

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 23, 2021

CLAIM NO. 202000400 & 201882763

STAKEHOLDER PAYROLL SERVICES, LLC

PETITIONER

VS. **APPEAL FROM HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE**

SAMMIE JERVIS;
DR. SUJATA GUTTI;
BRIAN HUNTER, PA; and
HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

BORDERS, Member. Stakeholder Payroll Services, LLC, (“Stakeholder”) appeals from the January 15, 2021 Opinion, Award and Order, and the February 16, 2021 Order denying its Petition for Reconsideration rendered by Hon. Christina D. Hajjar, Administrative Law Judge (“ALJ”). The ALJ determined Sammie Jervis (“Jervis”)

suffered a work-related low back injury with psychological overlay. The ALJ determined Jervis has a 5% impairment rating for her psychological condition and a 6% impairment rating for her low back condition for a combined 11% whole person impairment rating. The ALJ also determined Jervis does not retain the physical capacity to return to the job she was doing at the time of her accident and enhanced the award by the three-multiplier. The ALJ found Jervis achieved maximum medical improvement (“MMI”) on June 1, 2019, according to Dr. Anbu Nadar, and awarded temporary total disability (“TTD”) benefits from April 18, 2018 through June 1, 2019. The ALJ awarded permanent partial disability (“PPD”) benefits based upon the combined 11% impairment rating, enhanced by the three-multiplier contained in KRS 342.730(1)(c)1, and medical benefits pursuant to KRS 342.020.

Stakeholder argues the ALJ erred in determining Jervis achieved MMI on June 1, 2019 and in determining the application of the three-multiplier applies to both Jervis’s physical and psychological injuries, and should apply only to the physical injury. We disagree and affirm.

Jervis testified by deposition on June 16, 2020 and at the hearing held November 18, 2020. Jervis was employed as a CNA. Her position involved assisting elderly residents with their activities of daily living, including clothing, bathing, and feeding. Jervis injured her low back on April 17, 2018, while helping lift a 350-pound patient. Jervis heard a pop and felt an immediate onset of low back pain. She reported the incident and drove herself to the emergency room. She returned to work on July 23, 2018, and continued to work until August 15, 2018. She had physical therapy, including traction that sent a shock through her left leg.

She receives trigger point injections every other month that relieve her pain for one to two months. Her back and left leg have constant stabbing and throbbing. Jervis takes Lexapro to control her anxiety. Jervis denied taking any medication for any psychological problem prior to the injury. Jervis stated her condition did not improve following Dr. Thomas Menke's evaluation. She indicated she is able to do less now than at the time of the evaluation because her condition has worsened.

Jervis received treatment at St. Joseph Hospital of Martin on April 17, 2018. She reported a work injury and was diagnosed with a lumbar strain. She was given a Toradol injection and she was directed to see her family doctor.

PA Brian Hunter ("Mr. Hunter") of ARH Harold Primary Care treated Jervis for complaints of low back pain beginning in September 2018. He indicated Jervis would need to be off work through October 5, 2018, at which time she would be evaluated. Mr. Hunter referred Jervis to Dr. John Gilbert for a bulging L5-S1 disc. On October 12, 2018, he declared Jervis was at MMI and her benefits were cut off. Jervis reported she had physical therapy and traction and was now having pain, numbness, and tingling in the left leg. Jervis continued to complain of numbness and tingling with limited range of motion due to low back pain. On June 13, 2019, Mr. Hunter noted Jervis continued to have ongoing symptoms and physical therapy helped minimally. She saw Dr. Sujata Gutti for neuropathy with minimal improvement. On July 11, 2019, Jervis reported increasing anxiety due to loss of ability to work. Lexapro was prescribed. Jervis reported increased back pain with numbness and tingling in her legs. Jervis again reported increased anxiety and worsening back pain on August 27, 2019, and November 21, 2019. On November

22, 2019, Dr. Gutti noted Jervis was having anxiety/depression “for some time” due to her lack of ability to work, and she had increased back pain.

