

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 25, 2021

CLAIM NO. 201754876

TOYOTA MOTOR MANUFACTURING KENTUCKY, INC. PETITIONER

VS. **APPEAL FROM HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE**

RICHARD PROUTEY
and HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

STIVERS, Member. Toyota Motor Manufacturing Kentucky, Inc. (“Toyota”) appeals from the February 8, 2021, Opinion and Award and the March 15, 2021, Order ruling on its Petition for Reconsideration of Hon. John H. McCracken, Administrative Law Judge (“ALJ”).¹ The ALJ awarded Richard Proutey (“Proutey”) temporary total disability (“TTD”) benefits from December 12, 2017,

¹ The Order is incorrectly dated February 8, 2020, instead of February 8, 2021.

through March 30, 2018, permanent partial disability benefits, and medical expenses for a work-related right shoulder injury. The ALJ found compensable the June 13, 2019, right shoulder surgery he had previously determined was non-compensable in an April 5, 2019, Interlocutory Opinion, Award, and Order. Toyota filed a Petition for Reconsideration asserting the same arguments it now makes on appeal. By Order dated March 15, 2021, the ALJ denied Toyota's petition and set forth additional findings.

On appeal, Toyota asserts that the ALJ erroneously reversed his findings regarding the work-relatedness of the June 13, 2019, right shoulder surgery reflected in the April 5, 2019, interlocutory decision. Further, Toyota argues the medical evidence upon which the ALJ relied in reversing his previous decision does not constitute substantial evidence.

BACKGROUND

The Form 101, filed July 16, 2018, alleges Proutey sustained work-related cumulative trauma injuries to his "shoulder(s)" on September 7, 2017.

Proutey was deposed on August 20, 2018. He started working for Toyota in September 2013. He described what occurred on September 7, 2017:

A: I was doing the starter job. I had been having some pains prior to that, and I just thought where we had been on that new line for less than a year I thought, well, maybe it was just, you know, normal in growing pains because where our new line was totally different than our other line. And I was – I was reaching out to get a starter and it just seemed like I just couldn't – I would start getting sharp pains in my shoulder and it was like I lost my strength, I couldn't hardly pick nothing up. I couldn't hardly grab anything. It's just like I lost all my strength.

Q: So when – you said you had been having pains. Tell me, when did you start having pain?

A: I'd say pretty much since our new line actually started because, like I say, it was totally different. But like I said, most of the time it wasn't that bad, it was just, you know, aches and pains, just normal pains, you know.

Q: When would that new line have started?

A: Oh, I don't remember the exact date.

Q: About how long before the September 7th date?

A: I would say probably close to a year, give or take.

Q: Did you ever get any medical treatment?

A: No. Like I said, like most of the time it was just minor aches and pains, you know. I just figured it was where we've got to get used to the new line and the new guns, and all of our guns now were overhead where they weren't before. I just figured it was just normal growing in pains, is what I call it.

Q: But something changed on September the 7th?

A: Yes, sir.

Q: In what way?

A: It's like I got a real sharp pain in my shoulder, and then it was like I just couldn't grip anything, I couldn't hardly hold anything up, and, I mean, I just – it was just like – like I got stabbed in my shoulder is what it felt like.

Q: Did you get medical treatment?

A: Yes, sir.

Proutey went to "IHS" and eventually sought treatment from Dr.

David Dome.

Proutey filed the treatment records of Dr. Dome spanning from September 19, 2017, through April 30, 2018. The November 7, 2017, MRI report from Lexington Diagnostic Center & Open MRI reveals the following “Impression”:

1. There is minimal articular sided tearing of the infraspinatus at its insertion onto the footplate.
2. Mild-to-moderate arthritic changes of the acromioclavicular joint with small subacromial spur formations.”

A medical record dated April 30, 2018, indicates, in relevant part, the following under “Assessment/Plan”:

Mr. Proutey has rotator cuff tendinopathy without full thickness rotator cuff tear. He has continuing shoulder pain and functional limitations despite physical therapy and corticosteroid injection. He has failed attempt at work hardening. Mr. Proutey has chronic tendinopathy of the rotator cuff without obvious full thickness tear. He has failed conservative non operative treatment and I discussed with him arthroscopy decompression and possible rotator cuff repair.

