

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 27, 2021

CLAIM NO. 201982750 & 201980872

SABINA RICE

PETITIONER

VS.

APPEAL FROM HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE

JEFFERSON COUNTY PUBLIC SCHOOLS and
HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING

* * * * *

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

ALVEY, Chairman. Sabina Rice (“Rice”) appeals from the April 7, 2021 Opinion and Order rendered by Hon. Peter J. Naake, Administrative Law Judge (“ALJ”). The ALJ dismissed Rice’s claims for alleged injuries occurring on April 29, 2019 and May 7, 2019 while working as a certified substitute teacher for Jefferson County

Public Schools (“JCPS”). Rice also appeals from the May 6, 2021 Order on Petition for Reconsideration.

On appeal, Rice argues the ALJ erred in determining she did not sustain a work-related injury since Dr. Stacie Grossfeld, upon whom the ALJ relied, opined she sustained a left knee injury in her reports and deposition testimony. Rice asserts JCPS failed in its burden of proving she had a pre-existing active condition pursuant to Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007). Rice argues the ALJ misstated Dr. Grossfeld’s opinions, and he failed to provide additional findings of fact identifying which portions of her opinion or testimony he relied upon in determining a work injury did not occur. Rice also argues the ALJ failed to address her alternative arguments supporting a work-related injury pursuant to Derr Construction Company v. Bennett, 873 S.W.2d 824 (Ky. 1994). Because substantial evidence supports the ALJ’s determination that Rice failed to prove she sustained a permanent work-related injury, and a contrary result is not compelled, we affirm. However, we vacate in part and remand to the ALJ to provide additional findings of fact supporting his determination that Rice failed to prove a temporary work-related injury pursuant to Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001).

Rice filed two Form 101s on July 21, 2020. Rice alleged she injured both her right upper and left lower extremities while working for JCPS on April 29, 2019. She also alleged she sustained low back and left lower extremity injuries on May 7, 2019 while working as a substitute teacher for JCPS. The claims were subsequently consolidated.

Rice testified by deposition on September 3, 2020 and at the final hearing held February 9, 2021. Rice, a resident of Louisville, Kentucky, was born in March 1956. Rice graduated from high school and she is a certified substitute teacher. Rice takes medication prescribed by Dr. Rajan Amin, her primary care physician, for high blood pressure and diabetes. She also has stage four liver disease, and she actively treats for cancer.

Rice worked as a certified substitute teacher at Stuart Academy for JCPS at all relevant times. Rice testified that on April 29, 2019, she lost her balance as a student grabbed the door trying to leave the classroom without permission, causing her to fall against a chalkboard. Rice struck her right arm on the chalkboard and twisted her left knee. She experienced left knee pain, swelling in her right fingers, and sustained a bruise and cut to her right elbow. Rice went to the emergency room either the same or the following day, and then treated at Concentra on May 1, 2019. Rice missed a few days of work, and then returned to substitute teaching at Stuart Academy.

Rice testified that on May 7, 2019, two students were fighting in the hall in front of a crowd. A student kicked her in the leg as Rice attempted to break up the fight. She heard a crack and pop in her left knee, and she fell to the ground. The students continued to fight after she fell, and ended up on top of her. Rice estimated she was on the ground for fifteen to twenty minutes before the fight was broken up. Rice experienced right arm and left knee pain, and she was unable to move or bend her left leg. After being assisted into a wheelchair, Rice was taken to the emergency room at Norton Southwest. Rice requested a copy of the surveillance

video of the May 7, 2019 incident, but she was informed it was erased by mistake. Rice disputes Darren Dawson's ("Dawson") account of the May 7, 2019 fight.

Following the May 7, 2019 work incident, Rice received conservative treatment for her left knee at Concentra and with Dr. Amin, and she was placed on restricted duty. Dr. Amin referred her to Dr. Chad Smith. Dr. Smith ordered a left knee MRI and eventually referred her to Dr. Joseph Greene, who is located in the same practice. Dr. Greene recommended a total left knee replacement, which Rice is unable to pursue due to her active cancer treatment. Rice takes Hydrocodone for her left knee symptoms. She continues to experience left knee pain and swelling. She has difficulty walking, standing, navigating stairs, and sleeping. Rice does not believe she is physically capable of returning to her former job as a substitute teacher due to her restrictions. Rice has not returned to work since the May 7, 2019 incident. She was referred to Dr. Hazel (first name not provided) for her right arm complaints. Those records were not submitted into the record.

