

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 10, 2020

CLAIM NO. 2019-00686

PIKE COUNTY BOARD OF EDUCATION

PETITIONER

VS.

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

TINA PINION AND
HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, AND REMANDING

* * * * *

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

ALVEY, Chairman. Pike County Board of Education (“Pike County”) appeals from the Opinion, Award, and Order rendered January 14, 2020 by Hon. R. Roland Case, Administrative Law Judge (“ALJ”). The ALJ awarded Tina Pinion (“Pinion”) temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits for a low back injury she sustained on

December 18, 2018. Pike County also appeals from the January 30, 2020 Order on petition for reconsideration.

On appeal, Pike County argues the ALJ erred as a matter of law by awarding TTD benefits from December 18, 2018 through February 18, 2019. It notes no physician took Pinion off work or restricted her work activities due to her work injuries, and she continued to receive her salary during this time. It also notes Pinion was off work beginning January 11, 2019 because of her intervening brain surgery, unrelated to the work injury. We affirm in part, however we vacate the ALJ's analysis regarding the award of TTD benefits. While the ALJ found when TTD benefits would terminate, he failed to provide the necessary analysis regarding when such benefits should begin. We additionally note the ALJ failed to take into account KRS 342.730(7) in assessing TTD benefits, or credit for salary Pinion received. We remand for additional findings and a determination addressing whether Pinion is entitled to TTD benefits based solely on the December 18, 2018 work injury, and the basis for any such award. If the ALJ determines Pinion is entitled to an award of TTD benefits, he must determine whether Pike County is entitled to a credit for Pinion's earnings during such period.

Pinion filed a Form 101 alleging she sustained multiple injuries when she fell down concrete steps at Belfry Elementary School on December 18, 2018. The first report of injury indicates Pinion complained of back and hip pain due to the fall. Pike County subsequently filed a medical dispute, challenging requests for a prescription of Neurontin, a lumbar MRI, and physical therapy, ordered by Dr. Vellaiappan Somasundaram ("Dr. Soma"). In support of the medical dispute, Pike

County filed Dr. Neil Gupta's June 7, 2019 utilization review report. Dr. Gupta opined the challenged treatments were not medically necessary for Pinion's December 18, 2018 work injury.

Pinion testified by deposition on September 5, 2019, and at the final hearing held December 2, 2019. Pinion worked for Pike County as a teacher for 23 years. She began working as a kindergarten teacher at Belfry Elementary in 1993 or 1994. She later became the Gifted and Talented Coordinator, a position she held until her work injury. Pinion testified she was required to stand for long periods, traverse steps, lift children, bend, stoop, and move school tables and chairs.

Pinion acknowledged that prior to her accident, she experienced low back pain for which she sought treatment from her primary care physician, Dr. Soma. Dr. Soma prescribed medication, but did not restrict her activity, allowing Pinion to work her normal job. Immediately prior to her work injury, Dr. Soma prescribed Tramadol, Cyclobenzaprine, and Naproxen.

Pinion testified that on Tuesday, December 18, 2018, she fell down concrete steps while performing bus duty, injuring her low back and left hip. On the date of her accident, Pinion reported her injury and went to Tug Valley ARH where she had x-rays of her low back and hip. Pinion testified she attempted to work the rest of the week, but left early due to her pain. Christmas break began on Thursday, December 20, 2018, and continued through January 1, 2019. Pinion worked a full day on Wednesday, January 2, 2019, but was "in misery." She worked a partial day on January 3, 2019.

Pinion did not work on January 4, 2019, and sought treatment with Dr. Soma because she was “so sick.” Pinion testified that Dr. Soma wanted to restrict her activity, but she wished to return to work. She testified she was miserable. There is no evidence establishing restrictions were ever imposed for the injuries she sustained in the fall. Pinion stated she could not sleep, lie down, or sit up due to pain and burning sensations in her low back, hip, and head. She also stated her medications were not providing any relief.

At the hearing, Pinion testified she did not work on Monday, January 7, 2019. She attempted to work on Tuesday and Wednesday, but left early both days. Pinion’s last day of work was Thursday, January 10, 2019, and she has not returned since. She sought treatment with Dr. Soma on January 10, 2019. She reiterated, “I was just sick all over. The hip, the back, the leg, the head. I hadn’t slept in six nights. I was so - - my back and my hip and everything was - - - it was just so much pain, it was incredible, it was unbearable. And I went in and I told him that I was so sick that I just couldn’t manage, I didn’t know what I was going to do.”