Toyota filed Dr. Philip Corbett’s February 21, 2018, Independent Medical Evaluation (“IME”) report. After performing a physical examination and a medical records review, Dr. Corbett diagnosed the following: “appropriate diagnosis relative to the work-related exposure of 09/07/17 is painful arc syndrome, right shoulder with biceps tendinitis of the long head of the right biceps tendon.” He opined as follows:

The arthritis in the AC joint of Mr. Proutey’s right shoulder is an age-related experience. It does play a role in producing compression of the rotator cuff in the ‘painful arc syndrome’ and probably plays a role in compression of the long head biceps tendon for which Mr. Proutey complains of pain. With that being stated, there is not, in my opinion, evidence of a deviation from

normal in the human organism, as demonstrated by Mr. Proutey's examination.

Toyota also filed Dr. Rafid Kakel's September 27, 2018, IME report. After performing a physical examination and a medical records review, Dr. Kakel diagnosed a work-related "right shoulder sprain/strain." Further, Dr. Kakel opined Proutey had reached maximum medical improvement ("MMI") and assessed a 0% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. Relevant to the issues on appeal are the following opinions regarding the right shoulder surgery:

In my opinion, no additional treatment is indicated in relationship to the work-related injury. As discussed above, in my opinion the work-related diagnosis is right shoulder sprain/strain and it is further my opinion that he has had sufficient time and treatment to recover from this condition. Surgery would not be indicated for a shoulder sprain/strain.

It should be noted that the surgery proposed by Dr. Corbett would in my opinion be directed towards chronic age-related changes within the right shoulder; however, it should be noted that regardless of etiology, today's clinical findings which included full range of motion of the right shoulder, negative impingement signs, and no weakness would not support the necessity of any surgical intervention.

Proutey testified at the February 26, 2019, hearing. He detailed the physical requirements of his pre-injury job:

A: We used tools, hand tools, air tools, electronic guns, that required reaching overhead, extended reaching, picking up parts, a lot of walking.

Q: How much lifting was required, as far as pounds in that position, sir?

A: I would say probably 20 pounds max.

Q: And what would that be?

A: The drive shafts.

As to whether an injurious event occurred on September 7, 2017, he testified:

A: Nothing specific. It was like a gradual pain over time. It just got to the point where I – that day I was trying to put a starter on and I – it was like I lost all of my grip. I couldn't – I couldn't lift it. I just – it was like I – I just didn't have any power.

Q: Okay. You say gradual over time, over what time period are we talking about?

A: Our new line – we went from an old line to a new line, over maybe a year period of time and I just figured it was where the new line was totally different from our old line, and I just figured it was just like growing pains, you know.

Q: So on September 7, 2017, why did you report an injury that day?

A: Because like I said, I – I couldn't – it was like I couldn't feel – be able to lift anything or hold anything. It was like real sharp pain in my shoulder. And I wasn't able to grip anything.

Proutey also addressed the surgery recommended by Dr. Dome.

Q: Is it a fair statement that currently Dr. Dome has recommended a surgery to your right shoulder?

A: Yes, sir.

Q: Have you had that surgery?

A: No.

Q: Why not?

A: Because workmans' comp refuses to pay for it.

Q: Okay. Do you want to have the surgery?

A: Yes.

Q: Have you – what are your plans after the surgery?
Whether it's through –

A: Go back to work.

Q: You want to return back to work at Toyota?

A: Yes.

The November 13, 2018, Benefit Review Conference Order and Memorandum lists the following contested issues: work-related injury/causation, TTD benefits, and unpaid or contested medical expenses. Under “Other contested issues” is: “Claim is bifurcated on the issue of the compensability of right shoulder surgery. Defendant’s oral motion to join Dr. David Dome is sustained. (separate order will issue).”