At her deposition, Rice denied receiving any treatment for her left knee, right arm, or back prior to April 29, 2019. She similarly denied having any diagnostic testing on her left knee prior to April 29, 2019. At the hearing, Rice testified that prior to her work injuries, she was under no formal medical restrictions, had no problems performing her job duties, and she participated in a daily walking group. Rice did not recall reporting left knee pain to a nurse practitioner at the Amin Family Practice on September 21, 2018, but surmised it must not have been too bad since she was still participating in her walking group and working at JCPS. Rice similarly did not recall telling the nurse practitioner she had visited the emergency

room for her left knee symptoms three weeks prior or having a left knee X-ray done at that time. Rice did not remember reporting left knee problems again on March 21, 2019, nor did she recall having an appointment scheduled with Norton Orthopedic at the end of the month. She was prescribed Meloxicam for her left knee prior to her work injuries. Rice testified that since her work injury, she can no longer perform yard work, and she has difficulty walking.

Dawson, the assistant principal at Stuart Academy, testified by deposition on November 9, 2020. He did not witness either the April 29, 2019 or May 7, 2019 incidents. Dawson testified he has access to all cameras in the school. Dawson investigated the fight, and he reviewed the video surveillance of that incident. The video demonstrated two students fighting, and Rice being hit on her left leg when they ran into her from behind. However, Rice did not fall and the students stopped fighting after they ran into her. Dawson estimated the fight lasted approximately thirty seconds. Dawson testified the surveillance recording was erased after thirty days, and is no longer available.

JCPS filed the previous records from Amin Family Practice, particularly those treatment visits on September 21, 2018 and March 21, 2019. On September 21, 2018, Nurse Practitioner Toni Raybon noted as follows under “History of Present Illness”:

The patient is a 62 year old female who presents with knee pain. This condition occurred without any known injury. Symptoms include knee pain, swelling, stiffness, decreased range of motion, difficulty bearing weight and difficulty ambulating Symptoms are located in the left knee. The pain radiates to the left lower leg. The patient describes the pain as aching. The symptoms occur constantly Current treatment includes

[NSAID] (Mobic 7.5 mg daily). Pertinent medical history includes osteoarthritis The patient is currently able to do activities of daily living with limitations. The patient was previously evaluated in the emergency room 3 week(s) ago. Past evaluation has included knee x-rays (of the left knee showing tricompartmental degenerative changes with marginal osteophylosis along the medial femoral condyle and medial tibial plateau as well as the patella). Will refer to ortho.

Rice was diagnosed with left knee pain and tricompartmental disease of the knee. Meloxicam 7.5 mg per day was prescribed, and she was referred to an orthopedic surgeon. No medical evidence was produced establishing whether Rice in fact visited with an orthopedic surgeon.

On March 21, 2019, less than six weeks prior to the first work incident, Rice presented for a follow up for several chronic conditions, including diabetes and hypertension. She additionally complained of left knee pain, and the history reflected is similar to that provided in the September 21, 2018 note. The nurse practitioner ordered lab work and medication for Rice's chronic conditions. Rice was also diagnosed with tricompartmental disease of the left knee. The nurse practitioner again referred Rice to an orthopedic surgeon and increased the dosage of Meloxicam to 15 mg per day.

Rice attached Concentra Medical Center's May 1, 2019 note indicating Rice twisted her left knee, and hit her right arm and elbow in a work incident on April 29, 2019. Rice was diagnosed with a right elbow contusion, a left knee strain, and olecranon bursitis of the left elbow. The nurse practitioner ordered X-rays of the left knee, right elbow, and right humerus. He prescribed Doxycycline

and restricted Rice from lifting over ten pounds occasionally, and from standing and walking over three hours.

Rice also filed the May 7, 2019 emergency room record from Jewish Hospital Medical Center. Rice reported she was kicked in the anterior left knee while breaking up a fight in middle school earlier in the day. Rice was diagnosed with knee effusion and discharged.

