# Commonwealth of Kentucky
# Workers' Compensation Board

**OPINION ENTERED: January 19, 2018**

CLAIM NO. 201402240

TG KENTUCKY PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

SHEILA LANE;
TRIPLE M EQUIPMENT;
UNINSURED EMPLOYERS FUND; and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**AFFIRMING**

* * * * * *

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

**ALVEY, Chairman.** TG Kentucky ("TG") appeals from the October 19, 2015 Interlocutory Opinion, the July 24, 2017 Opinion and Award, and the September 7, 2017 order on petition for reconsideration rendered by Jonathan R. Weatherby, Administrative Law Judge ("ALJ"). The ALJ determined Sheila

Lane ("Lane") was employed by Triple M Services ("Triple M") at the time of the October 19, 2014 accident, and TG is responsible for the payment of benefits as an up-the-ladder employer pursuant to KRS 342.610(2). The ALJ awarded temporary total disability ("TTD") benefits as paid, permanent total disability ("PTD") benefits, and medical benefits.

On appeal, TG argues the type of work performed by Lane at the time of her injury was not a regular and recurrent part of the work of the trade, business, occupation, or profession of TG. Therefore, pursuant to KRS 342.610(2), TG is not an up-the-ladder liability employer. Because substantial evidence supports the ALJ's determination, we affirm.

Lane filed a Form 101 alleging injuries to her collar bone, left shoulder, elbow, and arm when she fell from a ladder while cleaning the inside of a smoke stack on October 19, 2014. Lane identified Triple M, TG, and the Uninsured Employer' Fund ("UEF") as defendants. Lane had worked as a commercial cleaner for Triple M since 2014. Triple M did not have workers' compensation insurance in effect at the time of Lane's injuries. The claim was bifurcated on the issues of up-the-ladder employment and whether Lane was an independent contractor. Since the sole issue on appeal pertains to up-the-ladder liability, we will not discuss the medical evidence.

Lane testified by depositions on March 18, 2015 and December 1, 2016, and at hearings held August 19, 2015 and May 25, 2017. Lane began working for Triple M in June or July 2014. Triple M, through its owner C. W. Murphy ("Murphy"), paid Lane $15.00 per hour. At the time of her injury, Lane concurrently worked at Popes Creek Ranch. Lane has not returned to any employment since the October 19, 2014 work injury.

Lane testified Murphy was responsible for securing jobs for Triple M. All jobs Lane performed for Triple M were located at TG, a factory manufacturing automotive parts for Toyota. During the several months she worked for Triple M, Lane cleaned and re-greased the ovens where car parts were baked and she pressure washed the roof. At the March 2015 deposition, Lane estimated she cleaned the ovens nearly every week and was on the roof, "a whole lot with the pressure washer from the - - where the paint come out and kind of got on the roof." Lane stated she worked at TG during the week while the factory was operating, and on some weekends when it was not operating. At the August 2015 hearing, Lane indicated she typically worked weekends at TG when the factory lines were shut down. Lane estimated she had been to TG for jobs ten to fifteen times during her employment with Triple M. Lane estimated she cleaned the oven line three or four times, and pressure washed the roof "a lot." Lane did not participate in factory work.

On Sunday, October 19, 2014, Murphy directed Lane to clean paint from the smoke or vent stacks with a hand scraper. Lane testified this was the first time during her employment with Triple M that she was directed to clean the stacks. Lane recalled there were three stacks to clean, and all equipment had been shut off. A ladder had already been set up when Lane reported to work that day, presumably by Murphy. Lane testified she was standing near the top of the eighteen-foot ladder scraping paint when the ladder moved causing her to fall to the ground. Lane testified she was cut out of the smoke stack, and transported to the emergency room. Lane ultimately underwent three surgeries to her left shoulder, all performed by Dr. Ryan Krupp. The accident was witnessed by a co-worker, Susie Burchett ("Burchett").

Murphy testified by deposition May 11, 2015. Murphy explained Triple M was in his wife's name, but he "took care of everything else." Triple M was an industrial cleaning business, which formally dissolved in 2015. Murphy confirmed Lane came to work for Triple M through a friend. Murphy believed Triple M was a subcontractor for TG and did not carry workers' compensation insurance. Murphy provided Lane a Form 1099 and informed her she would have to secure her own insurance. Lane supposedly filled out a subcontractor form stating she was a subcontractor and carried her own insurance. However, none of

these documents were submitted into the record. Triple M paid Lane $15.00 per hour.

