverage producer’s individual “recipe.” He was in charge of ensuring the accuracy of each recipe, overseeing the decoder area, and taking care of the entire melter area.

Lainhart described the hot metal area as being extremely hot, with four melt furnaces each burning roughly 22,000 cubic feet of natural gas per hour. There was an upstairs area called the mezzanine which housed a system that also burned large amounts of natural gas. He testified there was a lot of continuous dust and smoke fumes, and anywhere from four to eight forklift trucks were in the area at a given time emitting diesel fumes. He was in the mezzanine area at least two to three

times per day, but he spent more time there if the equipment broke down. The chemicals he was exposed to in the hot metal area included argon and chlorine, plus fumes from copper, manganese, iron silicon, and magnesium. He was responsible for loading those metals directly into the melter for each batch. He testified respirators were available and he routinely wore one while working.

During his eight-year tenure as hot metal area leader, Lainhart worked a complicated 12-hour swing shift, consisting of “three days on and two [days] off. And by the time you went back, you changed from days to nights. And then before you got off, you got off seven days in a row once a month. And before you got off, you worked four 12-hour days in a row and when you went back, you worked four 12-hour nights in a row. And then you went back to the three on, two off, swinging back and forth.” He testified he earned \$26.00 or \$27.00 per hour when he last worked for Novelis.

Lainhart testified his breathing issues worsened during his last four years at Novelis. Initially, during the off week, his breathing improved after a couple of days. As time went on, however, it took four to five days to improve and it continuously got worse, to the point where he never felt better. He began using inhalers and different medications to help. Lainhart testified he stopped working at the behest of APRN Isfort, who advised he should get away from the fumes. He stated he was eventually unable to function. He also testified that two former co-workers developed breathing issues, and he did not want to end up like them. He testified when he told APRN Isfort he had left his employment with Novelis, she

said it was “a good thing, because if I hadn’t decided that, she would have been coming to see me in the funeral home.”

After Lainhart stopped working, his symptoms improved and his inhaler use decreased, but he still uses it daily. He takes two puffs in the morning and two in the evening. Additionally, the inability to breathe often wakes him up in the middle of the night, requiring the inhaler. He says when he was still working at Novelis, he used the inhaler five to six times a night and five to six times a day without much relief. However, since he stopped work, that has improved. He also uses two or three pillows in bed at night to stay elevated to help him breathe.

Lainhart testified he had no history of childhood asthma and had never smoked or lived with smokers; though on occasion he used smokeless tobacco. He has no pets living in the home but has outside dogs and had worked a “hobby farm” on his land raising 12-15 cows since he was about 15 years old. During the winter, he would put out five or six rolls of hay weekly to feed the cows, but no hay was needed during the summer. Prior to his exposure to the fumes, Lainhart never had problems working the farm; however, he got to the point his lungs no longer cleared up. He described himself as an active outdoor person, but was no longer able to do much. After he left Novelis, he eventually sold the cattle in September 2019. Lainhart testified at the hearing his ability to perform physical activity is extremely diminished and he is unable to lift things, walk any distance or do outdoor activities like he used to. At this point, he limits himself to tinkering in the garden or sitting under the tree in the yard.

Lainhart filed Dr. Erica Gregonis' June 14, 2017 medical report with his Form 102 outlining pulmonary function studies. Spirometry readings from that date indicated moderate obstructive lung disease with no significant bronchodilator response. Lainhart subsequently had a CT-scan of the chest without contrast on September 22, 2017 at Mercy Health. That report indicated a 9mm x 8mm ground glass nodule within the inferior aspect of the right upper lobe ("RUL"). Lainhart was advised to have a follow-up CT-scan within 6-12 months, with a follow-up every two years to confirm stability. Lainhart's repeat CT-scan of February 21, 2019 showed the RUL nodule had not appreciated, but he had interval development of a 2.2x1.1x1.0cm right lower lobe ("RLL") nodule adjacent to the major fissure.