Rice filed the records from Drs. Smith and Greene at Norton Orthopedic Institute for left knee treatment she received from May 30, 2019 through July 2, 2020. On May 30, 2019, Dr. Smith noted the two work incidents and that Rice reports increased left knee pain, popping, and some numbness. X-rays taken in the office demonstrated moderate medial, lateral and patellofemoral joint space narrowing and osteophyte formation. He diagnosed left knee pain of unspecified chronicity, and he administered a steroid injection. He restricted her to sit-down duty and ordered an MRI, which was performed on June 10, 2019. It demonstrated a markedly abnormal medial meniscus with extensive degenerative changes and a small flap tear near the root of the posterior horn; tricompartmental osteoarthritis of the knee much greater across the medial femoral tibial joint; degenerative signal within the intact ACL; small joint effusion with tiny Baker's cyst; and mild bursitis. Dr. Smith diagnosed Rice with a medial meniscus tear and primary osteoarthritis of the left knee on June 13, 2019. Dr. Smith opined Rice had an underlying degenerative change, osteoarthritis of the left knee, and he indicated the two work events significantly exacerbated her pre-existing condition. He recommended a left knee gel series to treat the acute exacerbation of her underlying arthritis and to

continue sit-down duty. Ultimately, Rice was not cleared to undergo the recommended treatment due to concerns regarding her liver failure. Dr. Smith noted Rice's primary care physician had prescribed Hydrocodone. He referred Rice to Dr. Greene for consideration of a knee replacement. Rice treated with Dr. Greene on July 2, 2020. He diagnosed severe left knee anteromedial osteoarthritis, recommended left medial compartment knee arthroplasty, and he restricted Rice to sitting duty.

Rice filed Dr. Jeffrey Fadel's September 3, 2020 report. Dr. Fadel diagnosed degenerative osteoarthritis of the left knee aroused by the April 29 and May 7, 2019 work incidents. Dr. Fadel opined Rice had reached maximum medical improvement ("MMI") if she had no additional treatment, and he assessed a 15% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Dr. Fadel assigned permanent restrictions and opined Rice can return to substitute teaching if accommodations can be made. Dr. Fadel opined Rice had pre-existing dormant degenerative osteoarthritis of the left knee, which was aroused by the work injuries she sustained on both April 29, 2019 and May 7, 2019. In a supplemental report dated November 9, 2020, Dr. Fadel opined the May 7, 2019 work injury primarily caused her left knee complaints, and he attributed the entire 15% impairment rating to the May 7, 2019 work event.

JCPS filed Dr. Grossfeld's January 3, 2020, September 21, 2020, and November 4, 2020 reports. Dr. Grossfeld also testified by deposition on December 16, 2020. In her January 3, 2020 report, Dr. Grossfeld noted the two work incidents

and reviewed the treatment records following the work injuries. Dr. Grossfeld diagnosed osteoarthritis of the left knee with a flare-up of osteoarthritis secondary to the work-related injury, a right elbow contusion, and a lumbar strain. She opined the left knee injections are reasonable and directly related to the work injury, but the need for a total knee replacement is directly related to the pre-existing advanced osteoarthritis. Dr. Grossfeld restricted Rice to sit-down duty with occasional walking. In an April 30, 2020 supplement, Dr. Grossfeld opined Rice reached MMI on April 30, 2020 since she did not pursue the recommended left knee injections, and released her to full duty work.

Dr. Grossfeld re-examined Rice on September 21, 2020 and reviewed additional medical records from Drs. Smith and Greene. She noted the medical records first document complaints of low back pain five months after the May 7, 2019 work event. Dr. Grossfeld diagnosed pre-existing active degenerative joint disease of the left knee and low back pain, both of which are unrelated to the work injuries. Dr. Grossfeld opined Rice strained her left knee twice, and she experienced a right elbow contusion due to the April 29, 2019 and May 7, 2019 work events. Rice reached MMI for all work injuries on December 18, 2019. Dr. Grossfeld assessed a 0% impairment rating for the lumbar spine, a 0% impairment rating for the right elbow, and a 4% impairment rating for the left knee, none of which are related to the work injury. Dr. Grossfeld opined any permanent restrictions are unrelated to the work injury, and Rice could return to her former job. Dr. Grossfeld opined the permanent restriction of sit-down duty with occasional walking and the

recommended total left knee replacement are due to her pre-existing, active degenerative joint disease of her left knee, and are unrelated to her work injury.