The April 5, 2019, Interlocutory Opinion, Award, and Order contains the following findings of fact, and conclusions of law regarding the work-relatedness of Proutey’s right shoulder condition and the proposed surgery which are set forth, in relevant part, *verbatim*:

D. Did Mr. Proutey sustain a work-related repetitive shoulder injury?

Proving causation in cumulative trauma claims is more complex than proving causation in a specific, acute trauma injury. Cumulative trauma is caused from ongoing, multiple micro injuries to a part, or parts, of a person’s body over a period of time. Haycraft, supra, requires a claimant to show the “nature and duration of the work aggravated a condition to the degree that it culminated in an active physical impairment sooner than would have been the case had the work been less strenuous, and to that extent the pre-existing condition is itself an injury.”

Dr. Dome treated Mr. Proutey for his shoulder condition and recommended surgery. However, he has not expressed an opinion as to what caused his shoulder condition. Dr. McEldowney conducted an independent medical examination and received a history from Mr. Proutey. The history as recited by Dr. McEldowney is different than that testified to by Mr. Proutey. Dr. McEldowney stated that Mr. Proutey arrived to work on September 7, 2017 with no prior right shoulder problems. Mr. Proutey stated that his right shoulder had bothered him off and on for several months prior to that time, but that on September 7, 2017 it became significantly worse and he reported it to his employer. Dr. McEldowney specifically stated that Mr. Proutey had no prior active impairment before September 7, 2017. Dr. McEldowney also stated that Mr. Proutey sustained a right shoulder sprain/strain with exacerbation of a previously dormant and asymptomatic shoulder impingement. However, Mr. Proutey stated that no specific event occurred on September 7, 2017 while he was working. His right shoulder simply began to hurt worse.

Dr. McEldowney's rationale for causation is that Mr. Proutey's right shoulder did not hurt prior to September 7, 2017, but began hurting while working that day, therefore, his condition must be work-related. He treats this similar to an acute injury, not a cumulative trauma injury. Mr. Proutey brought the claim as a cumulative trauma injury based upon repetitive motion injury, not that an acute injury occurred on September 7, 2017. Cumulative trauma, according to Haycraft, presupposes an ongoing active condition that, in and of itself, is an injury. Dr. McEldowney does not address this in his statements relating to causation of Mr. Proutey's right shoulder condition. Dr. McEldowney stated that Mr. Proutey had a pre-existing dormant impingement condition that became active on September 7, 2017. However, he does not state what specific work activity caused the impingement to become active.

The ALJ finds that Dr. McEldowney's opinions on causation are based upon facts that are inconsistent to Mr. Proutey's testimony. Dr. McEldowney treats the claim as an acute injury claim, not one of cumulative trauma.

Because of these factors, the ALJ finds the opinions of Dr. Corbett and Dr. Kakel more persuasive.

All three doctors stated that Mr. Proutey sustained a strain/sprain injury to the shoulder. The ALJ relies on Dr. Corbett and Dr. Kakel to find that Mr. Proutey sustained a right shoulder sprain/strain as a result of his work.

E. Surgery

Dr. McEldowney does not state what activity caused the need for right shoulder surgery. He treats the injury as an acute injury. Dr. McEldowney did not address the elements required by Haycraft, *supra*. Dr. Kakel stated that insufficient objective medical evidence existed to relate Mr. Proutey's current complaints to his work activity. He specifically stated that the findings in the right shoulder were consistent with chronic, age-related changes rather than a work-related injury. Dr. Kakel stated that rotator cuff tearing is often seen on a degenerative basis, especially in the presence of AC joint osteoarthritis. He noted that the AMA Guides to the Evaluation of Disease and Injury Causation indicates that he is at increased risk for degenerative rotator cuff tearing based upon his age. The ALJ notes that the AMA Guides referenced by Dr. Kakel regarding injury causation are not controlling or adopted in workers' compensation claims in Kentucky.

Dr. Corbett stated that the arthritis in Mr. Proutey's right shoulder AC joint is an age-related experience. He stated that condition plays a role in producing compression of the rotator cuff in the "painful arc syndrome" and probably played a role in the compression of the long head biceps tendon for which Mr. Proutey complained of pain. Dr. Corbett did not find evidence of a deviation from "normal in the human organism."