Jervis submitted treatment records and insurance forms from Jennifer Bishop (“Ms. Bishop”), APRN, of Physicians for Women and Families documenting her treatment from April 20, 2018 through August 17, 2018. Bishop completed short-term and long-term disability claim forms. On September 11, 2018, she noted Jervis had been treated from April 20, 2018 through August 17, 2018 for a low back injury. She was expected to return to work on July 23, 2018 with restriction to desk duty with the ability to have frequent breaks to sit and stand. The restrictions were effective from July 23, 2018, to the date of the report. On March 12, 2019, Ms. Bishop indicated Jervis was not advised to return to work. She detailed restrictions in effect through March 3, 2019.

Jervis submitted treatment records from Dr. Gutti. Dr. Gutti administered trigger point injections on September 17, 2019, and December 14, 2019. On January 27, 2020, Dr. Gutti noted the last trigger point injection helped for approximately four to six weeks and reduced her pain level by 50%. A nerve conduction/electromyography on February 17, 2020, revealed findings consistent with peripheral neuropathy, predominantly sensory type, both axonal and demyelinating, mild. On March 9, 2020, Jervis continued to complain of persistent pain in the lower back, at times radiating into both lower extremities. Dr. Gutti’s impressions were peripheral neuropathy with increase in symptoms and increase in the sensory level suggesting progression of neuropathy and possible etiology would be lumbar radiculopathy; lumbar bulging disc at L5-S1; and myofascial pain.

Dr. Menke performed an evaluation on August 6, 2018. Dr. Menke noted Jervis had returned to work in a light duty capacity. Dr. Menke diagnosed a lumbar strain with MRI findings of a small left foraminal disc protrusion without nerve impingement and a mild midline annular bulge at L5-S1 without nerve impingement. He also diagnosed mild diffuse degenerative changes in the lumbar spine. Dr. Menke felt Jervis was at MMI as of the date of the examination. Dr. Menke assigned restrictions of lifting, pulling or pushing twenty pounds occasionally and ten pounds frequently. In a September 17, 2018 addendum report, Dr. Menke assigned a 6% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, (“AMA Guides”).

Dr. Menke performed a second evaluation on July 21, 2020. Dr. Menke noted Jervis had been receiving trigger point injections every other month from Dr. Gutti. Jervis reported the injections sometimes helped and sometimes did not. Jervis was not working. She reported she was fired on August 18, 2018, because light duty was no longer available. Dr. Menke did not believe any treatment for the lumbar spine since August 2018 has been reasonable, necessary, or related to the work event. He reiterated that he felt Jervis reached MMI on August 6, 2018. He continued to assess the same restrictions.

Dr. Nadar performed an evaluation on November 26, 2019. Dr. Nadar reviewed medical records including notes from the ER at St. Joseph Martin, treatment notes from Dr. Gutti, APRN Bishop, Mr. Hunter, and Highlands Physical Therapy. He also reviewed the report of Dr. Menke. Dr. Nadar diagnosed lumbosacral strain with radiculopathy. Dr. Nadar recommended a limitation of

activities that require heavy lifting, pushing, pulling, carrying, and prolonged sitting and standing. He felt Jervis presently did not retain the ability to return to her former employment as a CNA. He stated Jervis reached MMI in June 2019. Jervis continued to be symptomatic with persistent low back pain and pain down her left leg. Dr. Nadar assigned an 8% impairment rating for DRE lumbar category II pursuant to the AMA Guides.