Dr. Grossfeld prepared a November 4, 2020 supplemental report. She noted an August 28, 2018 left knee X-ray showed grade 3 changes involving the medial compartment of the left knee, and the May 7, 2019 left knee X-ray showed advancement of her grade 3 changes on the medial compartment of the knee to 3+ changes. Dr. Grossfeld stated her opinions contained in her September 21, 2020 report remain unchanged.

Dr. Grossfeld testified the June 10, 2019 left knee MRI demonstrated degenerative changes. Regarding the September 21, 2020 report, Dr. Grossfeld stated the left knee strain was a temporary work-related injury, which did not hasten Rice's degenerative condition. She noted a significant traumatic event would have had to occur to advance the knee arthritis rapidly, such as a fracture, which did not occur in Rice's case. She also found no permanent right elbow or low back injuries. Dr. Grossfeld opined the August 2018 and May 2019 X-rays of the left knee demonstrated a normal progression of arthritis. She found the August 2018 X-ray supports her determination that Rice's pre-existing degenerative changes were active prior to the work injuries.

Dr. Grossfeld reviewed Dr. Amin's records dated September 21, 2018 and March 21, 2019. She opined those records establish Rice's degenerative condition was pre-existing and active. Dr. Grossfeld estimated Rice has an 8% impairment rating pursuant to the AMA Guides as of September 21, 2018. Dr. Grossfeld opined the recommended left knee total replacement surgery is unrelated

to either work event. She also disagreed with Dr. Fadel's opinions regarding causation and impairment. She did not believe Rice's degenerative osteoarthritis was aroused by the work events. She further stated as follows:

Well, I guess I should say I do agree that she had a flare-up of her knee symptoms, but now that I have these other records, she was actually very symptomatic prior to the injury.

In fact, on March 21st, 2019, she was being referred to an orthopedic surgeon, and it was just four or five weeks later that she was injured at school. So she already had this problem going on prior.

I mean, it's documented by those records. In addition to the fact that when she presented, she had advanced arthritis already involving her knee.

So her knee arthritis was for sure flared up from a trauma, but it was already a problem prior to the trauma. The trauma was not traumatic enough to cause advancement of the arthritis such as an intra articular fracture that can cause post-traumatic arthritis, but - - so I disagree with him.

I agree with him in the sense that she has arthritis. I just disagree that the work injury caused the arthritis. The arthritis was already there.

Dr. Grossfeld did not believe the work events aroused Rice's osteoarthritis since the records demonstrate the condition was pre-existing and active. Dr. Grossfeld further testified her opinions would remain unchanged even if the mechanism of injury was similar to Dawson's testimony.

On cross-examination, Dr. Grossfeld testified that based upon her review of the prior records, her opinions contained in the September 2020 report have changed slightly in that Rice sustained only a "minor" flare-up of her osteoarthritis due to the work events. Dr. Grossfeld was unable to identify those

specific symptoms due to a flare-up since Rice was “pretty symptomatic prior to the injury” and complained of similar symptoms when Dr. Grossfeld examined her. Dr. Grossfeld testified Rice has not returned to her pre-injury baseline status since her symptoms have worsened.

A Benefit Review Conference was held on January 12, 2021. The parties stipulated Rice sustained a work-related injury or injuries on April 29, 2019 and May 7, 2019 for which JCPS received due and timely notice. The parties also stipulated JCPS voluntarily paid temporary total disability benefits (“TTD”) for the May 7, 2019 injury from May 14, 2019 through May 24, 2019, and May 30, 2019 through May 17, 2020 for a total of \$23,833.60 and medical expenses for both work injuries. The contested issues included the physical capacity to return to the type of work performed at the time of the injury, benefits per KRS 342.730, unpaid or contested medical expenses, work-relatedness/causation, injury as defined by the Act, exclusion for pre-existing disability/impairment, TTD, and credit for wages paid.

The ALJ rendered an Opinion on April 7, 2021. The ALJ stated Dr. Amin’s records impeached Rice’s deposition testimony that she had not had any left knee treatment prior to April 29, 2019. He further noted Rice testified she did not recall seeing Dr. Amin approximately one month before her first work event. The ALJ then summarized Dr. Amin’s September 21, 2018, March 21, 2019, and March 25, 2019 records.

