Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 23, 2021

CLAIM NO. 202000114

TRANE CO. PETITIONER

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

KENNY GADD
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART, VACATING IN PART
AND REMANDING

* * * * * *

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

STIVERS, Member. Trane Co. ("Trane") seeks review of the November 13, 2020, Opinion, Order, and Award of Hon. Grant S. Roark, Administrative Law Judge ("ALJ") finding Kenny Gadd ("Gadd") sustained a low back injury due to cumulative trauma arising out of his employment with Trane. The ALJ awarded permanent partial disability ("PPD") benefits enhanced by the multipliers contained

in KRS 342.730(1)(c)1 and medical benefits. Trane also appeals from the December 15, 2020, Order ruling on its Petition for Reconsideration.

On appeal, Trane contends the ALJ's finding Gadd sustained a permanent low back injury during his employment with Trane is not supported by the record. It also contends substantial evidence does not support the ALJ's finding the work injury precluded Gadd from performing the job he was performing at the time of the injury. Thus, enhancement of the PPD benefits pursuant to KRS 342.730(a)(c)1 is error.

BACKGROUND

Gadd's Form 101 filed January 23, 2020, alleges he sustained cumulative trauma to his low back and knees while employed by Trane. He listed the date of injury as November 28, 2018.[1]

Gadd testified at an April 6, 2020, deposition and at the September 14, 2020, hearing. At the time of his deposition, Gadd was 62 years old and is a high school graduate. When he retired from Trane on September 21, 2017, Gadd had been under no work restrictions. Prior to and at the time he retired, Gadd had not informed Trane personnel that he was physically incapable of working. He began working for Trane in 1983 and worked in the stock room the last 14 years with Trane. He provided the following job description:

[1] Gadd subsequently filed Motions to Amend his Form 101 to include claims for cumulative trauma injuries to the thoracic spine and neck based on the report of Dr. John W. Gilbert. Gadd also filed a Motion to Amend the Form 101 to reflect the correct date of last exposure is September 21, 2017. By Order dated April 20, 2020, the ALJ sustained Gadd's Motion to Amend his Form 101 to include claims for cumulative trauma injuries to the neck and thoracic spine. The ALJ did not rule upon the Motion to Amend the date of last exposure until the hearing at which time he orally sustained the motion.

Q: Could you describe for me what you would do on a day-to-day basis in the stockroom at Trane?

A: Okay. For the – well, let's see 2000 – see, that would be 14 years in the stockroom. I had to go back and rethink. I unloaded trucks, loaded trucks, took a product to the assembly line. It consisted of some lifting.

Q: Was this full-time, eight-hour work shifts?

A: Eight to 12 hours.

Q: You said loading and unloading of trucks. Using what equipment?

A: A fork truck, a stand-up.

Q: Anything else?

A: No, I think that pretty much covers the biggest majority.

Q: And you would do that at a loading dock, presumably?

A: Yes.

Q: And then you would take the product to various parts of the facility for assembly?

A: Yes.

Q: How much time in your shift would you be on a forklift or on a fork truck?

A: I would say probably – out of a eight-hour shift, probably a good six hours.

Q: Then the rest of the time what were you doing?

A: Filling carts or filling the product to take to the assembly line.

Q: And when you're filling the carts, what did that involve?

A: Putting coils on carts.

> Q: Are you lifting those by hand, are you lifting those by a dolly or some sort of winch?
>
> A: Some by hoist and some by hand.
>
> Q: How much time would you be on your feet when you were doing that work?
>
> A: Let's see, out of a eight-hour shift, probably six hours.
>
> Q: And by that, are you talking about being on one of the fork trucks or are you talking about walking or standing?
>
> A: Well, standing and walking.

Gadd believed he first developed problems in his low back and knees on or around 2004.[2] He testified "just wear and tear and the concrete and the equipment [he] would ride" precipitated his physical problems. His primary care physician is Dr. George Schloemer with the Berea Clinic of Internal Medicine ("Berea Clinic"). In 2006, Dr. Schloemer told him his work at Trane was causing injuries to his back. Except for his co-workers, Gadd did not tell anyone at Trane about this conversation with Dr. Schloemer. At that time, Dr. Schloemer prescribed muscle relaxers for his back. His low back treatment has consisted of applying heating pads at home. Gadd is unable to sit for long periods of time. He described his current low back problems:

> Q: Now, how about the low back, what symptoms do you have right now with your low back?
>
> A: Like a aching, pulling pain.
>
> Q: Where precisely?

