

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: August 2, 2019

CLAIM NO. 201360113

SHEILA FLYNN

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

TOYOTA MOTOR MFG. KENTUCKY, INC. and  
HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING IN PART,  
VACATING IN PART, AND REMANDING

\* \* \* \* \*

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

**ALVEY, Chairman.** Shelia Flynn ("Flynn") appeals from the March 8, 2019 Opinion and Order rendered by Hon. Grant S. Roark, Administrative Law Judge ("ALJ") finding she failed to prove she sustained any permanent, work-related injuries resulting from the December 17, 2012 work accident. No petition for reconsideration was filed.

On appeal, Flynn argues the ALJ erred by dismissing her claims, and the evidence compels a contrary result. In the alternative, Flynn argues she is entitled to temporary total disability (“TTD”) and medical benefits. Because substantial evidence supports the ALJ’s determination and a contrary result is not compelled, we affirm. However, we vacate the ALJ’s complete dismissal of Flynn’s claim and remand for additional findings addressing whether she sustained temporary feet injuries due to the December 17, 2012 work incident necessitating an award of TTD and medical benefits.

Flynn filed a Form 101 alleging she injured her feet, shoulders, and thumbs on December 17, 2012 when she tripped and fell while working as a team leader for Toyota Motor Manufacturing Kentucky, Inc. (“Toyota”). Flynn disclosed she had a prior workers’ compensation claim involving her knees in 2006. Subsequently, the ALJ granted Flynn’s motion to amend the Form 101 to include bilateral knee injuries.

Toyota filed a Form 111 accepting the feet injuries as compensable, but noting there is a dispute concerning the amount of compensation owed. Toyota denied Flynn’s claim for injuries to her thumbs, shoulders, and knees. The claim was placed in abeyance while Flynn underwent a right total knee replacement in November 2015, a left partial knee replacement in January 2017, and a left total knee replacement in November 2017.

Flynn testified by deposition on July 14, 2014 and July 21, 2017, as well as the final hearing held January 7, 2019. Flynn was born in August 1956 and has a college degree. Flynn began working for Toyota in April 1990, and worked as

a team leader for over twenty years. Flynn last worked for Toyota in March 2015 due to her restrictions, and retired on April 17, 2017. At the time of the work incident, Flynn lived in Lexington, Kentucky, but relocated to Cypress, Texas in April or May 2017.

Prior to the work injury, Flynn began experiencing knee problems in approximately 2004 due to the repetitive nature of her work with Toyota. Diagnostic studies demonstrated torn menisci in both knees, which were surgically repaired by Dr. Darren Johnson in 2006 or 2007. Flynn testified she fully recovered after the surgeries, and returned to her regular job duties at Toyota without restrictions. Flynn settled her 2006 bilateral knee claim for a lump sum amount. Flynn experienced no further knee problems and did not seek additional treatment until after the December 17, 2012 work incident. Flynn testified she also had a hammertoe surgically corrected in each foot in 2007. Following a period of recovery, Flynn experienced no problems with her feet until the December 17, 2012 work incident.

Flynn testified she experienced thumb problems in approximately 2009. Toyota referred her to a specialist and she underwent a course of conservative treatment consisting of physical therapy and medication. Afterward, Flynn experienced occasional thumb problems depending on what job she was assigned to at Toyota, but did not actively seek additional treatment until after the December 17, 2012 incident. Flynn did not recall reporting bilateral thumb problems on January 18, 2012 to Dr. Margaret Napolitano. Flynn testified she had no previous problems with either shoulder.

Flynn testified that on December 17, 2012, she tripped over a railing with her right foot and fell onto her hands, elbow and knees, causing her to jam her shoulders. Flynn reported the fall to her group leader the same day. The group leader advised her to wait until after the holidays to see if her symptoms improved. After the holidays, her group leader refused to send her to Industrial Health Services (“IHS”), the Toyota medical facility, despite her advising that her symptoms had not improved. Flynn first received treatment at IHS for her injuries in April 2013. Flynn testified she reported injuries to her shoulders, thumbs, knees, and feet, but that the facility only treated one injured body part at a time.