Lainhart submitted the March 4, 2019 medical record of Dr. Siby Saha on follow-up from the lung mass. On his Health Assessment Questionnaire, Lainhart stated he was a non-smoker and listed his medications as Dulera- two puffs 2-4 times a week. He reported a history of "COPD pneumonia, or worsening respiratory status." On exam, Dr. Saha indicated he had personally and independently reviewed the September 2017 and February 2019 CT-scans and radiology images and results. He noted the prior nodules and referred Lainhart for a PET-scan. The March 8, 2019 PET-scan showed a diminishing of the RLL nodule, without hypermetabolic activity, consistent with resolving infection or inflammation; no FDG-avid disease. Lainhart saw Dr. Saha again on March 11, 2019 for a discussion of the PET-scan results. He was advised to return in three months for a repeat chest CT-scan and continued follow-up.

Lainhart also filed the April 23, 2019 UNUM short-term disability claim form signed by APRN Isfort. She indicated a primary diagnosis of COPD and wheezing with a secondary diagnosis of mild persistent asthma with (acute) exacerbation. APRN Isfort opined the condition was work-related and she ordered Lainhart off work for one month. A second UNUM form signed by APRN Isfort on April 30, 2019 extended Lainhart's leave from work another month, stating: "Off work due to shortness of air and exposure to dust and chemicals. No work at this time." As noted above, Lainhart never returned to work after April 5, 2019.

Dr. Bob Moldoveanu, a board-certified pulmonologist, evaluated Lainhart on behalf of the Kentucky Department of Worker's Claims on July 22, 2020. In his August 17, 2020 report, he noted Lainhart was exposed over the past three to four years to inhaled copper, manganese, magnesium, silica, diesel fumes and chlorine gas. He noted Lainhart had an episode of bilateral pneumonia in 2017 wherein the doctor stated he may have asthma. Pulmonary function testing on June 14, 2017 revealed an FEV1 of 81% and FVC of 94% prior to dilators, and FEV1 of 79% and FVC of 97% post-dilators. Lainhart's chest x-ray that date was normal; however, his PET-scan demonstrated mild functional impairment with a maximum oxygen consumption of 69% and indicated Lainhart stopped the test due to shortness of air and fatigue.

Dr. Moldoveanu diagnosed Lainhart with occupational asthma and assessed a 25% whole body impairment with 10-25% permanent partial disability in accordance with the American Medical Association Guides to Evaluation of Permanent Impairment, 5<sup>th</sup> Edition ("AMA Guides"). Dr. Moldoveanu noted



Lainhart had no prior active impairment. He opined Lainhart did not retain the physical capacity to return to his pre-injury work. He further advised Lainhart should avoid contact with irritant fumes, smoke, mold, and organic dusts, as well as excessive heat, high humidity, and cold.

Dr. Moldoveanu testified by deposition on December 20, 2020. At the time he evaluated Lainhart on July 22, 2020, he had not been provided Lainhart's deposition transcript for review, nor had he been provided records from Dr. Chris Meyer, Dr. David Randolph's medical records review, or Dr. Gregonis' records. He also testified it is not common for him to inspect a worksite in his role, and he had not been provided with any information related to ventilation or material safety data sheets regarding Novelis' plant.

Dr. Moldoveanu testified generally spirometric studies, x-rays, and CT-scans appear about the same for both general and occupational asthma. He stated the symptoms and findings of general asthma and occupational asthma may be the same,

the majority of the time you discern occupational asthma by history and by timing, where the patient becomes more short of breath during the ... exposure and following a prolonged exposure. In other words, there – there's a history of exposure, and then it occurs, and then kind of we retroactively attach it to that exposure.

He agreed Lainhart reported seasonal allergies, GERD which was being treated with an H2 blocker, exposure to cows and organic compounds, and the occasional use of smokeless tobacco; however, he testified each of those potential causes for asthma was either already being treated or no longer existed. He stated,

“So generally speaking . . . the way that you differentiate the different exacerbates of asthma is you kind of go – go down, kind of pick them off and see what’s left.”

Dr. Moldoveanu reiterated, “The real difference in how you can identify occupational asthma or work-exacerbated asthma from regular asthma, is just by the timing and by the symptoms by the association because it is very difficult to ... separate one from the other, except by history.” Accordingly, Dr. Moldoveanu testified he stood by his report and diagnosis, despite the existence of other potential causes.