Pinion testified she went to the emergency room on January 11, 2019, and a brain CT-scan performed due to her headaches demonstrated a meningioma. Dr. Densler (first name not provided) performed brain surgery to remove the tumor on January 15, 2019. There is no evidence, nor is there an allegation that the tumor, or ensuing brain surgery were work-related. Pinion was discharged from the hospital a week after the surgery and placed on bedrest for approximately five months. Pinion has continued residuals from the tumor and brain surgery, including

blindness in her right eye, other vision and balance difficulties, nausea, and headaches. Pinion continues to treat with a neurosurgeon for her head issues.

Pinion testified her low back and left hip problems “took a back seat” to her brain tumor and surgery. However, she indicated her current low back and left hip pain is far more severe than she experienced prior to the fall, and rendered her unable to return to work. Pinion has continuous low back pain and tingling radiating down her left leg. She is unable to sit, stand, or walk for long periods without experiencing symptoms, and she has difficulty with navigating steps. Pinion continues to treat with Dr. Soma for low back and left hip symptoms. Dr. Soma has increased her prescription for Tramadol, a muscle relaxer, and Naproxen. The Workers’ Compensation insurer denied Dr. Soma’s request for a lumbar MRI, physical therapy, and a prescription for Neurontin.

Pinion testified she is unable to return to her teaching duties due to her back pain, difficulty with steps, and inability to stand for long periods. Pinion receives teacher’s disability retirement benefits based upon a combination of her low back condition and the meningioma.

Both parties filed Dr. Soma’s records from January 2014 to September 2019. Prior to the work injury, Dr. Soma treated Pinion’s stress fracture of the distal tibia on several occasions in 2014, and he prescribed Tramadol in May 2014. Pinion complained of left hip pain on three occasions in 2015. Dr. Soma diagnosed Pinion with bursitis, left hip pain, and lumbago, for which he prescribed Tramadol and Naproxen. Pinion consistently complained of low back pain radiating into both legs from May 2015 to October 2017. Dr. Soma diagnosed lumbago, as well as thoracic

and lumbosacral neuritis or radiculitis for which he prescribed Tramadol and Naproxen.

On December 18, 2018, Pinion called Dr. Soma reporting her fall at work. He ordered low back and bilateral hip x-rays. The lumbar x-ray demonstrated multilevel degenerative disc disease most marked at the L2-L4 and L4-L5 levels; lumbar dextroscoliosis; and no acute compression fracture, spondylolysis or spondylolisthesis. The hip x-ray demonstrated no acute fracture or dislocation. He noted severe degenerative changes in the lower lumbar spine, and to a lesser extent, at both hips. Pinion returned to Dr. Soma on January 4, 2019 complaining of low back and left hip pain due to the December 18, 2018 fall. Dr. Soma diagnosed lumbago and left hip pain. He increased the dosage of Tramadol, and prescribed Zanaflex and Ibuprofen. He noted, "Patient can continue to work." On January 10, 2019, Pinion presented with a headache of over five days duration, and dizziness for which Dr. Soma ordered a CT scan of the head. Following her brain surgery, Pinion returned to Dr. Soma for treatment of her low back and hip complaints in March 2019. Since that time, Dr. Soma has diagnosed Pinion with low back and left hip pain. He prescribed Tramadol, Zanaflex, and Naproxen. He also ordered physical therapy and a lumbar MRI.

Pinion filed Dr. David Muffly's May 23, 2019 report and Form 107-I. He noted the December 18, 2018 fall and treatment for the meningioma. Dr. Muffly noted Pinion worked after the fall until January 10, 2019. He diagnosed Pinion with "Chronic lumbar sprain and contusion left hip due related to the 12-18-2018 work injury. Exacerbation of pre-existing advanced lumbar degenerative disc disease/

advanced lumbar spondylosis. Chronic low back pain referred into the left leg.” Dr. Muffly assessed an 8% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. Dr. Muffly restricted Pinion to avoid bending and stooping, no lifting over fifteen pounds, and frequent position changes every thirty minutes. He opined Pinion is unable to return to her previous occupation. He determined Pinion reached maximum medical improvement (“MMI”) on May 23, 2019.