IHS first addressed Flynn’s bilateral feet complaints, which primarily affected her right foot. IHS ordered physical therapy, and then referred her to Dr. Vivian Rodes, who diagnosed plantar fasciitis and administered two injections. When her symptoms did not resolve, Flynn underwent right foot surgery in May 2015 by Dr. Fine (first name not provided) for an apparent torn ligament. Flynn testified her left foot symptoms had completely resolved by the time she saw Dr. Fine. Dr. Fine restricted Flynn from working between May 2015 and August 2015. Flynn then returned to regular duty with no restrictions.

Flynn treated with Dr. Napolitano for her thumbs on one or two occasions while off work for her right foot surgery. Dr. Napolitano did not place any restrictions on her activities for her thumbs. IHS ordered physical therapy for her shoulders and knees. Flynn then treated with Dr. Wallace Huff for her shoulders. Dr. Huff administered injections but did not restrict her activities since she was off

work for her right foot surgery. She also treated with Dr. Phillip Williams in Texas after she relocated in 2017.

Dr. Johnson administered injections into both knees, which did not resolve her symptoms. Dr. Gregory D'Angelo performed a right total knee replacement on November 18, 2015, and a left partial knee replacement on January 20, 2017. Dr. Stephen Duncan performed a left total knee replacement in November 2017. Flynn was restricted from work for all three surgeries during which Toyota paid her TTD benefits. Flynn did not return to work following her third surgery.

Flynn worked her regular job at Toyota without restrictions from December 17, 2012 until May 2015. She was then restricted from work until August 2015 due to her right foot surgery. She returned to her regular job without restrictions in August 2015, and worked until her first right knee surgery on November 18, 2015.

Flynn described her current bilateral shoulder, right foot, bilateral thumb, and bilateral knee symptoms. She takes Celebrex for inflammation in her knees, and Nabumetone for her shoulders and back. Flynn testified she is restricted from sitting, standing, twisting, repetitively using her hands or shoulders, and overhead work. She is also restricted from walking greater than twenty minutes at a time. Flynn attributes her symptoms to the December 17, 2012 fall. She does not believe she can return to her job with Toyota. She believes she is totally disabled from any work due to her restrictions and limitations.

As noted above, neither party filed Flynn's treatment records occurring after the December 17, 2012 work incident. However, Toyota filed extensive prior

records from UK Healthcare and multiple diagnostic studies for Flynn's previous bilateral knee problems spanning from March 2006 through October 2010. It also filed Dr. Napolitano's January 18, 2012 record for Flynn's previous bilateral thumb complaints. Flynn reported left knee symptoms due to the repetitive nature of her work with Toyota in March 2006. A February 2006 left knee MRI demonstrated a medial meniscus tear. On May 9, 2006, Dr. Johnson performed a left knee arthroscopy with partial medial meniscectomy. After a period of physical therapy, Flynn returned to work with no restrictions.

Flynn returned to Dr. Johnson in September 2006, reporting right knee symptoms. He recommended a course of conservative treatment including physical therapy, restrictions, and medication to treat her degenerative meniscus. The record reflects a diagnosis of bilateral medial osteoarthritis. An August 14, 2008 right knee MRI demonstrated moderate osteoarthritis and a tear/degeneration of the posterior horn and body of the medial meniscus. A repeat right knee MRI performed on April 5, 2010 demonstrated maceration of the medial meniscus with extensive cartilage loss in the medial compartment; extensive fluid and irregularity surrounding the iliotibial band likely reflecting a friction syndrome; and extensive cartilage loss in the medial trochlear groove. Dr. Johnson performed a right knee arthroscopy with partial medial meniscectomy on June 3, 2010. Flynn last treated with Dr. Johnson on October 4, 2010. Dr. Johnson diagnosed her as status post partial medial meniscectomy and patellofemoral chondromalacia, and advised her to follow up as needed.

Flynn visited Dr. Napolitano on January 18, 2012 complaining of bilateral thumb pain of one year duration with no history of an acute injury. Dr. Napolitano noted Flynn had x-rays and physical therapy in the past, and has thumb braces. Following an examination and x-rays, Dr. Napolitano diagnosed bilateral thumb first CMC joint osteoarthritis and right IP joint osteoarthritis. She recommended splints, glucosamine with chondroitin sulfate and anti-inflammatories. Dr. Napolitano allowed Flynn to return to regular duty.