[2] Since the ALJ dismissed Gadd's claims for cumulative trauma injuries to his knees, neck, and thoracic spine and the appeal concerns the award for the back injury, we will only discuss the testimony and medical evidence relating to Gadd's low back.

> A: Probably in the area of the hips, in the middle back or the lower back.
>
> Q: You say the hip and the middle of the low back?
>
> A: Well, I was – I'm sorry. I was more or less, you know, trying to line it up about where your hips are, but it's in my back, lower back, along about the same line.

Since retirement, his low back symptoms have worsened, as the pain is almost constant. He takes Tylenol and Ibuprofen once or twice daily. In spring 2018, he was diagnosed with AFIB. He testified that in 2018, he worked two or three days a week in the summer mowing for a lawn care company earning $10.00 an hour. Although this job primarily entailed mowing residential lawns, he also loaded and unloaded the equipment. Gadd believed he worked one summer at that job.

At the hearing, Gadd again testified he last worked for Trane on September 21, 2017, when he retired. He provided the following explanation of the jobs he performed at Trane:

> A: Okay. I worked in maintenance a few years. I worked on the coil lines several years. And then I worked at coil receiving about 15 or 16. And then I worked in the motor room about the last year that I worked there.

Gadd believed the heaviest job he performed was in coil receiving. He provided the following description of that work:

> A: It requires lifting, riding fork trucks and standup equipment, loading and unloading trucks, and taking product to the assembly line.
>
> Q: And how many years did you do that?
>
> A: Around 15 or 16 years.

Gadd also furnished the following description of the last job he performed at Trane prior to his retirement:

> A: Okay. It was putting up stock and taking the stock to the assembly lines. It was called the motor room.
>
> Q: And how did you do that job? Did you have hoists or forklifts or power jacks or something of that nature?
>
> A: Yeah, we had – I'm trying to think of the name of them. It was like a cherry picker, in a way. Yeah, you used it to pull some of your parts and put the parts up.
>
> Q: Was that a job that required you to stand, walk, squat, do all of the postural activities that you normally would do in heavy labor?
>
> A: Yes, all of those.

Gadd testified that a couple of years prior to retirement, he worked 10 to 12 hours daily during a work week of five to five and one-half days. Occasionally he worked seven days a week. His low back symptoms were muscle aches and sometimes throbbing pain. The pain is primarily located in his low back and does not extend into either leg. Gadd did not believe he was capable of performing his old job at Trane. He explained:

> Q: Now, this equipment that you rode, that would be things like forklifts and this cherry picker device that you were describing a while ago; is that correct?
>
> A: Yeah, and another machine that is called a standup.
>
> Q: And what is that like?
>
> A: Well, you step up on it, and it's got a long bed in front of it, and it raises things up and down. And then you take and haul what's called racks to the assembly lines and stuff. We also used them for moving racks around and stuff like that. And they had no kind of shock system on it or anything. It was just solid rubber wheels.
>
> Q: So you felt – you felt every movement it made; is that what you're trying to say?

A: Yes.

Q: Okay. And those are pieces of equipment that you've described to the administrative law judge that you used over the years and during the course of your employment with Trane; is that correct?

A: Yes, sir.

Q: You left there in '17. Do you believe you could go back at any time after that and do your job completely and competitively?

A: No, sir. As a matter of fact, I did receive a letter from Trane more or less asking me if I wanted to come back, and, I mean, that was a quick decision. No, there was no way I could physically be able to go back and do the things I used to do.

Gadd told his supervisor he needed to retire but did not explain the reason for retirement. When he retired, Gadd was not undergoing low back treatment. He believed that getting out of the factory and off the concrete would help his back problems. He takes Aleve and applies heat to his back. His last employment was with the lawn care company. That job lasted for a year and a half and entailed riding a mower for 15 hours a week. The job exacerbated his low back problems "Just some, not a lot."

The July 6, 2020, Benefit Review Conference Order and Memorandum reflects the following contested issues: "benefits per KRS 342730; notice; unpaid or contested medical expenses; injury as defined by the Act; and credit for unemployment."

In his decision, the ALJ found Gadd had not met his burden of proving work-related cumulative trauma injuries to his knees, neck, and thoracic

spine. The ALJ concluded Gadd sustained a work-related cumulative trauma low back injury finding as follows:

> However, with respect to plaintiff's lower back claim, the ALJ is persuaded plaintiff has a work-related motive trauma injury. In reaching this conclusion, it is noted that both Dr. Lyon and Dr. Gilbert noted significant enough clinical examination findings to conclude plaintiff's lumbar spine qualifies for a permanent impairment rating. Although Dr. Lyon concluded plaintiff's lower back condition is not work-related, the ALJ is, instead, persuaded by Dr. Gilbert's explanation that plaintiff's years of performing physical labor with the defendant caused increased wear and tear on his lower back and that his lumbar spine condition is, therefore, work-related. Accordingly, it is determined that plaintiff's lower back condition is work-related.

