

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 19, 2021

CLAIM NO. 201973145

PATRICK DURHAM

PETITIONER

VS. **APPEAL FROM HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE**

JOE'S TRANSMISSION
and HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

STIVERS, Member. Patrick Durham (“Durham”) appeals from the October 2, 2020, Opinion and Order, the November 2, 2020, Order, and the November 17, 2020, Order of Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”). The ALJ dismissed Durham’s claim alleging a work-related lumbar disc herniation concluding Durham failed to prove he sustained a work injury as defined by the Workers’ Compensation Act.

On appeal, Durham asserts the ALJ confused the issue of pre-existing active disability with the issue of whether Durham sustained a work-related injury. Further, Durham asserts the ALJ attributed greater weight to her own opinions regarding causation than she did to Durham's treating neurosurgeon, Dr. Jose Arias.

Durham's Form 101 alleges he sustained a work-related lumbar disc herniation on July 10, 2019, while in the employ of Joe's Transmission. The Form 101 indicates the following regarding how the alleged injury occurred: "STRAIN OR INJURY BY, NOC."

Durham was deposed on January 31, 2019. He described the alleged work accident as follows: "We were changing cab mount bushings on a Ford truck. I was standing on a stool on top working a ratchet and the other coworker was underneath the truck working a ratchet also. I went to step down from the stool and then my leg just give [sic] out. It just quit." Durham testified that the stool was about 16 inches in height, and his left leg gave out. He further testified as follows:

Q: Did you fall?

A: Yes. Because the first thing that pops in my head is Dallas asked me what I was doing down there with him.

Q: So you fell all the way to the ground?

A: Yes.

Q: On what body part did you land?

A: It would have been on my left hip because – and that was when I was trying to grab ahold of the grill and everything else on my way down to keep from –

Q: Left hip and left side of your body?

A: Mostly from the hip down because I was still trying to hold onto the front of the truck as I was going. So really nothing up here hit.

Q: Don't say up here, please.

A: Well, from the waist up hit the ground.

Q: Nothing from the waist up hit the ground?

A: Yes. It was mainly just my hip and my left leg.

Durham testified he was not experiencing any back pain before the alleged work-related injury.

At the August 6, 2020, hearing, Durham testified that Dr. Andria Brooks took him off of work from July 2, 2019, through July 8, 2019.¹

Joe's Transmission introduced various medical records of Dr. Brooks. Compelling to the ALJ are the records generated immediately prior to the alleged July 10, 2019, work injury establishing Durham was then experiencing severe low back pain. The July 2, 2019, record reflects Dr. Brooks noted the following history:

Hip Pain. Patrick's condition started on 06/14/2019 and he said: 'A couple of weeks ago he started hurting in his left hip, the pain radiates down to his knee. He is not aware of doing anything that would of caused the pain.' The symptoms appear on the left side. The symptoms are rated as severe. Patrick says the symptoms are burning and radiating pain. Patient's expectations: explanation of my condition, reduce symptoms and resume normal activity. The symptoms radiate to left buttock and left knee. Patrick rates the symptoms at 10. Activity affected level is rated at 9. The symptoms are happening constantly (76 – 100% of the day). Symptoms are getting worse. Nothing works to make the symptoms better. General mobility, lying down and sitting are making the symptoms worse.

¹ Dr. Brooks is a chiropractor.

Upon examination, regarding Durham's low back, Dr. Brooks noted: "Bechterew's is positive bilaterally. Pain level: 8. Both increased pain in his left leg. Ely is positive bilaterally. Pain level: 8. Hibb's is positive bilaterally. Pain level: 8. Nachlas' is positive bilaterally. Pain level: 8." At this appointment, Dr. Brooks diagnosed the following conditions:

1: Segmental and somatic dysfunction of lumbar region (M99.03), 2: Lumbago with sciatica, left side (M54.42), 3: Segmental and somatic dysfunction of pelvic region (M99.05), 4: Segmental and somatic dysfunction of thoracic region (M99.02), 5: Segmental and somatic dysfunction of cervical region (M99.01), 6: Sprain of oth parts of lumbar spine and pelvis, init encntr (S33.8XXA), 7: Pain in thoracic spine (M54.6), 8: Cervicalgia (M54.2).

Dr. Brooks listed Durham's condition as "guarded" and prognosis was "fair."

Dr. Brooks' July 3, 2019, record indicates Durham's pain level was still an eight out of ten. On July 8, 2019, two days before the alleged work-related injury, Dr. Brooks noted Durham was still suffering from a pain level of eight. Upon palpation, Dr. Brooks noted the following: "tenderness was found in left T3, T6, L5, S1; right T10, L2. Intensity: Severe. Grading: 8."