Flynn filed Dr. Warren Bilkey's August 7, 2014 report. Dr. Bilkey examined her prior to her three knee surgeries in 2015 and 2017. He noted the December 17, 2012 work accident, and subsequent symptoms and treatment for her knees, thumbs, shoulders and feet. He noted Flynn had previously undergone bilateral knee and bilateral foot surgery, and had experienced prior bilateral thumb pain. After reviewing the records and performing an examination, Dr. Bilkey diagnosed resolved a right ankle strain and plantar fasciitis. He opined Flynn had attained maximum medical improvement ("MMI") for the right foot, which resulted in no impairment rating. Dr. Bilkey diagnosed a bilateral hand contusion injury and CMC joint degenerative joint disease at the base of both thumbs exacerbated by the contusion injury. He opined Flynn's hand injuries had resolved, that she reached MMI, and sustained no permanent impairment. Dr. Bilkey also diagnosed bilateral knee strains, and aggravation of bilateral knee degenerative joint disease, right worse than left, bilateral shoulder strains, rotator cuff syndrome with rotator cuff weakness, and chronic pain.

Dr. Bilkey noted the diagnoses are due to the December 17, 2012 work injury and that Flynn is at MMI with respect to all injuries. He recommended additional treatment for Flynn's bilateral shoulders and knees, and assessed no permanent restrictions. Pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), Dr. Bilkey assessed a 3% impairment for each knee, but apportioned 1% each to the previous knee surgeries. This results in a 2% impairment rating for each knee due to the December 17, 2012 work accident, yielding a combined 4% impairment rating. Dr. Bilkey assessed a 2% impairment rating for each shoulder, yielding a combined 4% impairment rating attributable to the work injury.

Toyota filed Dr. Robert Jacob's September 26, 2014 report. Dr. Jacob also evaluated Flynn prior to her 2015 and 2017 knee surgeries. Dr. Jacob noted the December 17, 2012 trip and fall, and alleged injuries to Flynn's bilateral shoulders, hands, knees, and feet. He noted Flynn continued to work her regular job and first sought treatment in April 2013. At the time of his examination, Flynn worked at Toyota without formal restrictions. Dr. Jacob performed an examination and reviewed the medical records, including diagnostic studies, both prior and subsequent to the work injury. Subsequent to the work injury, IHS documented foot pain, bilateral thumb symptoms, and shoulder pain that Flynn attributed to a December 17, 2012 fall. Dr. Jacob noted IHS did not document right knee complaints until October 14, 2013, nor bilateral knee complaints until November 8, 2013. He also noted IHS did not document left shoulder complaints until March



2014 when Flynn complained of bilateral shoulder pain. At the time of his examination, Flynn had no complaints regarding either foot or ankle.

Regarding Flynn's feet, Dr. Jacob noted she currently has no symptoms, is under no medical management, and was discharged from her treating podiatrist for plantar fasciitis in August 2013. He notes, "[t]he right foot apparently has been accepted as work related." Dr. Jacob noted his examination of her feet and ankles was normal, and she retains a 0% impairment rating for the plantar fasciitis.

Regarding Flynn's bilateral thumb complaints, Dr. Jacob opined they are "not work related and she has a known history of bilateral thumb osteoarthritis and bilateral thumb complaints which date back to at least 1996 with multiple evaluations subsequent to that and a definitive diagnosis of advanced osteoarthritis to November 2011." Dr. Jacob noted Flynn's longstanding bilateral thumb treatment and her acknowledgement no physician attributed her thumb complaints and arthritis to her work activities. The examination of her thumbs was unremarkable and Flynn is currently performing her normal job using no external support. Dr. Jacob assessed a 0% impairment rating due to the December 17, 2012 work accident and opined she requires no current medical treatment.

Regarding the bilateral shoulders, Dr. Jacob emphasized there is no record documenting she had any injury, complaint, or sought medical attention for left shoulder pain and has had no treatment or diagnostic testing to her shoulders since December 17, 2012. He noted Dr. Rodes' June 5, 2013 record, which documented no complaints of hand or shoulder pain and an essentially normal shoulder examination. He noted Flynn is independent in her activities of daily living

and is working without restrictions. Dr. Jacob opined Flynn “has a 0% impairment to either shoulder and has sustained no harmful change to the human organism as a result of her work activities.” He opined there is no indication Flynn’s shoulder complaints are due to the December 17, 2012 work incident.