TG was Triple M's only client. Murphy testified he submitted his first bid to Jake Akers ("Akers"), who worked at TG and had been friends with him for many years. The first job began in the winter of 2013, and entailed cleaning ovens on the paint line. Murphy could not specifically state how often Triple M worked at TG, but stated the vast majority of the work occurred on the weekends. Triple M performed the following jobs for TG: cleaning three to four ovens, cleaning paint overspray off the roof, cleaning an area of the factory where a new line was installed, and the louvers. Murphy testified supplies were provided by both Triple M and TG. Murphy acknowledged although Triple M only worked in the paint section, TG used other contractors on-site.

Murphy estimated Lane worked an average of eight hours a week from June 2014 to October 2014. On Saturday, October 18, 2014, Triple M was working at TG, possibly cleaning the ovens. A TG employee, Greg Caldwell ("Caldwell"), approached him about performing cleaning work the following day on the louvers. The louvers contained paint build-up, and were not opening and closing correctly. Murphy had never previously worked on the louvers. Murphy asked Lane and Burchett if they wanted the job. Murphy testified as follows regarding the job:

> Q: Was the term “emergency” ever used to you by Mr. Caldwell or anyone else?
>
> A: I don’t -- he may have said it. I know he - - well, yes, because I asked him about a PO. I remember asking about a PO and he says - - he told me that, “Don’t worry about that, we’ll take care of it Monday. Because - - my understanding - - my memory serves me correct, I believe with those louvers not opening and shutting correctly, it would have shut the lines down.
>
> . . . .
>
> It was more or less just taking a putty knife and just, however many years TG’s been open, that much paint buildup was on the louvers, and just taking a putty knife and just scraping it off and let it fall to the floor.
>
> Q: Was it your understanding, based on your conversation, that this had not been cleaned since they’d been opened. . . .?
>
> A: Well, I mean, just by me looking at it, and from what the issues was, I was just under the pretty good assumption that they’d never been cleaned. I shouldn’t say it was said or not said, I don’t know, but there was nothing else in that plant that dirty. I’ll put it that way.

Murphy brought an eleven-foot ladder, as well as the scraper, the following day and set it up for the job. He showed Lane and Burchett the work site and then returned home. Murphy did not witness the fall. Murphy estimated the louvers where thirteen or fourteen feet from the ground.

Caldwell, a maintenance technician for TG, testified by deposition on May 5, 2015. He is responsible for maintaining the paint line. Caldwell agreed Triple M was working at TG the day before the accident cleaning ovens. On the day of the accident, Lane was cleaning louvers in the exhaust area of the paint booth. Caldwell explained you enter the exhaust house area through a door. Along the hallway is a grid of twelve filters. On the other side of the filters bank is a small area that is accessed by removing the filters and crawling through. The area contains a "fan at the top and then it offsets to a plume, then the stack. So your air flow has got to pass through everything to go out the roof." The louvers are approximately eight to ten feet from the ground, and the dimensions are three by four feet. Caldwell testified as to what transpired the day before the accident:

> Saturday, I had several contractors doing several jobs in this - - in the whole line. And the louvers actually got stuck. The lines on, they're open; the lines off; they close. Well, they wouldn't close. And with further investigation, we looked and they're built up with paint. And to let them close them all the way, you've got to scrape the paint off. So they were the first contractors done that did not have a job Saturday. So I requested for them to clean these - - clean the actual louvers.

Caldwell testified this would have been the first time to his recollection the louvers had been cleaned. Caldwell talked to Murphy on-site about the job, which was to be performed the following day on Sunday, October 19, 2014. Caldwell was able to show Murphy the louvers since the paint line was down. Although he was working at TG on the day of the accident, Caldwell did not witness Lane's fall. Once notified, Caldwell cut out a portion of the filter grid to enable the emergency crew to access Lane.