Joe's Transmission filed Dr. Thomas O'Brien's May 5, 2020, Independent Medical Evaluation ("IME") report. After performing a physical examination and conducting an extensive medical records review, Dr. O'Brien opined, in relevant part, as follows:

Mr. Durham had been actively treating with Chiropractor Brooks for the same complaints of left-sided low back pain and left lumbar radiculopathy prior to July 10, 2019. The notes from a chiropractor, Brooks

indicate that Mr. Durham began experiencing left-sided low back pain and left lumbar radiculopathy in June 2019. The chiropractic notes clearly indicate that there is no specific traumatic event or incident. There is same history of a lack of any inciting event or incident that provided to chiropractor, Brooks both before and after the 07/10/2019 work activities.

Prior to 07/10/2019, Mr. Durham's symptoms of left-sided low back pain and left leg symptoms were actually worsening. Mr. Durham treated with chiropractor, Brooks on 07/02, 07/03 and 07/08/2019. During the week prior to 07/10/2020, he described the worsening intractable symptoms that were present constantly. The days prior to 07/10/2020, Mr. Durham was describing the hallmark characteristic cardinal symptoms of an idiopathic L3-L4 disc herniation – he had anterior thigh pain symptoms radiating from the left buttock to the level of left knee. Mr. Durham clearly described these symptoms and dated them to June 2019. His symptoms were progressing on 07/2, 07/03, and 07/8/2019. Mr. Durham lowered himself to the ground at work would be consistent with a manifestation of this preexisting condition for which he was actively treating with chiropractor, Brooks prior to 07/10/2020. The work events described did not cause the disc herniation. He is already having left-sided lumbar radicular symptoms in L3 and L4 distribution prior to 07/10/2020.

Dr. O'Brien's report reflects the following pertinent questions and

answers:

1. Given the history as reflected above along with the information gleaned as a result of your examination, what do you believe to be the diagnosis (es) for the effects of the alleged July 10, 2019 injury to Mr. Durham's low back? What degree of permanent impairment, if any, do you believe he retains in accordance with the Fifth Edition of the AMA Guides for the low back? How much of that impairment rating, if any, is directly related to the July 10, 2019 alleged injury?

Response: Patrick Durham is a 48-year-old male who has a diagnosis of chronic back pain due to multilevel

lumbar degenerative disc disease and lumbar radiculopathy due to an idiopathic L3-L4 disc herniation. Additional comorbidities playing a role in Mr. Durham's nonwork-related back condition include a decades' long history of tobacco abuse which is resulted in more rapid aggressive degeneration of the lumbar intervertebral disc.

Mr. Durham did not sustain a musculoskeletal injury on July 10, 2019. Mr. Durham has been actively treating for progressive crescendo intractable back and left leg pain and left lumbar radiculopathy in the days just prior to 07/10/2019. Mr. Durham's symptoms involving the same complaints of back pain and left leg pain after July 10, 2019 representing manifestation of his preexisting nonwork related personal health condition.

Mr. Durham retains a 0% permanent partial impairment as it relates to the work events of July 10, 2019. (Mr. Durham did not sustain a musculoskeletal injury) [sic] prior to July 10, 2019. Mr. Durham had an active progressive lumbar condition (lumbar degenerative disc disease, lumbar radiculopathy, and idiopathic left L3-L4 disc herniation). Prior to July 10, 2019, Mr. Durham retained a 10% permanent partial impairment to the whole person using the AMA Guidelines to the Evaluation of Permanent Impairment, Fifth Edition (DRE category III). Following Dr. Arias' 07/20/2019 [sic] surgical procedure, Mr. Durham retains a same 10% permanent partial impairment to the whole person. The surgical procedure improved these pain symptoms. Mr. Durham continues to have some symptoms of left-sided L3/L4 radiculopathy and low back pain due to degenerative disc disease.

Dr. O'Brien opined Durham reached maximum medical improvement four to six months after the January 21, 2020, discectomy performed by Dr. Arias.

The October 2, 2020, Opinion and Order contains the following findings and fact and conclusions of law which are set forth *verbatim*:

Injury as defined by the Act

After reviewing the evidence, this ALJ finds Durham did not sustain a work injury on July 10, 2019, as alleged. Rather, the evidence indicates Durham suffered from a pre-existing, active condition immediately before the work accident. Thus, Durham's claim is dismissed with prejudice.