The ALJ did not find credible Rice’s testimony regarding her symptoms before and after the work injuries. He noted Rice had an incomplete

memory of her prior left knee problems and could not accurately testify to the difference in symptoms before and after her injuries at work. The ALJ noted the medical records show that Rice had ongoing problems with her left knee diagnosed as tricompartmental osteoarthritis for which she needed an orthopedic evaluation prior to the alleged work injuries. He noted that after her injury, Rice had problems with her left knee because of tricompartmental osteoarthritis for which she needed to be evaluated and treated by an orthopedic doctor. Those problems are similar to her complaints to Dr. Amin's office prior to her injury. The ALJ noted the degree to which Rice is more disabled now than she was after her injury is impossible to determine because she does not remember the limitations she had prior to her injury. The ALJ therefore determined he could not rely upon Rice's testimony, which compares pre-injury capabilities with her physical capacity after the injury.

The ALJ rejected Dr. Fadel's causation opinion, and provided an explanation for why he did not find it persuasive. The ALJ found persuasive Dr. Grossfeld's opinion that the April 29, 2019 and May 7, 2019 events did not arouse a previously dormant condition into disabling reality. The ALJ provided the following analysis in determining Rice did not sustain a temporary injury because of the two work events:

The [ALJ] must also consider whether the Plaintiff suffered a temporary injury as a result of the injuries she claimed. The [ALJ] notes that the description of the May 7, 2019 injury which was given by the Plaintiff differed significantly from the description given by the Defendant's witness, Darren Dawson. The Plaintiff's memory of events is not reliable, and therefore the [ALJ] is not persuaded that these events occurred as the Plaintiff has stated. On the other hand, the Defendant's witness testified that he watched videos of the incident

and concluded that the Plaintiff had not been injured as she stated. The Defendant did not introduce that video into evidence as documentary proof. Therefore, the Defendant's witness's testimony is unreliable because it is based on a video which was not available, and not Mr. Dawson's own observation.

As the Plaintiff, Ms. Rice bears the burden of proving entitlement to any benefit by a preponderance of the evidence, and carries the risk of non-persuasion. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984).; *Morrison v. Home Depot*, 279 S.W.3d 172, 175 (Ky. App. 2009). This includes the right to temporary total disability payments and medical treatment, as well as the permanent disability the Plaintiff has claimed. In other words, if the ALJ is not persuaded that the Plaintiff has had an injury, the Plaintiff's claims must be dismissed. The Plaintiff's claim is that a previously dormant condition in the Plaintiff's left knee was exacerbated or aggravated by injuries at work. In order to determine if there was such an aggravation the Administrative Law Judge must compare the Plaintiff's pre-injury medical condition with her post-injury condition. The ALJ previously determined that the Plaintiff's testimony was not accurate concerning her condition prior to her injury, and therefore the Plaintiff's comparison of pre-injury and post-injury disability is not persuasive or reliable evidence. None of the testifying medical experts, except Dr. Grossfeld, had a complete record of the plaintiff's previous treatment when they gave their opinions about exacerbation or aggravation of the plaintiff's left knee condition. Therefore, no award of a benefit based on a change in the Plaintiff's left knee condition, or aggravation or arousal of a previously dormant degenerative condition, such as osteoarthritis of the knee, can be granted. The Administrative Law Judge concludes that the Plaintiff has not met her burden of proof in showing that she suffered a work-related injury within the meaning of KRS 342.0011(1), and will dismiss her claims for temporary and permanent injury as a result of those incidents. All other issues are dismissed as moot.

Rice filed a Petition for Reconsideration arguing the ALJ misconstrued Dr. Grossfeld's opinion and requested additional findings of fact on

this issue. Rice asserted the ALJ erroneously stated that Dr. Grossfeld “could not agree that Ms. Rice had a flare-up of her knee symptoms, because the records from Amin Family Practice show Ms. Rice was very symptomatic prior to the injury” and that Dr. Grossfeld testified she could not state that the work injury exacerbated her symptoms. Rice points to Dr. Grossfeld’s deposition where she referred to a flare-up of left knee symptoms due to the work injury on several occasions. Rice asserted the ALJ failed to address her argument that JCPS is responsible for the effects of an exacerbation of a pre-existing, active condition pursuant to Derr Construction Company v. Bennett, supra, and requested additional findings of fact on this issue. Rice asserted the ALJ erroneously stated it was her burden to prove the work events aroused a previously dormant condition into disabling reality. Rather, Rice asserted the burden of proving the existence of a pre-existing active condition falls upon the employer pursuant to Finley v. DBM Technologies, supra, and requested additional findings of fact on this issue.