Dr. Amy Trivette performed a psychiatric evaluation on August 6, 2020. Dr. Trivette diagnosed an unspecified personality disorder. During the examination, Jervis did not appear depressed or anxious, and clinical impressions and results of psychological testing indicated possible exaggeration of symptomatology. Dr. Trivette disagreed with the diagnosis of adjustment disorder. Jervis did not report or display any psychiatric symptoms occurring within three months of the alleged work injury. Dr. Trivette felt the opioid medication may contribute to any mood symptoms Jervis experienced while taking it. During the evaluation, there was no evidence Jervis experienced significant psychiatric impairment preventing her from working in any position, including the one she had prior to the alleged work-related injury. Dr. Trivette opined productive working, financial gains, and social interactions would provide emotional benefit to Jervis. Dr. Trivette stated Jervis does not have a psychiatric impairment pursuant to the 2nd Edition AMA Guides and is at MMI. Jervis did not deviate from her baseline emotional functioning as a result of the April 17, 2018 event. Dr. Trivette concluded Jervis has no restrictions secondary to psychological functioning.

Dr. Megan L. Green performed a psychological evaluation on February 15, 2020. She also testified by deposition on August 14, 2020. Jervis was first treated for mental health concerns in August 2019 when she was prescribed Lexapro. Notes from Harold Primary Care at that time reflect she indicated she had increasing anxiety due to loss of ability to work and ongoing injury. Dr. Green diagnosed an adjustment disorder with anxiety and assigned a 5% psychiatric impairment solely attributable to the 2018 work injury. She felt Jervis requires no restrictions and is likely capable of returning to work from a mental health perspective. Dr. Green stated there is no indication of temporary total disability from a mental health perspective. Reasonable and necessary treatment would include psychiatric consultation/ongoing psychotropic medication management, individual therapy to address symptoms of anxiety, sleep hygiene counseling, and psychological techniques for pain management. She stated Jervis reached MMI one year after the injury, or in April 2019.

The ALJ made the following findings of facts and conclusions of law relative to the issues on appeal, as set forth *verbatim*:

Work-relatedness / Causation & Injury as Defined by
the Act

An employee has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of her workers' compensation claim. *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). Under KRS 342.0011(1), "injury" is defined as any work-related traumatic event or series of traumatic events, including cumulative trauma arising out of and in the course of employment which is the proximate cause producing a harmful change to the human organism evidenced by objective medical findings. . . . KRS 342.0011(1). When the causal relationship between an injury and a medical

condition is not apparent to a lay person, the issue of causation is solely within the province of a medical expert. *Elizabethtown Sportswear v. Stice*, 720 S.W.2d 732, 733 (Ky. App. 1986); *Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc.*, 618 S.W.2d 184 (Ky. 1981). This ALJ finds Jervis developed a psychological injury as a result of her work injury, and she has a 5% impairment rating for her psychological injury.

Jervis described that she suffers from depression and anxiety ever since this happened. She stated her psychological symptoms started about three or four months after her accident when she could not sign her daughter up to play ball, because she cannot sit on the bleachers for that long to watch her. She stated “everything rolled into one.”

Jervis first treated for anxiety and depression by a doctor 15 months after the injury. She did not take medication for anxiety or depression prior to the injury, but PA Hunter prescribes Lexapro. It allows her to be “more calm”, and she does not let things bother her as bad. When asked about the specific family tension she mentioned to PA Hunter, she stated she had split with her boyfriend. She testified her physical and psychological condition had “something to do with her split from her boyfriend.”

In her February 15, 2020 report, Dr. Megan Green, a licensed clinical psychologist, noted that the Harold Primary Care records from August 2018 indicate she was having increasing anxiety due to loss of ability to work and ongoing injury. She was prescribed Lexapro at that time. She was diagnosed with unspecified anxiety disorder and major depressive disorder, which was also noted by the Mountain Comprehensive Care records in December 2019. Dr. Green diagnosed an adjustment disorder with anxiety, and assessed a 5% impairment, based upon Class 2, which refers to mild impairment using the 2nd and 5th Edition of the AMA Guides. She found no indication of pre-existing mental health concerns and reported current symptoms related to her chronic pain, physical limitation and unemployment associated with the injury. She recommended psychiatric consultation, ongoing medication