The treatment records indicate Durham's low back pain began on June 14, 2019 with no known injury. This is what the contemporaneous treatment records indicate and this is what the ALJ finds.

It is clear Durham suffered from a significant lumbar condition with radiating symptoms prior to the work accident. On July 2, 2019, Dr. Brooks restricted him from working for one week. Durham returned to work on July 8, 2019 but continued to seek chiropractic treatment. On July 8, 2019, he rated his symptoms at a 10. Furthermore, he reported the symptoms were constant. Importantly, he noted the symptoms were getting worse. This all prompted Dr. Brooks to diagnose left lumbago and sciatica. Thus, the treatment records illustrate a significant and ongoing lumbar condition with radicular complaints. These treatment records lend credence to Dr. O'Brien's opinion that Durham presented with hallmark signs of a herniation in the week and days prior to the work 8 accident. As such, these treatment records support a finding that Durham's lumbar condition is not work-related.

Durham testified he fell on July 10, 2019. He also testified his condition improved prior to July 10, 2019. However, the treatment records do not support his testimony and are detrimental to his credibility.

Dr. Arias felt the work accident likely caused Durham's disc herniation. He characterized the work incident as a dramatic event. The ALJ reviewed the video footage of the work incident, but she was not convinced it portrayed a dramatic or traumatic event. Certainly, something happened as Durham stepped down from the stool but he did not sustain a full-fledged fall. Rather, he held on to the front of the truck and slid down to the ground. This ALJ is simply not convinced this work incident caused Durham's disc herniation in light of his

prior treatment records in the days leading up to the work accident.

On October 14, 2020, Durham filed an “Order Granting Petition For Reconsideration.” The proposed Order reads as follows:

This matter came before the Administrative Law Judge(ALJ) upon the petition for reconsideration of the Plaintiff, Patrick Durham, pursuant to KRS 342.033 and 803 KAR 25:010, Sect. 20 of the Rules and Regulations of the Workers’ Compensation Board.

The petition is granted and the ALJ shall make the following findings:

1. The ALJ's Opinion conflates the issues of pre-existing active disability (the defendant's burden to prove) and the issue of whether Mr. Durham sustained a work-related injury that caused the herniation. The ALJ must distinguish these issues and make appropriate findings.
2. The ALJ substitutes her opinion, regarding the severity of an obvious fall the plaintiff sustained. The ALJ must rely on a medical opinion to establish causation or the absence of causation.
3. Should the ALJ has [sic] determine that the plaintiff suffered from a pre-existing active impairment – then she must determine if the pre-existing impairment supports a finding of permanent partial disability (PPD) (KRS 342.730(1)(b)). The ALJ must also determine what degree of PPD Mr. Durham suffered from at the time of his work injury. The ALJ must specify the source for this finding and it must be made in accordance with the AMA Guides to the Evaluation of Permanent impairment, Fifth Ed. The ALJ may rely on Dr. O'Brien for this finding but she needs to specify that she relies on this opinion and explain what makes this medical opinion more persuasive.

A Petition for Reconsideration was not attached to the proposed Order.

In the November 2, 2020, Order, the ALJ set forth the following

findings:

This matter comes before this Administrative Law Judge (“ALJ”) following Plaintiff’s filing of an “Order Granting Petition For Reconsideration.” This does not appear to be a petition for reconsideration. Rather, it appears to be the order attached to the petition. Regardless, this ALJ will address Plaintiff’s arguments.

First, Plaintiff asserts this ALJ conflates the issues of pre-existing active disability and whether Plaintiff sustained a work-related injury that caused a herniation. Secondly, Plaintiff argues this ALJ substitutes her opinion regarding the severity of Plaintiff’s fall. Plaintiff maintains the ALJ must rely on a medical opinion to establish causation or the absence of causation. Lastly, Plaintiff essentially requests additional findings regarding the degree of permanent partial disability Plaintiff suffered from prior to the work injury.

After reviewing the evidence, this ALJ found Plaintiff did not sustain a work-related injury. She cited and explained Plaintiff was undergoing treatment in the days and weeks before the work accident for significant lumbar symptoms. She concluded the treatment records illustrated a significant and ongoing lumbar condition with radicular complaints. This ALJ further concluded these treatment records supported Dr. O’Brien’s opinion that the work accident did not causation Plaintiff’s herniation. To be clear, this ALJ was not convinced Plaintiff’s lumbar symptoms/condition were related to the work accident in light of his significant treatment in the weeks leading up to the work accident. Thus, she was not convinced Plaintiff sustained a work injury as a result of the work accident.