In an Order overruling Rice’s Petition for Reconsideration, the ALJ noted he has the discretion to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the same adversary party’s total proof. The ALJ “chose to rely on those parts of Dr. Grossfeld’s testimony which did not support a finding of a work-related injury, because the Plaintiff’s testimony of her condition prior to the injury was so inaccurate.” Therefore, the ALJ found Rice failed in her burden of proof.

On appeal, Rice argues it is undisputed she sustained an injury, noting Dr. Grossfeld repeatedly referenced a trauma, left knee strain, or flare-up in her

numerous reports and testimony. Rice asserts there is no evidence in the record supporting the ALJ's conclusion that no injury, whether temporary or permanent, had occurred as defined by the Act. According to Rice, since an injury occurred, the ALJ was required to perform an analysis pursuant to Finley v. DBM Technologies, supra, and noted JCPS bore the burden to prove her left knee condition was both symptomatic and impairment ratable immediately prior to the work injury. Rice also asserts the ALJ erred as a matter of law in stating she bore the burden in proving the work events aroused a previously dormant condition into disabling reality. Rather, her burden is to establish she sustained an injury as defined by the Act.

Rice argues the evidence compels a finding she sustained a compensable work-related left knee injury, and JCPS failed in its burden of proof to establish the existence of a pre-existing, active condition. Rice asserts the evidence does not establish her left knee condition was impairment ratable immediately before the work injury.

Rice argues the ALJ misstated the evidence and failed to make specific findings of fact regarding Dr. Grossfeld's testimony. Rice asserts the ALJ erroneously stated that Dr. Grossfeld "could not agree that Ms. Rice had a flare-up of her knee symptoms, because the records from Amin Family Practice show Ms. Rice was very symptomatic prior to the injury". Rice points to Dr. Grossfeld's deposition where she repeatedly stated Rice had a flare-up of her knee symptoms and she never returned to her pre-injury base line status. Rice asserts the ALJ mischaracterized Dr. Grossfeld's testimony and failed to make additional findings of fact on this issue despite her request in a petition for reconsideration.

As the claimant in a workers' compensation proceeding, Rice had the burden of proving each of the essential elements of her claim, including the occurrence of a work-relatedness injury, permanent or temporary. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Rice was unsuccessful in her 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 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 sole authority to judge 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); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is inadequate 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 his 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 which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. As long as the ALJ's ruling regarding an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

Finley v. DBM Technologies, supra, only applies after it has been determined a claimant sustained a permanent, work-related injury. Only then does the burden fall to the Employer to prove a pre-existing condition was symptomatic and impairment ratable prior to the work injury for the purposes of a "carve-out" of the award. Therefore, we first address whether the ALJ erred in determining Rice failed to prove she sustained a work-related injury.

We find substantial evidence supports the ALJ's determination that Rice did not sustain a permanent injury due to the work events, and a contrary result is not compelled. In her January 3, 2020 report, Dr. Grossfeld diagnosed osteoarthritis of the left knee with a flare-up of osteoarthritis secondary to the work-related injury, right elbow contusion, and lumbar strain. In the September 21, 2020 report, Dr. Grossfeld's diagnoses included pre-existing active degenerative joint disease of the left knee and low back pain, both of which are unrelated to the work injuries. Dr. Grossfeld opined the 4% impairment rating for the left knee and permanent restrictions are unrelated to the work injury. In her deposition, Dr.

Grossfeld stated the left knee strain was a temporary work-related injury, which did not hasten Rice's degenerative condition. She emphasized Rice's osteoarthritis was pre-existing and active prior to the work injuries based upon the September 2018 and March 2019 records of Dr. Amin. Dr. Grossfeld disagreed with Dr. Fadel's opinion that the work events aroused a dormant condition into disabling reality. She also found Rice did not sustain permanent right elbow or low back injuries. The ALJ provided a thorough analysis as to why he found Rice's testimony unpersuasive. Dr. Grossfeld's opinions, standing alone or in conjunction with Rice's testimony, constitute substantial evidence Rice did not sustain a permanent injury due to the work events, and a contrary result is not compelled.