management, individual therapy to address symptoms of anxiety, sleep hygiene counseling, and psychological techniques for pain management. Dr. Green testified by deposition, and was questioned thoroughly about the basis of her opinion. She admitted that the testing relies on the claimant being honest and putting forth an adequate effort, but she did not get the impression of any concern that Jervis did not present honestly or put forth adequate effort. She noted Jervis's responses were consistent with the collateral records, and she did not report anything severe, which may have suggested inaccurate reporting. She did not change her conclusions based upon the questions asked during her deposition. She did not believe her psychological symptoms would prevent her from performing work. She stated that Jervis would have reached maximum medical improvement one year after her injury. Dr. Amy Trivette performed an independent psychiatric evaluation on October 1, 2020. She stated that Jervis has reported minor anxiety symptoms relieved by a low dose of Lexapro that typically does not produce a significant response. She stated Jervis is reporting medical and psychological symptoms that are not accounted for by injuries sustained in the work-related accident. She did not appear depressed or anxious and clinical impressions and results of psychological testing indicated possible exaggeration of symptomatology. She stated Jervis has continued managing her activities of daily living, personal affairs, and relationships. She does not agree with the diagnosis of an adjustment disorder. She did not report or display any psychiatric symptoms occurring within three months of the alleged work injury. Her subjective report of distress may be exaggerated, and she did not endorse or display sleep disturbance (until the last few weeks), appetite or weight changes, crying spells, changes in energy level, or clinically significant impairment as a result of any emotional symptoms.

Dr. Trivette stated that productive working, financial gains, and social interactions would provide emotional benefit to her. She stated Jervis is at maximum medical improvement, and she did not deviate from her baseline emotional functioning as a result of the work event. She has no work restrictions secondary to psychological functioning. She assessed no

psychiatric impairment under the 5th Edition of the Guides, as Class 1 and under the 2nd edition, Class 1, which translates to 0 to 5%. She stated she would not recommend continued psychiatric treatment as a result of the alleged work-injury, but she should continue her current antidepressant if she feels like it is beneficial in mitigating emotional distress related to her longstanding problems coping with psychological stressors.

This ALJ is convinced that the work injury contributed to Jervis's psychological condition and need for Lexapro. Dr. Green was convincing that her symptoms are due to the work injury. Even Dr. Trivette admitted that Jervis should continue her current antidepressant if she feels like it is beneficial in mitigating emotional distress related to her longstanding problems coping with psychological stressors. Such medication was not prescribed prior to her injury and there is no evidence of prior treatment, symptoms, or impairment.

Defendant points out that Jervis's attorney questioned whether her physical and psychological split had anything to do with the split from her boyfriend, and Jervis responded "yes." This ALJ takes this response to mean that the injury and her psychological condition after the injury contributed to her break up with her boyfriend rather than her boyfriend's break up being the reason for her physical and psychological condition, as Defendant seems to suggest.

There is no credible evidence of any pre-existing psychological problem, and while other factors may have played a role, this ALJ finds that Dr. Green's report and her deposition testimony are convincing that she has a mild psychological impairment due to the injury. Thus, this ALJ finds she has 5% impairment rating due to her psychological condition.

Temporary Total Disability

Temporary total disability is 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

which would permit a return to employment. *Magellan Health v. Helms*, 140 SW 2d 579 (Ky. App. 2004). In *W. L. Harper Const. Co., Inc., v. Baker*, 858 S.W. 2d 202 (Ky. App 1993) the court explained that temporary total disability benefits are payable until medical evidence establishes that the recovery process, including any treatment reasonably rendered in an effort to improve claimant's condition is over, and the underlying condition is stabilized such that the workers' compensation claimant is capable of returning to his job, or to some other employment which he is capable, which is available in the local labor market. Further, it would not be reasonable to terminate temporary total disability benefits for a claimant when he is released to perform minimal work, but not the type of work that was customary or that he was performing at the time of his injury. *Central Kentucky Steel v. Wise*, 19 S.W. 3d 657 (Ky. 2000).