Regarding her bilateral knees, Dr. Jacob opined Flynn has “age-related nontraumatic bilateral knee osteoarthritis which has been neither aggravated nor exacerbated by her work injury in 2012.” He noted Flynn did not complain of knee symptoms after the work injury, and did not voice complaints of right knee pain until late 2013. Dr. Jacob noted Flynn’s treating physician attributed her bilateral knee pain to non-occupationally related osteoarthritis predating the December 2012 work injury. His knee examination was essentially normal and he noted Flynn is working without restrictions. He assessed a 1% impairment rating to each knee for the prior partial medial meniscectomies. Dr. Jacob opined Flynn “sustained no injury to her left knee and there is no evidence on clinical examination that she has any residual affects from any alleged knee injury in December 2012.”

Dr. Jacob concluded that her current diagnosis related to the December 17, 2012 work incident is, “right foot plantar fasciitis now resolved for which she reached [MMI] on August 28, 2013. She has not sustained any harmful change to the human organism to her shoulders or knees as a result of the work-related injury.” Dr. Jacob assessed a combined 0% impairment rating due to the December 17, 2012 injury. He opined Flynn does not require any ongoing medical treatment and he declined to assign permanent restrictions for the December 17, 2012 work injury.

Toyota also filed the May 7, 2018 report by Dr. David Jenkinson, who also testified by deposition on December 4, 2018. Apparently Dr. Jenkinson evaluated Flynn previously on July 20, 2017, but that report is not in the record. Dr. Jenkinson evaluated only Flynn's knee complaints. Dr. Jenkinson referenced his previous July 20, 2017 report under history of injury and past medical history. After his previous evaluation, Flynn underwent revision left knee surgery on November 20, 2017, when a prior uni-compartment arthroplasty was converted to a total knee replacement. He noted Flynn continued to experience occasional swelling and popping of the left knee, as well as some pain, but did not take any medication. Dr. Jenkinson examined Flynn's knees and reviewed the records occurring subsequent to his previous evaluation. Dr. Jenkinson diagnosed advanced osteoarthritis in both knees, and noted she is status post bilateral total knee replacement. He opined Flynn attained MMI from her left total knee replacement on May 7, 2018. Pursuant to the AMA Guides, Dr. Jenkinson assessed a 15% impairment rating for each knee, yielding a combined 28% impairment rating. Dr. Jenkinson opined, "100% of the impairment should be attributed to advanced osteoarthritis which had been present and progressive prior to the injury that is alleged to have occurred on 12/17/12." He opined Flynn requires no further medical treatment or permanent restrictions related to the December 17, 2012 work incident.

Dr. Jenkinson's deposition testimony is consistent with his report. He again opined Flynn's bilateral knee replacement surgeries were performed for her advanced osteoarthritis and were not necessitated by the December 2012 work event. Dr. Jenkinson opined the December 2012 fall did not cause Flynn to seek treatment

regarding her knees. He noted Flynn did not report knee symptoms until nearly a year after the December 17, 2012 fall and he would have expected her to seek treatment much earlier if she had experienced them.

Flynn filed Dr. Jules Barefoot's May 8, 2018 report. He performed an examination and reviewed medical records dated before and after the work injury. Dr. Barefoot diagnosed left knee arthroscopic surgery with partial medial meniscectomy on May 9, 2006; right knee arthroscopic surgery with partial medial meniscectomy on June 3, 2010; right knee total arthroplasty on November 18, 2015; left knee uni-compartmental knee arthroplasty in January 2017; left total knee arthroplasty with removal of medial compartment arthroplasty on November 20, 2017; bilateral shoulder impingement with subacromial bursitis and tendonopathy with AC joint osteoarthritis; and second metatarsal left foot osteotomy with fusion of the second PIP joint on March 11, 2003.

Pursuant to the AMA Guides, Dr. Barefoot assessed a 14% impairment for each knee, a 2% impairment for the right shoulder, and a 4% impairment rating for the left shoulder, yielding a combined 30% impairment rating. Dr. Barefoot opined the 30% impairment rating is solely attributable to the December 17, 2012 work injury, and found all treatment has been reasonable and appropriate for her work injury. He noted Flynn had no prior, active shoulder conditions, and although she had prior osteoarthritis in both knees, this condition was asymptomatic and non-disabling prior to December 17, 2012. Dr. Barefoot assigned permanent restrictions and opined Flynn is unable to return to her former job. He also found Flynn attained MMI on May 8, 2018.