The ALJ does not find the Utilization Review helpful as Mr. Proutey appeared to suffer from "painful arc syndrome" and other conditions that the reviewer stated did not exist.

The ALJ relies on Dr. Kakel and Dr. Corbett to find that request for surgery is not related to the right shoulder strain/sprain work injury.

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F. Unpaid or Contested Medical Expenses

Having found that the requested right shoulder surgery is not work-related, the ALJ finds that all medical expenses related to the proposed right shoulder surgery are not work-related.

Following this decision, Toyota filed Dr. Dome's treatment records spanning from January 30, 2019, through August 21, 2019. The June 13, 2019, operative report contains the following under "Indications":

Mr. Tucker [sic] sustained a work-related repetitive use injury to the right shoulder. He failed extensive nonoperative treatment. Risks, benefits, indications, and alternative treatments to arthroscopy of the shoulder, arthroscopic subacromial decompression, possible rotator cuff repair was discussed in detail with him in April 2018. His worker's comp carrier denied his surgery. He has had persistent pain since that time. He was subsequently found to have significant AC joint arthropathy as well. The risks, benefits, indications and alternative treatment to arthroscopy of shoulder, arthroscopic subacromial decompression, possible rotator cuff repair as well as partial claviclectomy was discussed in detail with him and he requests to proceed with surgery. (Emphasis added).

Proutey filed the February 20, 2020, Medical Questionnaire completed by Dr. Dome which reads, in relevant part, as follows:

2. Please state your diagnosis of Mr. Proutey's medical condition for which you are treating or have treated him.

Mr. Proutey has continuing mild discomfort of the right shoulder status post subacromial decompression and partial claviclectomy. He continues to have some discomfort but no longer has significant weakness of the

supraspinatus. I recommend continuation of home exercise program and regular duty work. Using the 5th Edition AMA Guidelines to Impairment with Figures 16-40, 43, and 46 and Table 16-3 the impairment rating for the shoulder injury is 4% upper extremity for the limitation of range of motion and 10% upper extremity for resection arthroplasty of the distal clavicle using Table 16-27. This yields an 8% whole person impairment for his work related injury 9/27/17.

3. In your opinion, do you feel that Mr. Proutey's current medical condition is a direct result of the September 7, 2017 work-related injury?

painful [sic] right shoulder following a work related injury 9/7/17. He denies prior history of difficulty in this area in the past. He had onset after outstretched right arm use at work on line. He has had intermittent painful popping o [sic] the shoulder and significant pain at night. He has failed to resolve his shoulder pain with physical therapy.

4. It is my understanding that Mr. Proutey underwent an Arthroscopic subacromial decompression and partial claviclectomy of the right shoulder on June 13, 2019. Do you feel that the surgery was reasonable, necessary, and directly related to the September 7, 2017 work injury? Please explain your response.

yes and he failed to respond to extended course of non operative treatment which necessitated the surgery.

5. In your November 29, 2019 office note you assigned Mr. Proutey an eight percent (8%) impairment. Please state whether this impairment is directly related to the September 7, 2017 work-related injury.²

yes

Proutey testified at the December 11, 2020, hearing. He was released to return to work in November 2019 following the June surgery.

² The Board has been unable to locate this record.

The February 8, 2021, Opinion and Award contains the following relevant findings of fact and conclusions of law which are set forth *verbatim*:

D. Did Mr. Proutey sustain a permanent work-related repetitive shoulder injury/Impairment?

Proving causation in cumulative trauma claims is more complex than proving causation in a specific, acute trauma injury. Cumulative trauma is caused from ongoing, multiple micro injuries to a part, or parts, of a person's body over a period of time. Haycraft, supra, requires a claimant to show the "nature and duration of the work aggravated a condition to the degree that it culminated in an active physical impairment sooner than would have been the case had the work been less strenuous, and to that extent the pre-existing condition is itself an injury."