This ALJ finds Jervis reached maximum medical improvement on June 1, 2019, based upon Dr. Nadar's report. Dr. Menke was not convincing that she reached maximum medical improvement earlier, as she was still undergoing injections, physical therapy, and her symptoms worsened after her visit with him. As Dr. Nadar did not specify a date other than "June 2019", this ALJ is using the date of June 1, 2019.

This ALJ finds Jervis's argument convincing that TTD is owed from April 18, 2018 through June 1, 2019, as she had not reached a level that would permit her to return to her employment and had not reached maximum medial improvement during that time period. Although she worked for a short period of time at light duty from July 23, 2018 through August 15, 2018, she was not capable of performing her customary work during this time period. To the extent that Jervis worked and received wages during this time, Defendant is entitled to a credit. However, there is no evidence as to how much she was paid. Thus, this ALJ is unable to determine a proper credit. TTD benefits should be paid at the rate of \$199.23 per week, from April 19, 2019 through June 1, 2019, with Defendant taking credit for benefits paid, including any overpayment as to rate.

Permanent Partial Disability

In order to qualify for permanent partial disability under KRS 342.730, the claimant is required to prove not only the existence of a harmful change as a result of the work-related traumatic event, but also required to prove that the harmful change resulted in a permanent disability as measured by an AMA impairment.

Although Dr. Nadar believed that Jervis should receive the maximum impairment rating in DRE Category II, this ALJ was convinced by Dr. Menke's report that her symptoms indicated a potential symptom magnification. Given Dr. Menke's lack of objective findings supporting a verified radiculopathy, this ALJ finds Dr. Menke's 6% assessment most credible and awards a 6% impairment rating for the lumbar spine. She has a total 11% impairment rating for the injury.

3X Multiplier

Under KRS 342.730, if, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of the injury, the permanent partial disability benefit shall be multiplied by three. Dr. Nadar recommended restrictions of heavy lifting, frequent bending, pushing, pulling, twisting, prolonged standing or walking. Physical therapist Franklin Stumbo performed a functional capacity evaluation on January 8, 2020. He opined she could perform limited light level work due to lumbar and lower extremity limitations. He noted she would not tolerate working in environments of prolonged sitting, standing, stooping or vibration due to her current physical limitations about the lumbar and knee regions. Jervis testified she frequently lifted 100 to 150 pounds in her previous position as a CNA, and had to stand for 2.5 hours before getting a 15 minute break. This ALJ is convinced that Jervis cannot return to the work she was performing at the time of the injury, based upon her testimony and the restrictions recommended by Dr. Menke, Dr. Nadar, and Mr. Stumbo. PPD benefits are calculated as follows: $\$199.23 \times .11 \times 1.0 \times 3.0 = \65.75 per week for 425 weeks.

Jervis filed a Petition for Reconsideration requesting the ALJ correct a patent error appearing on the face of the Opinion regarding the period of permanent partial disability benefits awarded, which the ALJ sustained. Stakeholder filed a Petition for Reconsideration arguing the ALJ erred in determining Jervis was at MMI on June 1, 2019. Stakeholder argues MMI was reached on August 6, 2018. It also argues the ALJ erred in assessing the three-multiplier to both the physical and psychological claims as Jervis retains the physical capacity to return to work from a psychological perspective. Lastly, it argues the ALJ erred in awarding reimbursement for medical expenses.

The ALJ entered an Order denying Stakeholder's Petition for Reconsideration, and in doing so set forth the following additional findings of fact, *verbatim*.

This matter is before the undersigned Administrative Law Judge for consideration of Defendant's petition for reconsideration of the Opinion, Award, and Order of January 15, 2021. Therein, Defendant contends that the undersigned provide additional findings of the fact regarding maximum medical improvement, payment of medical treatment after August 6, 2018, and whether Plaintiff's entire award is subject to the 3x multiplier. Plaintiff filed a response.