In a supplemental report dated September 24, 2019, Dr. Muffly noted he reviewed the records for Pinion’s treatment prior to the December 18, 2018 work injury. He apportioned 2% of the impairment rating to a pre-existing, active condition, and 6% to the work injury.

Pike County filed Dr. Christopher Stephens’ October 16, 2019 report. Dr. Stephens noted the December 18, 2018 work injury. He also noted Pinion returned to her regular job after the winter break for approximately one week, but stopped working due to severe headaches. He noted the brain surgery and long period of recovery. Dr. Stephens diagnosed an exacerbation of chronic low back and left hip pain, with no evidence of permanent structural injury. He opined Pinion had a pre-existing, active condition in her lumbar spine and left hip warranting a 6% impairment rating. Dr. Stephens opined Pinion did not sustain a permanent injury to her lumbar spine due to the December 18, 2018 accident. Rather, the accident resulted in a temporary exacerbation of her symptoms. Dr. Stephens opined Pinion’s inability to work is due solely to the residual visual and balance disturbances from the brain surgery. Had the meningioma not occurred, Dr. Stephens believed Pinion

would still be working as a teacher. He assigned no restrictions based upon Pinion's lumbar condition due to the December 18, 2018 fall. He opined Pinion continues to have a 6% impairment rating, and found no evidence that her impairment rating or her symptoms have worsened since the fall at work. Dr. Stephens opined Pinion attained MMI on February 18, 2019.

The ALJ rendered his opinion on January 14, 2020, finding the December 18, 2018 work injury resulted in a permanent injury warranting a 6% impairment rating assessed by Dr. Muffly. The ALJ determined Pinion does not retain the physical capacity to return to her former work performed at the time of her injury. The ALJ found Pinion is not permanently totally disabled, and she is entitled to an enhancement of her award of PPD benefits by the 3.4 multiplier contained in KRS 342.730(1)(c)1. The ALJ resolved the medical dispute in Pinion's favor.

The ALJ awarded TTD benefits from December 18, 2018 through February 18, 2019, PPD benefits, and medical benefits. Regarding TTD benefits, the ALJ specifically stated as follows:

Temporary total disability is defined in KRS 342.001(11)(a) as the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement which would permit a return to employment. The Courts have noted that in order for temporary total disability benefits to be payable the plaintiff must not have reached maximum medical improvement and must not have reached a level of improvement that would permit a return to employment. Magellan Health v. Helms, 140 S.W.2nd 579 (Ky. App. 2004).

The defendant paid no temporary total disability benefits to the plaintiff. The ALJ has reviewed the medical evidence concerning the date of maximum medical improvement. Dr. Stephens felt the plaintiff reached

maximum medical improvement on February 18, 2019. In view of the plaintiff's testimony and the opinion of Dr. Stephens the ALJ is persuaded that the plaintiff reached maximum medical improvement as of February 18, 2019.

Therefore, the appropriate award of temporary total disability benefits will be entered from the date of the injury December 18, 2018 through February 18, 2019 the date on which Dr. Stephens found the plaintiff to have reached maximum medical improvement.

Based upon the plaintiff's average weekly wage of \$1,009.32 the appropriate temporary total disability rate is \$672.88 per week. Therefore, the plaintiff will be entitled to temporary total disability benefits from December 18, 2018 to February 18, 2019 at the rate of \$672.88 per week with the defendant employer taking credit for any such compensation heretofore paid.

Pike County filed a petition for reconsideration requesting the ALJ correct typographical errors contained in his decision. Pike County also raised the same arguments regarding entitlement to TTD benefits that it now asserts in its appeal to this Board. The ALJ sustained Pike County's petition, in part, and corrected the errors contained in the order. In all other aspects, the ALJ overruled its petition, stating verbatim as follows:

Concerning the issue of the award of temporary total, the ALJ has reviewed the evidence relative thereto. The ALJ in the original Opinion discussed the issue of temporary total on Pages 7 and 8 of the Opinion. The ALJ accepted the MMI date assigned by Dr. Stephens of February 18, 2019. The evidence shows the Plaintiff tried to go back to work and could not do so. The award of temporary total is supported by the credible testimony of the Plaintiff and the opinion as to MMI of Dr. Stephens. Whether the Plaintiff continued to receive her salary does not preclude the Plaintiff from being awarded temporary total disability. The employer may or may not be entitled to repayment of temporary total

based on contract. Generally, workers' compensation benefits are not taxable while the salary continuation would be taxable. Even if pursuant to contract the benefits have to be repaid, the claimant could benefit from the tax savings. The facts before the ALJ establish the Plaintiff was not working and did not reach MMI until February 18, 2019 and, hence, the award of temporary total disability is appropriate. The Petition for Reconsideration relative thereto is overruled.

On appeal, Pike County argues the ALJ erred as a matter of law in awarding TTD benefits. While Pike County does not challenge the finding Pinion reached MMI on February 18, 2019, it argues that determination alone does not trigger the entitlement to TTD benefits. It notes Pinion was not taken off work by a physician for her low back and left hip conditions between her fall at work and February 18, 2019. It notes Dr. Soma stated on January 4, 2019 that she could continue to work. It also notes Pinion continued to receive her salary. Pike County argues Pinion was off work beginning January 11, 2019 due to the intervening and unrelated brain surgery, which does not trigger entitlement to TTD benefits. Relying upon Trane Commercial Systems v. Tipton, 481 S.W.3d 800 (Ky. 2016), Pike County argues Pinion is not entitled to TTD benefits while she was receiving her normal wages and was not restricted from work by a physician. Such an award allows for double dipping in contravention of the purpose of the Act. Pike County argues Tipton requires, at a bare minimum, "specific evidence-based reasons why an award of TTD benefits in addition to the employee's wages would forward" the purpose of the Act, rather than simply stating Dr. Stephens found Pinion reached MMI as of February 18, 2019.

Pinion had the burden of proving each of the essential elements of her cause of action, including entitlement to TTD benefits. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since she was successful in her burden, the question on appeal is whether substantial evidence of record supports 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). 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). Although a party may note evidence supporting a different outcome than reached by an ALJ, this 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).

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).

TTD is statutorily defined in KRS 342.0011(11)(a) as “the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment[.]” In Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed that until MMI is achieved, an employee is entitled to TTD benefits as long as he remains disabled from his customary work or the work he was performing at the time of the injury. In Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000), the Kentucky Supreme Court explained, “It would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but not the type that is customary or that he was performing at the time of his injury.” Thus, a release “to perform minimal work” does not constitute a “return to work” for purposes of KRS 342.0011(11)(a).

In Livingood v. Transfreight, LLC, et, al., 467 S.W.3d 249 (Ky. 2015), the Supreme Court declined to hold a claimant is entitled to TTD benefits so long as he or she is unable to perform the work performed at the time of the injury. The Court stated, “... we reiterate today, Wise does not ‘stand for the principle that workers who are unable to perform their customary work after an injury are always

entitled to TTD.” Id. at 254. Most recently in Trane Commercial Systems v. Tipton, supra, the Supreme Court clarified when TTD benefits are appropriate in cases where the employee returns to modified duty. The Court stated:

We take this opportunity to further delineate our holding in *Livingood*, and to clarify what standards the ALJs should apply to determine if an employee "has not reached a level of improvement that would permit a return to employment." KRS 342.0011(11)(a). Initially, we reiterate that "[t]he purpose for awarding income benefits such as TTD is to compensate workers for income that is lost due to an injury, thereby enabling them to provide the necessities of life for themselves and their dependents." *Double L Const., Inc.*, 182 S.W.3d at 514. Next, we note that, once an injured employee reaches MMI that employee is no longer entitled to TTD benefits. Therefore, the following only applies to those employees who have not reached MMI but who have reached a level of improvement sufficient to permit a return to employment.