Lainhart also introduced the testimony of Mark Burns (“Burns”), a former maintenance mechanic at Novelis from December 2013 to March 2021. Burns testified the hot metal area where he and Lainhart worked was extremely hot and was the worst area of the plant with respect to dust and smoke. He described climbing the stairs to the mezzanine area as being an intensely hot, dusty environment in which it was difficult to breathe. He described it as “walk[ing] into another world” and being “just awful.” He testified if Ken Troutman (“Troutman”) was not covered in dust after his inspection, then he must not have made it all the way up the stairs to the mezzanine. Burns testified he, too, had developed breathing issues while working at Novelis and would spit up “black stuff” while showering at home after his shift. Burns ultimately left Novelis due to other issues, but also stated he “didn’t want to end up like Randy” Lainhart.

Shane Hibbits (“Hibbits”), the current North American Regional Health and Safety Manager for Novelis, testified at the hearing regarding periodic testing of environmental exposure done at the facility. He stated the testing is not

necessarily done annually, but is based on a schedule which they would consider normal testing. If there was an outage one year, they would do extra testing to cover for that outage. They are required to meet certain exposure levels set by OSHA-permissible exposure limits (“PEL”). Another agency, American Conference of Governmental Industrial Hygienists, is more stringent than OSHA, with which Novelis would also have complied. He testified Novelis had a policy to take corrective action any time it came within 50% of the PELs to avoid overexposure. He stated respirators are required in the hot metal area at times when the area fell within that 50% exposure limit. Hibbits agreed the mezzanine area “from a dust standpoint would be, yes, that would be the worst area in the plant.” He stated he was never made aware of any other Novelis employees lodging claims of COPD or asthma.

Dr. Thomas Jarboe evaluated Lainhart on July 16, 2020 at Novelis’ request. He is a pulmonologist who has been a B-Reader since the mid-1980s. Dr. Jarboe presented his findings in both a narrative report dated August 10, 2020, as well as a Form 108-OD, 2016 Edition dated August 12, 2020. Dr. Jarboe took a history and performed a physical examination. He also administered spirometric testing before and after dilators, resting arterial blood gasses, took a plain chest radiograph, and reviewed Lainhart’s medical records.

Dr. Jarboe noted Lainhart’s job duties at Novelis and the metals to which he was exposed for 30 years. He noted Lainhart did not initially use respirators at work, but eventually those were provided. Lainhart stated he had not reviewed material safety data sheets nor did he have any in his possession. He noted

Lainhart's account of developing "lung issues" over the past 4-5 years, mainly shortness of breath, but with continued wheezing at rest or when lying down. He noted Lainhart treated those symptoms with Dulera and Symbicort, and his symptoms had improved since he had been removed from the chemical environment. Lainhart identified two co-workers, D.J. and S.M., who have worked at Novelis for 30 years and complained about shortness of breath and other similar symptoms. Dr. Jarboe noted Lainhart's medications include cyclobenzaprine, Dulera, Lisinopril, ProAir HFA, and Symbicort. He noted Lainhart only used Dulera as needed and it is unclear whether he is using the other inhalers as prescribed. He classified Lainhart as a never smoker who is not exposed to second-hand smoke.

Pulmonary function testing that day was performed with good and consistent effort. Prior to dilators, FVC was 101% and FEV1 was 83%; following dilators, FVC was 103% and FEV1 was 94%. Dr. Jarboe found the pre-dilator spirogram showed mild airflow obstruction while the post-dilator spirogram showed significant response to bronchodilators and was completely normal without restriction or obstruction. Lung volume testing showed total lung capacity normal at 107%; residual volume mildly increased at 129%. The diffusion capacity was completely normal at 123%. Resting blood gasses were completely normal. Dr. Jarboe obtained and reviewed a single chest x-ray that day. He noted the film was of good quality. His impression of the film showed no evidence of pneumoconiosis and specifically no evidence of a silica-induced lung disease.