In the Interlocutory Opinion, the ALJ found that Proutey sustained a right shoulder sprain/strain. The issue of permanency was not before the ALJ at that time. Dr. Dome had not expressed his own opinion as to the cause of Proutey's right shoulder problems, nor the surgery he proposed at that time. Dr. McEldowney treated the case as though it was an acute injury. This left the ALJ with the opinions of Dr. Corbett and Dr. Kakel. However, since that April 5, 2019 Interlocutory decision, Dr. Dome has provided new information regarding causation as has Dr. Jenkinson.

Proutey has been consistent on how his right shoulder began hurting at work. He did not experience a single acute event. His work required repetitive movements approximately every 60 seconds. He worked this job for almost a year and one-half. His shoulder began hurting to the point he was having enough difficulty that he reported it to his employer on September 7, 2017. Dr. Dome stated in his June 13, 2019 operative report that Proutey sustained injury to the right shoulder due to repetitive movement from his work. This is evidence that the ALJ did not have, and stated so, at the time of the Interlocutory Opinion. Dr. Dome stated that Proutey's right shoulder continued to bother him; he failed physical therapy, work hardening, and injections. That is the reason he performed surgery

on Proutey. The missing piece was his opinion that repetitive motion caused the injury. In contrast is Dr. Jenkinson's opinion that Proutey did not sustain any evidence of a work-related injury. He did not appear to review Dr. Dome's opinion letter. He found that all of Proutey's shoulder problems were age related, not caused by his work. While there is truth to his statements that at Proutey's age, he may be prone to age related degenerative conditions. However, Proutey has been consistent with his story of how his shoulder began to hurt and what activity he was performing on September 7, 2017. At the time of the Interlocutory Opinion, the ALJ did not have Dr. Dome's opinion that Proutey's shoulder problems were the result of repetitive movement from his work. To the ALJ, this makes more sense, in Proutey's claim, than does his condition being age related when the symptoms began at work.

The ALJ relies on Dr. Dome and Proutey to find that on September 7, 2017, Proutey sustained cumulative trauma injury to his right shoulder, which manifest on that date and ultimately required surgery. The ALJ relies on Proutey and Dr. Dome to find that the June 13, 2019 right shoulder surgery performed by Dr. Dome was in fact related to September 7, 2017 work injury. Dr. Dome's evidence relating to causation, that was not present prior to April 5, 2019, is the reason for the change in the decision made in the Interlocutory Opinion. The ALJ notes that the history contained in Dr. Domes records, dated November 7, 2017, where he references Dr. Maria Reyes referral to him for evaluation of a painful right shoulder following a work related injury on September 7, 2017, was interpreted by the ALJ to not be a statement from Dr. Domes, but rather history he received about Proutey from Dr. Reyes. To the ALJ, there is a significant difference between the two.

Dr. Dome stated that Proutey retains an eight percent impairment due to the right shoulder injury. Dr. Kakel found no impairment. Dr. Corbett did not render an opinion regarding the amount of impairment Proutey may have sustained. Dr. Jenkinson stated that Proutey sustained a 6% impairment due to the surgery.

Given that Proutey returned to work performing job tasks that require similar physical requirements, the

ALJ believes that Dr. Jenkinson's impairment of 6% is more reflective of Proutey's current condition. The ALJ relies on Proutey and Dr. Jenkinson to find that Proutey sustained a 6% impairment as a result of the September 7, 2017 work injury.

Regarding the compensability of the right shoulder surgery, the ALJ held as follows:

Previously, the ALJ ruled in the Interlocutory Opinion of April 5, 2019, that the right shoulder surgery was not work related and therefore not compensable. However, new evidence was submitted that changed, in a significant manner, the manner in which causation was reviewed. The ALJ has found that the surgery was a result of the September 7, 2017 work injury and relied upon Dr. Dome and his opinions relating to causation.

The ALJ relies on Proutey and Dr. Dome to find that all expenses related to the June 13, 2019 right shoulder surgery are the result of the September 7, 2017 work injury and therefore compensable.