When asked about the maintenance of the different components of the exhaust house for the paint booth, Caldwell testified as follows:

> Q: Now, we talk about these louvers and the actuators and the filters and the fans as if they were discreet pieces, and they are. But they're kind of one process. I mean, it's an exhaust house, so you've got the filter section, the louver section. You know, it's all part of the same piece of equipment, the exhaust house; is that correct?
>
> A: Yes. It is a system with individual pieces.
>
> Q: And basically, you've done maintenance on the filters. I'm assuming those filters are - - you know, throw away; they don't last forever?
>
> A: Yes.
>
> Q: So you replace those on a fairly regular basis?

A: Yes.

Q: And what about the fans, I know that you were talking about how the gentleman was balancing the fans. I'm assuming that you all do, you know, regular maintenance on those fans?

A: Yes.

Q: And basically, the louvers, while they may not have - - the paint may not have necessarily had to have been scraped off there, have you had to do any work to those louvers previously? I mean, any actuator problems? I mean - -

A: No.

Q: Not that you recall?

A: No. Like I said, I've been over that line for five years now. Prior to that, it's been other maintenance guys.

Caldwell stated TG hires outside contractors to perform various cleaning tasks. Caldwell estimated he had six different contractors working on other parts of one paint line the day before the accident, totaling about sixteen to eighteen individual workers. Caldwell testified the contractors were performing various tasks including cleaning fans, deep cleaning the paint line, and performing oven work. On the day of the accident, Caldwell estimated he had four different contractors working on various projects.

Akers testified by deposition on May 5, 2015. He has worked for TG for fifteen years, with the past seven years as a

facilities engineer. His responsibilities include finding contractors or vendors to provide new equipment, and overseeing installation and set-up. Akers confirmed he had contracted with Triple M to clean the ovens on Saturday, October 18, 2014. Akers testified the ovens are cleaned periodically every three to six months, or whenever needed. While cleaning the ovens, Caldwell had run into trouble with the louvers and asked Triple M if they could clean them the following day.

Akers explained the ovens and the paint booth are in different sections of the factory and are two separate pieces of equipment. The parts are painted in the paint booth, and are then dried in the oven. The ovens and paint booth each have their own separate ventilation stacks. At the time of the accident, Lane was working on the louvers of the exhaust stack connected to the paint booth. The louvers are at the top of the housing, below the stacks. When asked if the louvers on the stacks had been cleaned before, Akers testified as follows:

> Q: What about the louvers on the stacks? What - - do you all - - have you all - -
>
> A: In the 15 years I've been there, I don't know - - I know this is the only time we've ever done it.
>
> Q: So to your knowledge, basically, they've never been cleaned prior to this?
>
> A: No, sir.

> Q: And was that work that was done to clean those, do you know if that was done kind of on an emergency basis, or was that something that - -
>
> A: That's what I took it as, yes. The maintenance guy was having trouble with something, so he asked them to - - if they could do it.
>
> . . . .
>
> A: I just know that he was needing them cleaned or something, so whether they were open or what, I don't know.
>
> Q: You also said that Greg was the one that arranged for Triple M to come in and do that?
>
> A: Yes, sir.
>
> Q: Had they - - was this like an emergency?
>
> A: Yes, from my understanding, yes.

At the time of the accident, the paint booth was not operating. Akers was not working on the day of the accident, and did not witness the fall.

Akers confirmed TG had contracted with Triple M to clean the ovens on multiple occasions. Triple M had also pressure washed the roof on one occasion, and cleaned an area which underwent an expansion. Akers stated TG used contractors regularly to clean the ovens.

Chris Spurling ("Spurling") testified by deposition on May 5, 2015. At the time of Lane's accident, Spurling worked

as a safety specialist for TG, but did not handle safety training at the time of the accident. Spurling understood Lane was cleaning the louvers when she fell, but he did not personally witness the accident. Spurling stated this was the first time this particular job had ever been done. Akers prepared a standard flash accident report. Since the accident occurred, TG now has a contractor/vendor application process, which Spurling oversees.

Spurling testified TG retains outside contractors to perform maintenance work since "there is only a finite amount of time that we can shut down equipment. So you must accomplish many tasks at one time, and we simply do not have enough manpower to tackle them all at once." Spurling agreed TG relies upon the expertise, equipment, and training of the contractors they retain to perform maintenance work.