Dr. Jarboe diagnosed: 1) occupational asthma- based on the claimant's medical history and demonstration of reversible airway disease on pulmonary

function testing; and 2) essential hypertension – controlled. Dr. Jarboe listed several specific observations that led him to his finding. He stated:

The claimant has established asthma. After a number of years exposure, he developed symptoms of wheezing and shortness of breath. There is no history of any asthmatic like symptoms at any time earlier in his life. The diagnosis is further established by his significant response to bronchodilating agents on pulmonary function testing. An additional finding characteristic of occupationally-induced asthma is his improvement after cessation of exposure to his work environment. The finding of ground glass nodules on the CT scan of September 2017, though nonspecific, suggest airway inflammation that may be seen in asthma. Finally, he was able to identify at least 2 coworkers who have developed very similar illnesses performing essentially the same job as he did with essentially the same exposures.

Next, Dr. Jarboe outlined the potential effects of each of the metals vis-à-vis the condition of asthma and how those symptoms related to Lainhart. He opined,

It is reasonable to conclude that once Mr. Lainhart developed occupational asthma, it has been aggravated by his exposure to diesel fumes. It is my reasoned opinion that Mr. Lainhart has irritant-induced asthma caused by prolonged exposure to these various metals or oxides after heating to extremely high temperatures.

He stated within a reasonable degree of medical certainty Lainhart's condition occurred during the course of his work at Novelis. Dr. Jarboe supported his finding by citing to specific publications. He believes Lainhart has the ability to return to his pre-injury work; however, due to the clear correlation between his asthma and the types of exposures presented in the environment at Novelis, he should avoid exposure to those irritants.

Dr. Jarboe submitted a supplemental report on October 26, 2020 assigning Lainhart an impairment rating of 15% based on the AMA Guides.

Novelis introduced the November 16, 2020 report of Dr. Randolph, who performed a medical record review. Dr. Randolph has, among other credentials, a PhD in Causation Analysis (Epidemiology). Dr. Randolph opined Lainhart's asthma is not work-related. He also stated that neither the opinions of Dr. Moldoveanu nor Dr. Jarboe determining Lainhart has occupational asthma were based upon fact nor science, but merely on Lainhart's personal opinion of exposure. Instead, Dr. Randolph believed external, environmental, or other health factors more likely caused Lainhart's asthma. Dr. Randolph provided a May 5, 2021 supplemental report following his review of the depositions of Troutman and Dr. Moldoveanu. Dr. Randolph indicated none of the information offered in either deposition alters any of the opinions he previously expressed.

Novelis filed multiple x-ray review reports from Dr. Meyer, a Board-certified pulmonologist and B-Reader. Dr. Meyer provided readings for three of Lainhart's prior films and outlined his findings for each of them on separate reports dated October 5, 2020. Dr. Meyer found, "No pleural or parenchymal findings of occupational lung disease." He found Lainhart had clear lungs on both the July 22, 2019 and January 24, 2020 films. For the March 8, 2019 PET-scan, Dr. Meyer interpreted, "No CT findings of occupational lung disease. PET images of the chest are normal." He also noted the ground glass nodule in the RLL had decreased. He opined this is most consistent with resolving aspiration or infection and no CT findings of interstitial lung disease.

Troutman, a certified industrial hygienist, testified by deposition on February 12, 2021. He described his work as being involved specifically with chemical health hazards in the workplace. He primarily goes to factories and conducts sampling of air, radiation, heat or noise, and determines whether or not there is a hazard and, if so, how to resolve it. He testified he conducted a one-day visit on December 11, 2020 to the Berea, Kentucky Novelis plant where Lainhart worked. He met with Hibbits and Mr. Andreesen (no first name provided) there, but did not speak with any of the laborers, team leaders or maintenance men in the hot metal area that day. Troutman testified his inspection lasted approximately two hours, including a walk-through of the hot metal area, as well as looking at furnaces and control rooms, the break rooms, offices, and the general floor area of the plant. He stated he was not provided with any information suggesting other people who had symptoms similar to Lainhart. He stated there was dust on the ground and a little smoke, but found it was a very large, well-ventilated area. He did not collect any air or dust samples from the hot metal area that day. He opined all of the metal exposure levels at the Novelis plant were within safe, normal limits pursuant to OSHA regulations.

A Benefit Review Conference was held on April 7, 2021. As noted above, this appeal concerns only the ALJ's award of benefits for Lainhart's occupational asthma claim. Regarding that condition, the issues preserved include existence of occupational asthma, causation and work-relatedness of any pulmonary disease, benefits pursuant to KRS 342.730, whether Lainhart is entitled to PTD

benefits, and whether the ALJ abused her discretion in basing the award on the impairment rating proffered by Novelis' medical expert instead of the UE.