As previously noted, Toyota filed a Petition for Reconsideration which the ALJ overruled providing the following additional findings which are set forth *verbatim*:

Defendant filed a Petition for Reconsideration asserting that the ALJ committed patent error by finding, in contradiction to the Interlocutory Opinion dated April 5, 2019, that Proutey sustained work-related cumulative trauma to the right shoulder and found compensable the right shoulder surgery. The ALJ stated in the final Opinion, Award and Order that new evidence was submitted by Dr. Dome on the issue of causation of repetitive use to the right shoulder. As stated in the Opinion, Award and Order, in the June 2019 operative report that "Mr. Tucker sustained a work-related repetitive use injury to the right shoulder." Defendant asserts this is simply a history that may not be relied upon as substantive evidence. The ALJ disagrees and notes that on February 20, 2020, Dr. Dome assigns an "8% whole person impairment for his work related

injury 9/27/17. painful right shoulder following a work related injury 9/7/17."

The Administrative Law Judge 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). The Administrative Law Judge 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 adverse party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). The ALJ believes that he satisfied the requirements of Bowerman v. Black Equipment Company, 297 S.W.3d 858 (Ky. App. 2009). In the Interlocutory Opinion, the ALJ found a work-related right shoulder injury, but did not make a finding of whether or not Proutey sustained work-related cumulative trauma. The ALJ disagreed with Dr. McEldowney opinions as he treated the claim as if it was an acute injury case, not cumulative trauma. The ALJ relied on Dr. Corbet and Dr. Kakel and found a work-related right shoulder sprain/strain. After surgery, Dr. Dome opined that Proutey sustained work-related repetitive use injury to the right shoulder. The ALJ believes that this constituted new evidence justifying the change from the Interlocutory Opinion. The ALJ declines to make additional findings.

Toyota complains the ALJ improperly reversed his findings regarding the work-relatedness of Proutey's right shoulder surgery, as there was no newly discovered evidence, fraud, or mistake as required by Bowerman v. Black Equipment Company, 297 S.W.3d 858, 867 (Ky. App. 2009). We affirm.

ANALYSIS

In Bowerman v. Black Equipment Company, supra, the ALJ rendered a November 2005 interlocutory opinion finding Bowerman had not reached MMI, per the opinion of Dr. Theodore Davies, but had improved enough to return to some sort of work. The ALJ awarded medical benefits and placed the claim in abeyance

pending MMI. The claim was subsequently removed from abeyance and no new evidence was introduced that contradicted Dr. Davies' original opinion, the opinion upon which the ALJ relied regarding MMI. However, in the final August 20, 2007, Opinion, the ALJ abandoned her interlocutory finding regarding MMI and determined MMI was actually reached on September 6, 2005. In finding the ALJ's "unexplained turnabout" to be "arbitrary capricious, and so unreasonable as to be erroneous as a matter of law," the Court of Appeals held as follows:

We hold the ALJ's unauthorized second review of the merits of a claim for compensation benefits is an egregious error constituting manifest injustice. *Durham v. Copley*, 818 S.W.2d 610, 612 (Ky. 1991). Legal consequences stemming from an ALJ's factual determinations must not be left to ebb and flow according to the changing current of the ALJ's mere whim as fact-finder. **Thus, absent newly discovered evidence, fraud, or mistake, parties have a reasonable expectation that they may rely on factual findings that have been fully and fairly adjudicated by an ALJ, even when rendered in an interlocutory decision.** See *Garrett Mining Co. v. Nye*, 122 S.W.3d 513, 522 (Ky. 2003).

Id. at 868. (Emphasis added).

The case *sub judice* can be distinguished from Bowerman, supra, as new evidence from Dr. Dome was generated and introduced in the record nearly one year after the April 5, 2019, Interlocutory Opinion, Award, and Order.