The ALJ rendered an opinion and interlocutory order on October 19, 2015 addressing the issues of whether Lane was an independent contractor and up-the-ladder employment. The ALJ summarized the testimony from Lane, Murphy, Caldwell, Spurling, and Akers. The ALJ concluded Lane was an employee of Triple M at the time of the October 19, 2014 fall, a determination not challenged on appeal. In addressing "Up the Ladder Employment," the ALJ quoted the statutory language

contained in KRS 342.610(2), and then provided the following analysis:

> 15. The ALJ finds that the relationship between TG and Triple M is that of contractor and subcontractor. The ALJ is convinced by the testimony of Mr. Akers that cleaning the louvers was an essential part of the overall operation of TG and that Triple M was hired to perform this service on an emergency basis in order to keep the business in operation, which ultimately resulted in the injury to the Plaintiff.
>
> 16. The ALJ also finds that the testimony of Mr. Spurling confirms that TG uses outside contractors because they have limited time to complete many tasks and can only do so when the plant is shut down. There is little question that this is just such a situation. The ALJ therefore finds that per KRS 342.610, TM is responsible as an up the ladder employer for the payment of compensation related to the Plaintiff's injury.

The ALJ therefore found TG the responsible party as an up-the-ladder employer of Lane who was employed by its subcontractor, Triple M, on the date of injury.

TG filed a petition for reconsideration requesting additional findings of fact to support the ALJ's conclusion TG is an up-the-ladder employer pursuant to KRS 342.610(2), and specifically how the work performed by Lane at the time of the accident was a regular or recurrent part of the work of the trade, business, occupation or profession of TG. TG contended the ALJ's findings actually support the conclusion such work

was not a regular or recurrent part of TG's operations. TG specifically stated it did not dispute the ALJ's conclusion that the relationship between it and Triple M was that of a contractor and subcontractor. In the December 14, 2015 order, the ALJ made the following additional findings of fact:

> 1. The ALJ did refer to the cleaning of the louvers as being done on an emergency basis however the finding that it was also a regular and recurrent part of TG's operations is based upon the testimony of the facilities engineer, Jake Akers.
>
> 2. The ALJ finds based upon the testimony of Mr. Akers that the ovens have to be cleaned every three to six months and though the louvers had not been cleaned in Mr. Akers[sic] memory, the condition of them had deteriorated to the point that it had become an emergency. The ALJ finds that this by definition makes cleaning the louvers a regular and recurrent part of the operations of TG. The fact that they had not been diligent in doing so, thus necessitating the emergency service, does not change that fact. The ALJ therefore declines to disturb the Interlocutory Order dated October 19, 2015.

Subsequent to the interlocutory opinion and order on reconsideration, the parties submitted medical evidence and vocational rehabilitation opinions. In addition, TG filed a medical fee dispute challenging certain treatment. In the July 24, 2017 opinion, the ALJ reiterated his prior finding that TG is an up-the-ladder entity responsible for Lane's injuries

pursuant to KRS 342.610(2), and adopted the findings and conclusions reached in the interlocutory opinion and order on petition for reconsideration. The ALJ found Lane permanently and totally disabled from the work-related left shoulder injury, and awarded TTD benefits already paid, PTD benefits and medical benefits. The ALJ found Lane's bilateral carpal tunnel syndrome not causally related to the work injury, and therefore non-compensable.

The UEF filed a petition for reconsideration requesting the ALJ correct typographical errors and dismiss it from the action since TG had workers' compensation coverage at the time of Lane's injury. It argued TG's carrier had paid all medical and income benefits to date, and it is liable pursuant to KRS 342.610(2) for those expenses in the future. TG did not file a petition for reconsideration.

In the order on petition for reconsideration, the ALJ dismissed the UEF, and ordered Lane shall recover from TG the TTD benefits as already paid, PTD benefits, and medical benefits.

On appeal, TG argues the ALJ erred in finding it an up-the-ladder entity since the work performed by Lane was not a regular or recurrent part of the work of the trade, business, occupation or profession of TG. TG argues the testimony established the work task of cleaning the louvers was an

emergency arising one day prior to the accident, and that it was the first time the job had ever been done. TG asserts these facts establish the louver cleaning was not a regular or recurrent part of its business, nor part of its trade, business, occupation, or profession.