The ALJ rendered the July 16, 2021 Opinion determining Lainhart met his burden of proving a work-related lung condition caused by injurious exposure. In reaching this determination, the ALJ relied upon the fact that both the UE and Novelis' own medical expert Dr. Jarboe diagnosed Lainhart with occupational asthma. However, the ALJ found Dr. Jarboe adduced substantial evidence to overcome the presumptive weight afforded to the UE's opinion, relying upon the 15% impairment rating he assessed. She stated Novelis provided contradictory evidence to the clinical findings and opinions of the UE with respect to injurious exposure from Troutman, Dr. Randolph and Dr. Meyer, as well as Dr. Jarboe's contrary impairment rating of 15%.

The ALJ explained she found Lainhart's testimony particularly credible and found Dr. Jarboe's opinions most consistent with Lainhart's account of the onset and nature of his pulmonary disease, stating,

Dr. Jarboe adequately demonstrated an understanding of Plaintiff's history of exposure. He provided discussion and explanation of OSHA-regulated toxic metals of aluminum, copper, iron, magnesium, and manganese as well as information on exposure to diesel fumes – all of which were discussed by Mr. Troutman – existing in Defendant's facility.

Dr. Jarboe credibly determined that Plaintiff's asthma was work-related and that workplace exposure to the aforementioned metals and/or fumes caused the disease. Thus, the ALJ finds the opinions of Dr. Jarboe are the most credible and Plaintiff has sustained 15% whole person impairment due to occupational asthma.



The ALJ rejected Lainhart's claim that he is permanently and totally disabled, but determined he is unable to return to his pre-injury work, given his age of 64 with a GED education level. She awarded PPD benefits with the 3.6 multiplier contained in KRS 342.730(1)(c)1 and (1)(c)3, calculated as follows:  $\$1,402.66 \times 66 \frac{2}{3}\% = \$935.11$  reduced to  $\rightarrow \$716.49$  (2019 PPD maximum)  $\times 15\% \times 1.0 \times 3.6 = \$386.90$  per week. She found Novelis is entitled to a credit for the payment of short- and long-term disability benefits, absent any internal offset in the long-term disability plan. She also found Lainhart is not entitled to temporary total disability benefits because he does not meet the statutory requirement. The ALJ also found Lainhart is entitled to reasonable and necessary treatment, both past and future, for the cure and relief of occupational disease pursuant to KRS 342.020.

Both parties filed Petitions for Reconsideration making the same arguments they now raise on appeal. In an Order rendered August 13, 2021, the ALJ overruled the Petitions, stating as follows, *verbatim*:

KRS 342.281 provides that an ALJ is limited on review on petition for reconsideration to correction of errors patently appearing on the face of the award, order or decision. Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Roland, 998 S.W.2d 479, 481 (Ky. 1999). The parties in a worker's compensation claim, however, are entitled to sufficient explanation by the ALJ of the basis for a decision. Id. At 481.

First, with respect to Plaintiff's Petition, the ALJ does not believe Plaintiff points to patent error. The Act does not prohibit the ALJ from rejecting a finding or opinion of a University Evaluator. It only requires the reasons for doing so must be specifically stated. Magic Coal v. Fox, 19 S.W.3d 88, 94-95 (Ky. 2000).

In the Opinion, Plaintiff was found to retain 15% AMA impairment based upon the opinions of Dr. Jarboe. Consistent with the Act and applicable law, the ALJ identified substantial evidence that had been adduced in this matter rebutting the opinions of the University Evaluator. As such, the ALJ had the discretion to weigh the conflicting medical evidence. Fox, 19 S.W.3d at 97. The Opinion indicates that all the evidence was fully considered in this claim.