A review of Dr. Dome's treatment records filed in the record at the time of the April 5, 2019, interlocutory decision reveal he had not proffered an opinion regarding the work-relatedness of the proposed right shoulder surgery. As noted by the ALJ in the Interlocutory Order, Dr. Dome first addressed the possibility of surgery during Proutey's April 30, 2018, appointment. A review of this record

reveals Dr. Dome offered no opinions relevant to causation. This is the latest record generated by Dr. Dome which was filed in the record when the Interlocutory Order was rendered. Proutey ultimately underwent right shoulder surgery on June 13, 2019, nearly two months after the April 5, 2019, interlocutory decision. Dr. Dome's Medical Questionnaire in which he opined that the surgery is work-related was generated on February 20, 2020, nearly one year after the Interlocutory Order. The relevant question and answer within the February 20, 2020, Questionnaire is as follows:

4. It is my understanding that Mr. Proutey underwent an Arthroscopic subacromial decompression and partial claviclectomy of the right shoulder on June 13, 2019. Do you feel that the surgery was reasonable, necessary, and directly related to the September 7, 2017 work injury? Please explain your response.

Yes and he failed to respond to extended course of non operative treatment which necessitated the surgery.

This medical evidence, generated after the interlocutory decision is precisely the type of evidence constituting “newly discovered evidence” and satisfies Bowerman's criteria necessary to support reversal of a previous ruling. On this issue, we affirm.

Next Toyota asserts Dr. Dome's statement in the June 13, 2019, operative report regarding the cause of Proutey's right shoulder condition should be excluded pursuant to Cepero v. Fabricated Metal Corp., 132 S.W.3d 839 (Ky. 2004).³ It claims this statement is not a medical opinion but rather a history Proutey provided to the occupants of the operating room prior to his surgery. It further asserts

³ The statement, once again, is as follows: “Mr. Tucker [sic] sustained a work-related repetitive use injury to the right shoulder.”

Dr. Dome displayed no knowledge of Proutey's actual job and the tasks he performed within Toyota at the time of the alleged injury. We disagree.

As a preliminary matter, we note Toyota is not contesting the ALJ's *change* of opinion regarding causation as it pertains to Proutey's right shoulder condition. In other words, Toyota is not implicating Bowerman in the context of the work-relatedness of Proutey's right shoulder condition as it did regarding the work-relatedness of the right shoulder surgery. Rather, Toyota objects to the reliance upon Dr. Dome's opinions in concluding, as seen in the February 8, 2021, Opinion and Award, that Proutey sustained a work-related cumulative trauma right shoulder injury which manifested on September 7, 2017.

Cepero v. Fabricated Metals Corp., *supra*, is inapplicable. Cepero was a unique case involving deliberate subterfuge on behalf of the employee in order cover up a significant non-work-related injury to the left knee sustained only two-and-a-half years prior to the alleged work-related injury to the same knee. The prior, non-work-related left knee injury caused Cepero to be confined to a wheelchair for more than a month. The physician upon whom the ALJ relied in awarding benefits was not informed of this prior injury by the employee and had no other apparent means of becoming informed. In contrast, every physician who was adequately informed of this prior injury opined Cepero's left knee impairment was not work-related but, instead, attributable to the prior non-work-related injury.

There is nothing akin to Cepero in the case *sub judice*. The ALJ is free to interpret the statement in Dr. Dome's June 13, 2019, operative report that Proutey suffered a repetitive use injury to his right shoulder as a statement of causation and

not a restatement of the history Proutey provided someone in the hospital.⁴ 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). 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 function of the Board in reviewing an ALJ's decision is solely limited to a determination of whether the findings made 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). Consequently, this Board does not have the authority to alter the ALJ's interpretation of Dr. Dome's statement in the June 13, 2019, operative report as being determinative of the issue of work-relatedness.

Similarly, we are unpersuaded by Toyota's assertion Dr. Dome failed to possess an understanding of Proutey's pre-injury jobs and tasks. This is a factor going to the weight to be afforded to Dr. Dome's testimony and not its admissibility.

⁴ This Board acknowledges the typographical error (i.e. "Tucker" instead of "Proutey") within this statement.

Assuming, *arguendo*, Dr. Dome did not demonstrate a complete understanding of Proutey's precise job tasks, the ALJ still has the discretion to rely upon Dr. Dome's opinions despite these alleged deficiencies. For this Board to usurp that discretion would be error.

Accordingly, on all issues raised on appeal, the February 8, 2021, Opinion and Award and the March 15, 2021, Order ruling on the Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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