KRS 342.610(2) states as follows:

> (2) A contractor who subcontracts all or any part of a contract and his or her carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his or her carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another:
>
> . . . .
>
> (b) To have work performed of a kind which is a **regular or recurrent** part of the work of the trade, business, occupation, or profession of such person shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. . . . (Emphasis added)

The purpose of KRS 342.610, "is to discourage a contractor from subcontracting work that is a regular or recurrent part of its business to an irresponsible subcontractor

in an attempt to avoid the expense of workers' compensation benefits." General Electric Corporation v. Cain, 236 S.W.3d 579, 585 (Ky. 2007).

Citing to Daniels v. Louisville Gas & Electric Co., 933 S.W.2d 821 (Ky. App. 1996), the Court in Cain provided the following analysis addressing work, which is "regular or recurrent:"

> In *Daniels,* 933 S.W.2d at 824, the Court of Appeals also formulated definitions of "regular" and "recurrent," *viz.:*
>
> > "Recurrent" simply means occurring again or repeatedly. "Regular" generally means customary or normal, or happening at fixed intervals. However, neither term requires regularity or recurrence with the preciseness of a clock or calendar.
>
> Thus, the court construed "regular" to apply not only to the nature of the owner's business but to the frequency of the occurrence of a need to perform the work in question. As so defined, "regular" and "recurrent" are almost redundant.
>
> *Webster's New College Dictionary* 928 (1995), defines "recurrent" as "occurring or appearing again or repeatedly," which would apply to, *e.g.,* routine maintenance. It defines "regular" as "customary, usual or normal." *Webster's, supra,* at 934. Therefore, as used in KRS 342.610(2)(b), "regular" means that the type of work performed is a "customary, usual or normal" part of the premises owner's

"trade, business, occupation, or profession," including work assumed by contract or required by law. "Recurrent" means that the work is repeated, though not "with the preciseness of a clock." *Daniels,* 933 S.W.2d at 824.

. . . .

Work of a kind that is a "regular or recurrent part of the work of the trade, business, occupation, or profession" of an owner does not mean work that is beneficial or incidental to the owner's business or that is necessary to enable the owner to continue in business, improve or expand its business, or remain or become more competitive in the market. *Larson's, supra,* at § 70.06[10]. It is work that is customary, usual, or normal to the particular business (including work assumed by contract or required by law) or work that the business repeats with some degree of regularity, and it is of a kind that the business or similar businesses would normally perform or be expected to perform with employees.

The test is relative, not absolute. Factors relevant to the "work of the ... business," include its nature, size, and scope as well as whether it is equipped with the skilled manpower and tools to handle the task the independent contractor is hired to perform. *Larson's, supra,* at § 70.06 [5]. Employees of contractors hired to perform major or specialized demolition, construction, or renovation projects generally are not a premises owner's statutory employees unless the owner or the owners of similar businesses would normally expect or be expected to handle such projects with employees. Employees of contractors hired to perform routine repairs or maintenance that the owner or owners of similar businesses would normally be

> expected to handle with employees generally are viewed as being statutory employees. Whether a project is customized to the premises owner's needs is irrelevant.
>
> When characterizing a project as being routine repair or maintenance versus a capital improvement, a relevant consideration is whether the premises owner capitalized and depreciated its cost for tax purposes or deducted its cost as a business expense. Capitalized costs tend to indicate that the business was not the injured worker's statutory employer, while expensed costs tend to indicate that the owner was the statutory employer. This factor is not conclusive, however, because even projects performed entirely with a premises owner's workforce may be capitalized depending on their character. It is irrelevant when a contractor's employees are used to supplement the premises owner's workforce. Stated simply, KRS 342.610(2)(b) refers to work that is customary, usual, normal, or performed repeatedly and that the business or a similar business would perform or be expected to perform with employees.

Cain, 236 S.W.3d at 586-589

TG does not dispute the ALJ's finding the relationship between TG and Triple M is one of contractor and subcontractor. Rather, TG argues the services Lane provided at the time of her injury was not "a regular or recurrent part of the work" it performed.