The ALJ laid out the deposition testimony of the University Evaluator wherein he disclosed data to which he did not have the ability to review in rendering his findings including films taken of Plaintiff. He admitted to the relevance of that data to his findings. Further, the ALJ indicated that Dr. Jarboe's opinions were consistent with Plaintiff's testimony as to his exposure to toxins existing in Defendant's facility and their effect on him. In short, the ALJ considered the arguments set forth by Plaintiff in his Petition and came to the final conclusion that Defendant adduced substantial evidence to overcome the presumptive weight afforded the University Evaluator on the issue. Plaintiff's Petition is a re-argument of the merits. Therefore, Plaintiff's Petition is overruled.

As to Defendant's Petition, the ALJ also does not believe Defendant points to patent errors. In the Opinion, Plaintiff was found to have met his burden to prove injurious exposure caused the occupational disease.

The Opinion identified the statutory definitions and applicable case law with respect to the burden of proof as well as the definitions of occupational disease and injurious exposure under the Act. The Opinion indicates that all of the evidence was fully considered in determining that Plaintiff met his burden to prove injurious exposure based upon the opinions of Dr. Jarboe, one of Defendant's own medical experts, and Plaintiff's testimony.

Consistent with the Kentucky Supreme Court's decision in Miller v Tema Isenmann, Inc., 542 S.W.3d 265 (Ky. 2018), the Opinion identifies the evidence relied upon that demonstrated an injurious exposure as well as the

causal connection between the occupational disease and the conditions under which Plaintiff's work was performed. The Opinion indicates that OSHA-regulated toxic metals of aluminum, copper, iron, magnesium, and manganese as well as diesel fumes existed in Defendant's facility consistent with Plaintiff's testimony and Mr. Troutman's findings. The evidence including Plaintiff's testimony as well as testimony from Mr. Burns and Mr. Hibbits, medical records and reports from various treating and evaluating physicians, and the testimony of Mr. Troutman, led to the finding that Dr. Jarboe's opinions as to injurious exposure and causal connection to the occupational disease were the most credible and persuasive on this issue.

The Opinion sets out the reasoning behind the finding that Plaintiff met his burden of proof to establish injurious exposure to toxic metals and diesel fumes in his employment with Defendant caused the occupational disease under relevant and applicable law. Defendant's Petition on these issues is a re-argument of the merits. Accordingly, Defendant's Petition is overruled.

On appeal, Novelis argues the ALJ erred in finding Lainhart contracted occupational asthma due to injurious exposure sustained while in its employ. Novelis argues the chemical dust and smoke within the hot metal area were at safe levels. Novelis alleges Lainhart failed to provide medical evaluators with critical information that may have affected their diagnoses of occupational asthma, such as the fact that he wore a respirator while working in the hot metal area. Novelis further claims the ALJ erred in overlooking evidence regarding a number of other potential factors that could have contributed to Lainhart's asthma diagnosis, such as organic farm compounds and animals, seasonal allergies, GERD, cardiac issues, and smokeless tobacco use.

As the claimant in a workers' compensation proceeding, Lainhart bore the burden of proving each of the essential elements of his cause of action. *See* KRS 342.0011(1); *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). Since Lainhart was successful in his burden, the question on appeal is whether substantial evidence existed in the record supporting 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 the ALJ, as fact-finder, the sole authority to determine the weight, credibility and substance of the evidence. *AK Steel Corp. v Adkins*, 253 S.W.3d 59 (Ky. 2008). The 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). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. *Magic Coal Co. v. Fox*, 19 S.W.3d 88 (Ky. 2000); *Whittaker v. Rowland*, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. *Id.* In order to reverse the decision of the ALJ, it must be shown there was no

substantial evidence of probative value to support her decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, *supra*. So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, *supra*.

We find substantial evidence supports the ALJ's determination that Lainhart was exposed to toxic metals and fumes while working at Novelis, causing him to develop occupational asthma. The ALJ found Lainhart's testimony "particularly credible with respect to his explanation of exposure that he had endured" in the course of his employment with Novelis for nearly 30 years, as well as the toll it has taken on him. The ALJ found significant the fact his symptoms improved since he stopped working at Novelis. The ALJ also relied on the fact both Dr. Moldoveanu and Novelis' own medical expert, Dr. Jarboe, independently diagnosed Lainhart with occupational asthma. Both experts found Lainhart's prolonged exposure to the chemical dust and smoke while working in the hot metal area caused his asthma. Dr. Jarboe's report laid out in detail the cause and effect of each of the toxic metals to which Lainhart was exposed as it relates to the onset and exacerbation of asthma. The ALJ also was persuaded by the testimony of Burns' account of his own exposures to the toxic substances and conditions at the Novelis facility, which was corroborated by Troutman's findings.