As we have previously held, “[i]t would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but not the type [of work] that is customary or that he was performing at the time of his injury.” Central Kentucky Steel v. Wise, 19 S.W.3d at 659. However, it is also not reasonable, and it does not further the purpose for paying income benefits, to pay TTD benefits to an injured employee who has returned to employment simply because the work differs from what she performed at the time of injury. Therefore, absent extraordinary circumstances, an award of TTD benefits is inappropriate if an injured employee has been released to return to customary employment, i.e. work within her physical restrictions and for which she has the experience, training, and education; and the employee has actually returned to employment. We do not attempt to foresee what extraordinary circumstances might justify an award of TTD benefits to an employee who has returned to employment under those circumstances; however, in making any such award, an ALJ must take into consideration the purpose for paying income benefits and set forth specific evidence-based

reasons why an award of TTD benefits in addition to the employee's wages would forward that purpose.
Id. at 807

In determining Pinion's entitlement to TTD benefits, the ALJ was required to provide an adequate basis to support his 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). While an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result, he is required to 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. Chafins, 502 S.W.2d 526 (Ky. 1973).

The ALJ's analysis regarding Pinion's entitlement to TTD benefits is deficient and fails to provide findings of fact and conclusions of law to reasonably apprise the parties and this Board of his rationale for such award. The evidence establishes that although Pinion experienced physical difficulty subsequent to the December 18, 2018 injury, she continued to work until she sought medical treatment, which ultimately established she had an unrelated brain tumor requiring surgery. The ALJ only addressed when Pinion attained MMI from her work injury, not the basis for establishing when she may be entitled for those benefits to commence.

In the Order on petition for reconsideration, the ALJ found, “the evidence shows the Plaintiff tried to go back to work and could not do so. The award of temporary total is supported by the credible testimony of the Plaintiff and the opinion as to MMI of Dr. Stephens.” The ALJ also explained the fact Pinion continued to receive her salary following the work injury does not preclude an award of TTD benefits. We determine the TTD analysis is deficient and inadequate in light of the fact Pinion underwent brain surgery for an unrelated brain tumor within one month following the work injury. We also find Pinion’s treating physician did not impose any restrictions due to the work injury at any time prior to the attainment of MMI precluding her from working due to her work injury.

The particular circumstances of this claim are unique in that Pinion sustained a work-related injury on December 18, 2018 and subsequently underwent brain surgery on January 15, 2019 to remove an unrelated tumor. We note it is undisputed that Pinion sustained a work-related injury on December 18, 2018, from which she reached MMI on February 18, 2019.

Pinion testified at both her deposition and the hearing regarding her return to work following the work injury. At her deposition, Pinion testified she sustained the work injury on Tuesday, December 18, 2018. She completed her bus duties before reporting her injury and then drove to the hospital to have x-rays taken of her hip and back. Pinion indicated the winter break began on December 21, 2018. During those few days before winter break, Pinion indicated she attempted to return to work, but left early. Pinion stated school was out through January 2, 2019. Pinion returned to work on January 3, 2019, and sought treatment with Dr. Soma

the following day. Pinion testified, “I tried to work on and off, but I was sick and I didn’t sleep for six days [I]t was because of my back and my hip. . . . And unbeknownst to me, my head.” She further testified as follows:

A: I was just - - my back, I couldn’t sleep, I couldn’t lay down, I couldn’t sit up, I was - - - everything hurt so bad. I was in complete misery. And from the 4th until the 10th or 11th I didn’t sleep for six nights. So finally on the 11th [my husband] took me to the ER.

. . . .

Q: Okay. And when you couldn’t sleep, was that the pain or –

A: Yes. The pain in my back and hip was nothing I had ever felt before. The back of my head burned. It was just an unusual feeling I couldn’t lay down, I couldn’t sit up, I was just miserable.

Pinion last worked on January 10, 2019, and went to the hospital on January 11, 2019 for her head pain. A CT scan of her brain revealed a meningioma. Pinion underwent excision surgery to remove the tumor on January 15, 2019. Pinion testified she stayed in the hospital for approximately one week after the surgery. She was then on bed rest due to the brain surgery for approximately five months.

At the hearing, Pinion testified she fell on Tuesday, December 18, 2018. She worked only part of the day on Wednesday due to her pain, and winter break began on Thursday, December 20, 2018. School resumed on January 2, 2019, and Pinion worked the full day “in misery.” Pinion left work early on January 3, 2019. Pinion sought treatment with Dr. Soma on January 4, 2019 for her back and hip complaints. Pinion testified Dr. Soma wanted to restrict her activity, but she wished to return to work. Pinion testified she did not work on January 4, 2019 or

January 7, 2019. Pinion worked on January 8 and 9, 2019 but left early both days.