Benefit Review Conferences (“BRC”) were held on December 9, 2014 and January 7, 2019. At the December 2014 BRC, the parties stipulated Flynn sustained a work-related injury on December 17, 2012 “only as to the foot.” The parties identified benefits per KRS 342.730, work-relatedness/causation, exclusion for pre-existing disability/impairment, and “causation as to anything other than plantar fasciitis” as contested issues. At the January 2019 BRC, the parties stipulated Flynn sustained a work-related injury on December 17, 2012. The parties stipulated Toyota paid medical expenses totaling \$5,630.49 and TTD benefits from November 18, 2015 to May 17, 2016; January 25, 2017 to August 22, 2017; and November 20, 2017 to June 3, 2018. The following were identified as contested issues: benefits per KRS 342.730, work-relatedness/causation, injury as defined by the ACT, exclusion for pre-existing disability/impairment, and date of injury.

The ALJ entered an opinion on March 8, 2019. He noted Toyota “accepts that plaintiff temporarily developed plantar fasciitis after the work injury, but maintains that condition has completely resolved with no residual effect or impairment or need for additional treatment.” The ALJ then determined Flynn failed to prove she suffered any permanent, work-related injury due to the December 17, 2012 based upon Dr. Jacob’s opinion. Regarding Flynn’s knees, the ALJ noted she was asymptomatic and able to perform her full job duties with no knee complaints for approximately one year after the trip and fall at work. The ALJ noted that Dr. Jacob explained that if Flynn’s knees or osteoarthritis was aggravated by a work incident, she should have experienced knee symptoms very soon after the incident. The ALJ also explained why he found Dr. Jacob’s opinion addressing the

knees more persuasive than Dr. Bilkey's and Dr. Barefoot's, and again concluded Flynn failed to prove she sustained any permanent bilateral knee injury due to the December 17, 2012 work incident.

Similarly, the ALJ found Dr. Jacob's opinion most persuasive in concluding Flynn sustained no permanent bilateral shoulder injuries due to the December 17, 2012 work incident. He also noted Flynn's own experts, Dr. Bilkey and Dr. Barefoot, did not agree on the nature of her purported bilateral shoulder injury and that Dr. Rodes noted Flynn had no hand or shoulder pain at the time of her June 5, 2013 examination. The ALJ noted none of the physicians of record diagnosed a permanent foot injury warranting an impairment rating. The ALJ found Dr. Jacob most persuasive in concluding her right foot plantar fasciitis has resolved without permanent, harmful change to the human organism and she is not entitled to an award of permanent benefits. Also relying upon Dr. Jacob's opinion, the ALJ found no evidence of permanent bilateral thumb injuries due to the work accident.

The ALJ found Flynn failed to prove she suffered any permanent, work-related injuries due to the December 17, 2012 work accident, and she is not entitled to any award of permanent income or medical benefits, and dismissed her claim. Neither party filed a Petition for Reconsideration.

On appeal, Flynn argues the ALJ erred in dismissing her claims, and the evidence compels a contrary result. Flynn asserts the December 17, 2012 slip and fall, the occurrence of which was stipulated by the parties, directly caused her current conditions and resulted in injuries as defined by the Act. Flynn asserts her

prior conditions regarding her knees and thumbs had fully resolved and she was asymptomatic at the time of the work incident. Flynn also directs our attention to her hearing testimony explaining the five-month delay in seeking treatment was due to her supervisor refusing to send her to IHS despite her consistent complaints. Flynn also points to Dr. Barefoot's opinion in support of her argument. Flynn argues it was inappropriate for the ALJ to find any portion of her disability attributable to an active, pre-existing condition since it was not symptomatic and impairment ratable immediately prior to the work injury.

Flynn also argues the ALJ failed to determine whether she sustained any temporary injuries, and she is at the minimum, entitled to temporary medical and income benefits for the temporary injuries she sustained to her bilateral thumbs, feet, shoulders, and knees pursuant to Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2002).

As the claimant in a workers' compensation proceeding, Flynn had the burden of proving each of the essential elements of her claim, including work-relatedness/causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Flynn 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.