KRS 342.0011(2) states an occupational disease is a disease arising out of and in the course of the employment. KRS 342.0011(3) states an occupational disease is deemed to arise out of the employment:

... if there is apparent to the rational mind, upon consideration of all the circumstances, 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. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;

KRS 342.011(4) defines “injurious exposure” as “that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made.” KRS 342.0011(4) requires only that the exposure “would” independently cause the disease, not that the exposure *did in fact* independently cause the disease. “All that is required ... is that the exposure be such as *could* cause the disease independently of any other cause.” Childers v. Hackney’s Creek Coal Co., 337 S.W.2d 680, 683 (Ky. 1960) (emphasis added)(interpreting identical predecessor statute). The Kentucky Court of Appeals has similarly interpreted that provision as requiring proof the received exposure “would have produced or caused the disease in and of itself regardless of any other exposure.” Mills v. Blake, 734 S.W.2d 494, 496 (Ky. App. 1987).

We find the ALJ appropriately reviewed the evidence. She could reasonably conclude Lainhart contracted occupational asthma while working for Novelis. Because her determination is supported by substantial evidence, her finding that Lainhart contracted compensable occupational asthma while working for Novelis is affirmed.

Regarding Lainhart's cross-appeal, again we find no error. Lainhart argues the ALJ erred in finding Dr. Jarboe's testimony presented substantial evidence to overcome the presumptive weight of the UE, Dr. Moldoveanu. We disagree.

KRS 342.315(2) generally requires affording presumptive weight to the clinical findings and opinions of a UE. An ALJ has the discretion to reject such testimony where it is determined the presumption has been overcome by other evidence and the reasons for doing so are expressly stated within the body of the decision. Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 891 (Ky. 2007); Morrison v. Home Depot, 197 S.W.3d 531, 534 (Ky. 2006); Magic Coal Co. v. Fox, supra. Whether a party overcomes the presumption established pursuant to KRS 342.315(2) is not an issue of law, but rather a question of fact at all times subject to the ALJ's discretion as fact-finder to pick and choose from the evidence. Magic Coal Co. v. Fox, Id.

An ALJ is vested with broad authority to decide questions including the presence or absence of an occupational disease. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). Whether an individual has contracted a work-related injury is an issue for determination within the sound discretion of the ALJ as fact-finder.

Union Underwear Co. v. Scarce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W.2d 565 (Ky. 1969).

We again find the ALJ appropriately reviewed the evidence in reaching her determination, and in rejecting the findings of the UE regarding the appropriate impairment rating. The ALJ enumerated the reasons why she believed Dr. Jarboe's assessment of impairment was the most appropriate in the record. The ALJ properly exercised her authority and provided an adequate explanation for rejecting the impairment rating Dr. Moldoveanu assessed. The ALJ acted within her discretion in determining which evidence to rely upon, and it cannot be said her conclusions are so unreasonable as to compel a contrary result. McCloud v Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The ALJ's determination is supported by substantial evidence, and a contrary result is not compelled; therefore, on this issue, we affirm.

Accordingly, the Opinion, Award and Order rendered on July 16, 2021, and the Order denying both parties' Petition for Reconsideration issued August 13, 2021 by Hon. Tonya M. Clemons, ALJ, are hereby **AFFIRMED**.

ALL CONCUR.



**DISTRIBUTION:**

**COUNSEL FOR NOVELIS CORPORATION:**

**LMS**

HON BONNIE HOSKINS  
PO BOX 24564  
LEXINGTON KY 40524

**COUNSEL FOR RANDALL LAINHART:**

**LMS**

HON MICHAEL THOMAS KUNJOO  
309 NORTH BROADWAY  
LEXINGTON, KY 40508

**ADMINISTRATIVE LAW JUDGE:**

**LMS**

HON TONYA M CLEMONS  
MAYO-UNDERWOOD BLDG  
500 MERO STREET, 3<sup>rd</sup> FLOOR  
FRANKFORT, KY 40601