Pinion sought treatment with Dr. Soma on January 10, 2019, stating,

I was just sick all over. The hip, the back, the leg, the head. I hadn't slept in six nights. I was so - - my back and my hip and everything was - - - it was just so much pain, it was incredible, it was unbearable. And I went in and I told him that I was so sick that I just couldn't manage, I didn't know what I was going to do.

As noted above, Pinion sought treatment at the emergency room on January 11, 2019, and underwent surgery to remove the brain tumor on January 15, 2019. Pinion testified her back and hip pain following the work accident was worse than she had experienced before and that there was "no way I could have went - - I could have worked."

The medical records demonstrate Pinion sought treatment with Dr. Soma after the December 18, 2018 accident. He ordered x-rays on December 18, 2018 of Pinion's low back and hip. Pinion returned to Dr. Soma on January 4, 2019. He noted the complaints of low back and left hip pain due to the fall. He diagnosed Pinion with lumbago and left hip pain, and prescribed medication. He noted, "Patient can continue to work." On January 10, 2019, Pinion presented with headaches and dizziness. Dr. Soma ordered a CT scan of the head. Pinion was not treated for her work injury on this visit. On January 23, 2019, Pinion presented with bilateral edema in her legs and Dr. Soma noted she had recently undergone brain surgery to remove a tumor. Pinion was not treated for her work injury at that visit. Pinion next treated in March 2019, after the ALJ determined she had attained MMI. Dr. Soma's records do not appear to reflect Pinion was ever restricted from work.

We find the ALJ's cursory statement the evidence shows Pinion tried to go back to work and could not do so is insufficient to support the award of TTD benefits. On remand, the ALJ must set forth a complete and thorough analysis of Pinion's entitlement to TTD benefits based solely on the December 18, 2018 work injury. We acknowledge Pinion testified she believed she was unable to work following the work accident due to her low back and left hip symptoms. However, we note she continued to work after the accident until the Christmas break, albeit with reported difficulty. She was then off work for approximately two weeks for the normal break, and returned to work until January 11, 2019, again with reported difficulty. We also note Pinion complained of low back and hip pain, as well as head symptoms, in the weeks leading up to her visit to the emergency room on January 11, 2019 for her head symptoms. We also emphasize the fact Pinion underwent brain surgery on January 15, 2019 to remove an unrelated brain tumor, and according to Pinion, was on bed rest for approximately five months for that condition. We note Pinion's treating physician allowed her to continue to work without restrictions due to the work injury.

We additionally note the ALJ's analysis fails to take into consideration KRS 342.730(7) effective July 14, 2018. That statute states as follows:

Income benefits otherwise payable pursuant to this chapter for temporary total disability during the period the employee has returned to light-duty or other alternative job position shall be offset by an amount equal to the employee's gross income minus applicable taxes during the period of light-duty work or work in the alternative position.

In AGI Transportation, Inc. v. Adkins, 2018-CA-000861-WC (rendered November 30, 2018) (designated not to be published), an unreported decision from the Kentucky Court of Appeals addressed the application of KRS 342.730(7). There, the Court held KRS 342.730(7), as amended, provides a credit against TTD benefits for *bona fide* wages paid. Therefore, on remand, if the ALJ determines Pinion is entitled to an award of TTD benefits, he must determine whether Pike County is entitled to a credit for her earnings pursuant to KRS 342.730(7).

We acknowledge this Board cannot engage in fact-finding to support the ALJ's decision. However, it is unclear whether the ALJ considered the above factors in his determination or whether his award of TTD benefits is based solely upon the December 18, 2018 work injury. While we acknowledge the ALJ determined Pinion attained MMI on February 18, 2019, his analysis addressing her entitlement to TTD benefits is deficient.

Accordingly, the January 14, 2010 Opinion, Award and Order, and the January 30, 2020 Order on petition for reconsideration rendered by Hon. R. Roland Case, Administrative Law Judge, are hereby **AFFIRMED IN PART and VACATED IN PART**. This claim is **REMANDED** for additional analysis and findings concerning Pinion's entitlement to TTD benefits, and any appropriate credit to Pike County, in accordance with the views set forth herein.

ALL CONCUR.

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