KRS 342.281 provides that an administrative law judge is limited on review on petition for reconsideration to the correction of errors patently appearing upon the face of the award, order or decision. The ALJ may not reweigh the evidence and change findings of facts on petition for reconsideration. *Garrett Mining Co. v. Nye*, 122 S.W.3d 513 (Ky. 2003). Having reviewed Defendant's petition for reconsideration, the undersigned notes that it is simply an impermissible re-argument of the merits of the claim, and the petition for reconsideration is, therefore, OVERRULED.

However, the ALJ sets forth these additional findings.

The ALJ has read Defendant's petition for reconsideration and again finds that Plaintiff reached maximum medical improvement on June 1, 2019, based upon Dr. Nadar's report. Jervis was still undergoing active treatment with the nurse practitioner and then her PA Brian Hunter. This ALJ was given two options for determining MMI: either the August 6, 2018 date from Dr. Menke or the June 2019 date from Dr. Nadar. This ALJ finds that Dr. Nadar's June 2019 date was more convincing, as medical "treatment reasonably rendered in an effort to improve" Jervis's condition was not over as of August 6, 2018. After this date, she underwent additional physical therapy, routine visits with her PA, and evaluation and testing by Dr. Gutti. Although her condition may not have changed substantially in hindsight, this ALJ finds that the August 6, 2018 date is not appropriate, as the treatment she was receiving at that time and thereafter was reasonably rendered to improve her condition.

The ALJ also finds that the 3x multiplier is applicable to the entire impairment, even though a portion of the impairment is for her psychological injury, which does not preclude her from returning to work. Defendant has not produced any case law suggesting that the 3x multiplier should be apportioned.

This ALJ finds that the compensability of specific medical bills was not raised by the parties. The ALJ did address the issue raised - whether the treatment was reasonable, necessary or related to the injury. The issue of the failure to raise the issue of unpaid expenses or submit medical bills was not raised by the parties. Thus, this ALJ declines to find any specific bills or treatment in general, compensable or not.

If any past medical bills are tendered for payment, this ALJ believes it would be the subject of another dispute, and the reasonableness of the failure to submit bills at the BRC, in light of Defendant's refusal to pay for any additional treatment after the IME by Menke, may be at issue.

As the claimant in a workers' compensation proceeding, Jervis had the burden of proving each of the essential elements of her cause of action. *See* KRS 342.0011(1); *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). Since Jervis was successful in that burden, the question on appeal is whether there was substantial evidence of record to support 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). An 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 that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. *McCloud v. Beth-Elkhorn Corp.*, 514 S.W.2d 46 (Ky. 1974). 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).

The ALJ was confronted with conflicting medical evidence of when Jervis achieved MMI. Dr. Menke opined MMI was reached on August 6, 2018, and Dr. Nadar opined MMI was achieved on June 1, 2019. In her Opinion and Order on Petition for Reconsideration, the ALJ acknowledged the conflicting evidence and explained why she found Dr. Nadar's opinions more persuasive. This was a proper exercise of her discretion as the fact-finder and was supported by substantial evidence and will therefore not be disturbed on appeal.

On the issue of apportionment of the three-multiplier, the ALJ determined applicable the three-multiplier to the entire impairment rating as she believed Jervis did not retain the physical capacity to return to the job she was performing at the time of her injury into the indefinite future, and applied the three-multiplier to the entire award of PPD benefits. Stakeholder argues the three-multiplier should not be applied to that portion of the award compensating Jervis for psychological injuries as she retains the physical capacity to return to work from a psychological perspective.

KRS 342.730(1)(c)(1) provides permanent partial benefits are enhanced by the three-multiplier if the claimant does not retain the physical capacity

to return to work as a result of the injury. The statute does not distinguish, nor apportion, the benefits to a specific injury preventing the return to work, it simply allows the effects of the injury, in total, to be considered in making this determination. The statute makes no distinction between injuries when multiple body parts, including psychiatric, are included in a claim. Had the Legislature intended such an apportionment to occur it would have declared it, but it did not. Therefore, a plain reading of the statute does not allow for the apportionment Stakeholder seeks.

Accordingly, the Opinion, Award and Order of January 16, 2021 and the February 16, 2021 Order on Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR

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