In addition, Flynn not file a petition for reconsideration from the March 8, 2019 Opinion and Order dismissing her claim. In the absence of a petition



for reconsideration, on questions of fact, the Board is limited to a determination of whether substantial evidence in the record supports the ALJ's conclusion. Stated otherwise, where no petition for reconsideration was filed, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record supporting the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, on appeal, we must determine whether substantial evidence supports the ALJ's decision.

In dismissing Flynn's claim, the ALJ relied primarily upon Dr. Jacob's opinions. Dr. Jacob reviewed the medical records both pre-dating and subsequent to the December 17, 2012 work injury, and performed an examination. He addressed each body part allegedly injured due to the work injury. Dr. Jacob specifically found Flynn's bilateral thumb and shoulder complaints are not work-related and do not warrant an impairment rating. He explained his reasoning in reaching his conclusion. Dr. Jacob found Flynn has age-related bilateral knee osteoarthritis neither aggravated nor exacerbated by the December 17, 2012 work injury. He noted the records contain no knee complaints until nearly a year after the work accident and that Flynn's treating physician attributed the bilateral knee condition to non-occupationally-related osteoarthritis. Regarding her feet, Dr. Jacob noted Flynn's right foot has been accepted as work-related, but retains a 0% impairment rating for the plantar fasciitis.

We conclude Dr. Jacob's opinion alone constitutes substantial evidence supporting the ALJ's determination that Flynn failed to prove she sustained

any permanent, work-related injury due to the December 17, 2012 work incident, and no contrary result is compelled. Dr. Jenkinson's opinion regarding Flynn's bilateral knee condition further supports his determination. On appeal, Flynn does not argue that Dr. Jacob's opinion is unreliable. Rather, she points to contrary evidence supporting her argument on appeal. However, the ALJ as fact-finder, not the Board, determines the credibility of the evidence. The ALJ may also choose whom and what to believe when faced with conflicting evidence. It was the ALJ's prerogative to rely on Dr. Jacob's opinions. Therefore, his determination Flynn failed to prove she suffered any permanent, work-related injuries due to the December 17, 2012 work accident will not be disturbed.

Regarding Flynn's second argument, we find the ALJ was not compelled or mandated to determine whether she sustained any temporary injuries to her bilateral shoulders, thumbs, or knees. The ALJ primarily relied upon Dr. Jacob's opinion in finding Flynn did not sustain any temporary injuries to her bilateral shoulders, thumbs or knees. Flynn did not file a petition for reconsideration requesting additional findings addressing whether she sustained temporary injuries due to the December 17, 2012 work incident.

However, we do find it necessary to remand the claim for the ALJ to address whether Flynn sustained a temporary injury to her right foot, and whether she is entitled to temporary medical and/or income benefits for that condition. Toyota filed a Form 111 accepting Flynn's bilateral feet injuries as compensable, but noted a dispute existed concerning the amount of compensation owed. Likewise, at the December 2014 BRC, the parties stipulated Flynn sustained a work-related injury

on December 17, 2012 “only as to the foot.” The parties identified benefits per KRS 342.730, work-relatedness/causation, exclusion for pre-existing disability/impairment, and “causation as to anything other than plantar fasciitis” as contested issues. The ALJ relied upon Dr. Jacob’s opinions in reaching his determinations. Dr. Jacob concluded Flynn’s current diagnosis related to the December 17, 2012 work incident is “right foot plantar fasciitis now resolved for which she reached [MMI] on August 28, 2013” which warranted a 0% impairment rating.

In light of the above, we find it necessary to remand the claim to the ALJ for the sole purpose of determining whether Flynn sustained a temporary foot injury due to the December 17, 2012 trip and fall incident, and whether she is entitled to TTD benefits and medical benefits pursuant to Robertson v. United Parcel Service, supra, and FEI Installation, Inc. v. Williams, 214 S.W.3d 284 (Ky. 2001) for that injury only. We do not direct any particular result.

Accordingly, the March 8, 2019 Opinion and Order rendered by Hon. Grant S. Roark, Administrative Law Judge is **AFFIRMED**. We **VACATE** the ALJ’s complete dismissal of Flynn’s claim and **REMAND** for additional findings addressing whether she sustained a temporary foot injury due to the December 17, 2012 work incident and whether she is entitled to TTD and medical benefits for that injury.

ALL CONCUR.

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