This ALJ reviewed the video footage of the fall. Dr. O’Brien and Dr. Arias also reviewed this footage. Dr. O’Brien was not convinced Plaintiff sustained an injury as a result of this fall. This ALJ described and considered the events shown during this footage and set forth her reasoning for why she relied on Dr. O’Brien’s opinions.

This ALJ found Plaintiff did not sustain a work-related lumbar injury. That finding renders all other issues moot.

After reviewing this matter, and the ALJ being in all ways sufficiently advised, it is hereby ordered as follows:

Plaintiff's petition for reconsideration is over-ruled.

On November 3, 2020, Durham filed a "Petition for Reconsideration" asserting the same arguments he now makes on appeal.

On that same date, Durham filed a "Motion to Alter, Amend or Vacate Order Overruling Petition For Reconsideration or In the Alternative Motion To Supplement The Petition For Reconsideration." In this Motion, Durham asserted as follows:

On November 14, 2020, the Plaintiff, Patrick Durham, pursuant to KRS 342.033 and 803 KAR 25:010, Sect. 20 of the Rules and Regulations of the Workers' Compensation Board, filed a petition for reconsideration. The LMS docket reflects that the plaintiff filed a petition to reconsider.

On November 2, 2020, the Administrative Law Judge, (ALJ) entered this order.

"This matter comes before this Administrative Law Judge ("ALJ") following Plaintiff's filing of an "Order Granting Petition For Reconsideration." This does not appear to be a petition for reconsideration. Rather, it appears to be the order attached to the petition. Regardless, this ALJ will address Plaintiff's arguments." *Page one of ALJ order denying the Plaintiff's petition for reconsideration.*

Counsel for the Plaintiff filed the petition for reconsideration and the entry is reflected on the LMS docket as "petition for reconsideration". It was not until counsel received the ALJ's order overruling the petition that counsel was aware that, for whatever reason, the actual petition to reconsider was not uploaded.

Counsel states that to the best of his knowledge, the actual petition was timely filed. While counsel cannot explain why only the order was uploaded to the LMS system, he was not aware until the judge's order that the petition itself had not been uploaded.

Counsel attaches the petition for reconsideration as it was ready to file on November 14, 2020. The petition addresses the issues at length with ample reference to the record and ample citation of authority. It would be unfair to the Plaintiff not to have his arguments considered by the ALJ. It would be unfair to the ALJ to make these arguments on appeal without hearing, in detail, the Plaintiff's reasons for asking for additional findings.

Counsel attaches to this motion as an exhibit, his petition for reconsideration.

Wherefore counsel moves the ALJ to vacate the order overruling the Petition to reconsider and allow the Plaintiff to file the petition for reconsideration.

In the November 17, 2020, Order, the ALJ held as follows:

This matter comes before this Administrative Law Judge ("ALJ") upon Plaintiff's petition for reconsideration and motion to alter, amend or vacate order over-ruling petition for reconsideration or in the alternative to supplement the petition for reconsideration. This ALJ previously reviewed this matter upon on petition. This ALJ reviewed the matter once again and is not inclined to disturb her previous findings or conclusions. This ALJ is not convinced Plaintiff has presented any patent errors. Rather, Plaintiff has re-argued the merits of his claim. After reviewing this matter, and the ALJ being in all ways sufficiently advised, it is hereby ordered as follows:

Plaintiff's petition for reconsideration and motion to amend, alter, or vacate is over-ruled.

As an initial matter, we emphasize that this Board will not rule on whether Durham timely filed a Petition for Reconsideration. While Joe's Transmission questioned the adequacy of Durham's October 14, 2020, "Order

Granting Petition For Reconsideration” in its October 21, 2020, response to Durham’s proposed order and in its brief to this Board, it does not raise this issue on appeal. Further, Joe’s Transmission failed to file any objection to Durham’s November 3, 2020, filings, one of which Durham has asserted is his *actual* Petition for Reconsideration which should have been uploaded to the Litigation Management System at the same time as his October 14, 2020, proposed order but somehow was not. Significantly, we note the ALJ treated Durham’s October 14, 2020, “Order Granting Petition For Reconsideration” as a Petition for Reconsideration by ruling on it in her November 2, 2020, Order. We also note that the October 14, 2020, “Order Granting Petition For Reconsideration” does, in fact, list Durham’s arguments that he raises on appeal albeit without fully developing them. The ALJ also ruled upon Durham’s November 3, 2020, filings via her November 17, 2020, Order, and these filings clearly relate back to Durham’s October 14, 2020, “Order Granting Petition For Reconsideration” and the ALJ’s November 2, 2020, Order. We will not disturb the ALJ’s treatment of Durham’s filings. That said, the issues of whether Durham timely filed a Petition for Reconsideration and an appeal does not alter our rulings herein.