We find substantial evidence supports the ALJ's decision Lane was performing work, which was a regular and

recurrent part of TG's business. In this instance, TG is in the business of manufacturing automobile parts and, as testified by Caldwell, includes a paint department with two paint lines. In Cain, the Court provided the following examples of who are and are not statutory employees:

> Employees of contractors hired to perform major or specialized demolition, construction, or renovation projects generally are not a premises owner's statutory employees unless the owner or the owners of similar businesses would normally expect or be expected to handle such projects with employees. Employees of contractors hired to perform routine repairs or maintenance that the owner or owners of similar businesses would normally be expected to handle with employees generally are viewed as being statutory employees. Whether a project is customized to the premises owner's needs is irrelevant.

Cain, 236 S.W.3d at 588.

The facts of this case fit within the last example provided by Cain. Caldwell indicated he had six different contractors working on one of the paint lines on the day before the accident, including Triple M. The contractors were cleaning fans, deep cleaning the paint line, including the pits and booth, and performing oven work. On Sunday, the day of the accident, Caldwell indicated he had approximately four different outside contractors on site, one of which included a contractor retained to balance the exhaust fans enabling the louvers to

open and close. Caldwell testified that on the day before the accident, the louvers would not close due to paint build up. Since Triple M was the first contractor to complete its job on Saturday, Caldwell "requested for them to clean these - - clean the actual louvers." Caldwell indicated he had seen Triple M on-site cleaning before and stated the louver job was basically a cleaning job. Caldwell stated he did not regularly monitor the louver work performed throughout the day by Triple M since "that's just a cleaning job." Caldwell indicated this was the first time he had seen the louvers cleaned. Caldwell provided the following testimony:

> Q: When you noticed there was a problem with the louvers, and Triple M, you said, they happened to finish first on Saturday, apparently, is that the reason you went to them first?
>
> A: Yes, yes.
>
> Q: And you have seen them on site - -
>
> A: Yes, I have seen them clean.
>
> Q: -- sometime before?
>
> A: I've seen them doing cleaning. Basically, that's what this is, is cleaning.
>
> Q: And you folks contract the cleaning to outside contractors?
>
> A: Yes.
>
> Q: And that's what you were doing on that Saturday and that Sunday?

A: Yes.

Akers testified the ovens and paint booth are in the same area, but are two separate pieces of equipment explaining the parts are painted in the paint booth, and then dried in the oven. Akers stated the ovens are cleaned regularly every 3 to 6 months. Akers had contracted with Triple M to clean the ovens on Saturday, the day before the accident. Akers confirmed TG used outside contractors to clean the ovens regularly. Regarding the louvers, Akers just knew Caldwell needed them "cleaned or something." In his fifteen years of employment with TG, Akers stated the louvers had never been cleaned.

Spurling testified Triple M was hired as a cleaning company. When asked why TG hired outside contractors to do the maintenance work, he replied, "From my understanding, most of the time it is - - there is only a finite amount of time that we can shut down the equipment. So you must accomplish many tasks at one time, and we simply do not have enough manpower to tackle them all at once."

The above testimony indicates Triple M provided industrial cleaning services, and TG regularly retained contractors to perform various maintenance and cleaning work in the painting department. As relied by the ALJ, Spurling stated TG uses outside contractors, like Triple M, because they have

limited time to complete many tasks and can only do so when the plant is shut down. Based upon the above testimony, maintaining, repairing and cleaning various equipment used in the painting department of TG was work that is customary, usual, or normal and was repeated with a degree of regularity.

TG emphasizes the cleaning of the louvers was an emergency and had never been cleaned before. The ALJ addressed this argument in the December 14, 2015 order on petition for reconsideration. As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inference 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). In this instance, the ALJ reasonably inferred from the evidence that since the louvers had not been cleaned, the condition of them had deteriorated to the point that it had become an emergency. The fact TG had not been diligent in doing so, thus necessitating the emergency service, does not change that fact cleaning the louvers was a regular and recurrent part of the operations of TG. We find the ALJ properly exercised his discretion in drawing this reasonable inference from the evidence.

Accordingly, the October 19, 2015 Interlocutory Opinion, the July 24, 2017 Opinion and Award, and the September 7, 2017 order on petition for reconsideration rendered by Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED.**

ALL CONCUR.

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