We disagree with Rice that an analysis pursuant to Finley v. DBM Technologies, supra, is applicable to this case. However, we note that since the rendition of Robertson v. United Parcel Service, supra, this Board has consistently held it is possible for an injured worker to establish a temporary injury for which temporary benefits may be paid, but fail to prove a permanent harmful change to the human organism for which permanent benefits are payable. In Robertson, the ALJ determined the claimant failed to prove more than a temporary exacerbation and sustained no permanent disability because of his injury. Therefore, the ALJ found the worker was entitled to only medical expenses the employer had paid for the treatment of the temporary flare-up of symptoms. The Kentucky Supreme Court noted the ALJ concluded Robertson suffered a work-related injury, but its effect was only transient and resulted in no permanent disability or change in the claimant's pre-existing spondylolisthesis. The Court stated:

Thus, the claimant was not entitled to income benefits for permanent partial disability or entitled to future medical expenses, but he was entitled to be compensated for the medical expenses that were incurred in treating the temporary flare-up of symptoms that resulted from the incident. Id. at 286.

In FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the Kentucky Supreme Court instructed KRS 342.020(1) does not require proof of an impairment rating to obtain future medical benefits, and the absence of such rating does not necessarily preclude such an award. Therefore, the absence of an impairment rating does not preclude the ALJ from awarding future medical benefits.

The ALJ found that none of the medical experts, except Dr. Grossfeld, had a complete record of Rice's previous treatment when they gave their opinions regarding exacerbation or aggravation of her left knee condition. Therefore, no award of a benefit based on a change in her left knee condition, or aggravation or arousal of a previously dormant degenerative condition, such as osteoarthritis of the knee, can be granted. The ALJ found Rice failed to prove a work-related injury, permanent or temporary.

However, in both the January 2020 and September 2020 reports, Dr. Grossfeld diagnosed at a minimum, temporary injuries caused by the work events. In her January 3, 2020 report, Dr. Grossfeld diagnosed osteoarthritis of the left knee with a flare-up secondary to the work-related injury, a right elbow contusion, and a lumbar strain. In her September 21, 2020 report, Dr. Grossfeld diagnosed left knee strains and a right elbow contusion due to the April 29, 2019 and May 7, 2019 work events for which she reached MMI on December 18, 2019. At her deposition, Dr. Grossfeld stated the left knee strain was a temporary work-related injury, which did

not hasten Rice's degenerative condition. She also found no permanent right elbow or low back injuries. After reviewing the prior records and the opinions of Dr. Fadel, Dr. Grossfeld noted, "she had a flare-up of her knee symptoms, but now that I have these other records, she was actually very symptomatic prior to the injury.... So, her knee arthritis was for sure flared up from a trauma, but it was already a problem prior to the trauma. The trauma was not traumatic enough to cause advancement of the arthritis ..."

Rice filed a Petition for Reconsideration requesting additional findings of fact on the issue of occurrence of an injury. In the Order on Petition for Reconsideration, the ALJ stated he chose to rely on those parts of Dr. Grossfeld's testimony which do not support a finding of a work-related injury because Rice's testimony of her condition prior to the injury was so inaccurate. However, he did not cite with specificity the portions of Dr. Grossfeld's reports or testimony upon which he relied.

Considering Rice's Petition for Reconsideration requested additional findings of fact and the multiple reports and deposition testimony by Dr. Grossfeld, we vacate in part and remand to the ALJ for specific findings supporting his determination that the work event or events did not result in a temporary injury pursuant to Robertson v. United Parcel Service, supra, and FEI Installation, Inc. v. Williams, supra. We direct the ALJ to perform an analysis pursuant to Robertson v. United Parcel Service, supra, and FEI Installation, Inc. v. Williams, supra, and to cite with specificity those portions of Dr. Grossfeld's medical opinions he relied upon

in reaching his determination. We do not direct a particular result, but any determination must be based upon the evidence.

Accordingly, the April 7, 2021 Opinion and Order and May 6, 2021 Order rendered by Hon. Peter J. Naake, Administrative Law Judge, are hereby **AFFIRMED IN PART and VACATED IN PART**. This claim is **REMANDED** to the ALJ for a determination in accordance with the directions set forth above.

ALL CONCUR.

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