Durham first contends the ALJ confused the issue of pre-existing active disability with the issue of whether Durham sustained a work-related injury. We disagree and affirm.

As the claimant in a workers’ compensation proceeding, Durham had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Durham was unsuccessful in that

burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). “Compelling evidence” is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ’s decision is limited to a determination of whether the findings made by the ALJ 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).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). 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). 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). 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, 998 S.W.2d 479, 481 (Ky. 1999). 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, 708 S.W.2d 641, 643 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, *supra*. 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, *supra*.

The ALJ demonstrated an adequate understanding of the applicable law and facts in reaching her conclusion that Durham did not suffer from a work-related injury on July 10, 2019, but instead had a pre-existing active lumbar spine condition at the time of the alleged work incident. In reaching her conclusion, the ALJ relied upon Dr. Brooks' treatment records and Dr. O'Brien's May 5, 2020, IME report.

Dr. Brooks' records pre-dating the alleged July 10, 2019, work-related injury reveal Durham was experiencing significant active lumbar back pain immediately prior to the July 10, 2019, incident. Specifically, the records dated July 2, 3, and 8, 2019, reflect Durham's low back pain was consistently remaining at a level eight out of ten.

In Dr. O'Brien's May 5, 2020, IME report, he described the symptomatic back pain Durham was experiencing immediately prior to the July 10,

2019, incident at work. As previously noted, after reviewing the medical records of Dr. Brooks, Dr. O'Brien opined as follows: "Prior to 07/10/2019, Mr. Durham's symptoms of left-sided low back pain and left leg symptoms were **actually worsening**....During the week prior to 07/10/2019, he described the **worsening intractable symptoms that were present constantly**." (Emphasis added). Dr. O'Brien ultimately concluded that Durham had an "**active progressive lumbar condition** (lumbar degenerative disc disease, lumbar radiculopathy, and idiopathic left L3-L4 disc herniation)." (Emphasis added). Dr. O'Brien further assessed a 10% whole person impairment rating for Durham's lumbar condition immediately preceding the July 10, 2019, work incident. *Importantly, he assessed a 0% whole person impairment stemming from the work incident transpiring on July 10, 2019.*

The ALJ, as was within her discretion, relied upon Dr. Brooks' medical records and Dr. O'Brien's opinions in concluding Durham did not sustain a work-related injury on July 10, 2019. Rather, she concluded Durham suffered from a pre-existing active lumbar spine condition immediately prior to the July 10, 2019, work incident. Dr. Brooks' records and Dr. O'Brien's opinions comprise substantial evidence supporting the ALJ's ultimate conclusion. Since the ALJ's determination is supported by substantial evidence, we must affirm.

Next, Durham asserts the ALJ gave her own opinion as to causation greater weight than the opinions of Dr. Arias, Durham's treating neurosurgeon. We disagree.

We are aware the record contains medical opinions which support a finding Durham sustained a work-related injury on July 10, 2019. Dr. Arias,

Durham's treating physician, proffered such an opinion. Nonetheless, the ALJ had the discretion to sift through the medical evidence and rely upon the evidence she deemed to be most credible. Long recognized is the principle that within the context of a workers' compensation claim, KRS 342.285 grants an ALJ the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, supra. Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, in this case Dr. Arias' opinions, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., supra. Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, supra.

Here, based upon Dr. O'Brien's opinions and Dr. Brooks' medical records, the ALJ concluded Durham did not sustain a work-related injury on July 10, 2019, but instead suffered from a pre-existing active lumbar spine condition immediately prior to the alleged work incident. Nothing in the October 2, 2020, Opinion and Order, November 2, 2020, Order, or the November 17, 2020, Order suggests the ALJ expressed personal opinions regarding causation. Rather, the ALJ afforded greater weight to Dr. O'Brien's opinions than the opinions of Dr. Arias, which is well within her discretion. If "the physicians in a case genuinely express medically sound, but differing opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). This is precisely what transpired in the case *sub judice*, and we will not disturb the ALJ's exercise of discretion. On this issue, we affirm.

Concerning all issues raised on appeal, the October 2, 2020, Opinion and Order, the November 2, 2020, Order, and the November 17, 2020, Order are **AFFIRMED.**

ALL CONCUR.

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