In finding Gadd's low back injury generated a 5% impairment rating, the ALJ provided the following:

> The next issue becomes the extent of plaintiff's impairment/disability attributable only to his compensable lower back claim. On this issue, Dr. Lyon assigned a 5% rating while Dr. Gilbert assigned a 13% impairment rating. As between these ratings, the ALJ is not persuaded by Dr. Gilbert's impairment rating. In reaching this conclusion, it is noted that a 13% impairment rating based on DRE III of the AMA Guides requires confirmation by diagnostic studies or some other source beyond the clinical examination findings. Dr. Gilbert did not perform or review any actual diagnostic studies. He testified he reviewed Dr. Martin's interpretation of x-ray reports, but he did not actually review any x-rays. As such, the ALJ finds Dr. Gilbert's impairment rating is not appropriate under the requirements of the AMA Guides. As such, it is determined that Dr. Lyon's 5% impairment rating is most persuasive.

The ALJ found Gadd is not totally occupationally disabled, but does not retain the physical ability to return to the type of work he was performing at the time of the injury finding as follows:

> However, the ALJ does credit plaintiff's own testimony that his lumbar condition causes significant enough pain that he would have difficulty performing the tow motor operator job he held at the time of his injury. His testimony in this regard is simply considered more persuasive than Dr. Lyon's or Dr. Snider's opinions that plaintiff has no restrictions. As such, it is determined plaintiff does not retain the physical ability to return to the job he held at the time of his injury, thereby entitling him to application of the 3X multiplier in KRS 342.730(1)(c)(1). His award of benefits is, therefore, calculated as follows:
>
> $1114.14 x 2/3 = $742.76 → $626.29 (maximum 2017 PPD rate) x .05 x .65 x 3.6 = $73.28 per week.

Trane filed a Petition for Reconsideration noting an error regarding the date of the alleged injury. It also requested the following:

> …Defendant/Employer respectfully requests the evidentiary basis that supports the finding that this minor disability to Plaintiff's low back *taken in isolation* physically precluded him from performing his usual job at Trane. It is Defendant's position that there is no such basis, and that Plaintiff has failed his burden of proof regarding that application of a 3x multiplier. Plaintiff was not restricted from working when he retired in September 2017; there is no record of any objective medical finding of harm to his low back in September 2017; in fact, there is no record he was even treating for his low back in September 2017. The first time the low back in [sic] mentioned in Plaintiff's treatment records in 12/5/18, *fourteen months after he left Trane*, when Plaintiff was seen at the Berea Clinic for back pain in conjunction with his subsequent employment with a lawn care company. Plaintiff's departure from Trane had nothing to do with back injury or restriction, and his PPD, therefore should be awarded with a 1x multiplier at $20.45 weekly. (Emphasis not ours).

Alternatively, Trane observed that pursuant to the statute Gadd was entitled to enhanced benefits by a factor of 3.4 rather than 3.6. In his December 15, 2020, Order ruling on the Petition for Reconsideration, the ALJ corrected the opinion to reflect Gadd's last day of work was September 20, 2017, and is the date of his cumulative trauma injury. Consequently, the award of benefits began on September 20, 2017. The ALJ summarily denied Trane's request concerning the three multiplier as a re-argument of the merits. The ALJ amended the award to reflect Gadd's benefits are enhanced by a factor of 3.4 rather than 3.6.

On appeal, Trane first argues that when Gadd retired on September 21, 2017, and for almost two years thereafter the medical evidence does not support a finding of a low back injury regardless of the cause. It asserts the first records supporting a potential injury were generated on January 14, 2020, when Dr. Julie Martin, a chiropractor, examined Gadd and on February 12, 2020, when he was seen by Dr. Gilbert. Thus, in Trane's view this "substantial temporal gap in time severs the notion of any causal nexus" to Gadd's employment with Trane. Trane insists the Berea Clinic notes reflect there is intervening trauma and those notes were not reviewed by either Drs. Martin or Gilbert. Trane also notes the only objective medical finding in Dr. Schloemer's records is "mild tenderness to palpation" in the low back charted on December 5, 2018. It asserts this is a minimal finding and occurred while Gadd was working for the lawn care company after he retired from Trane. Trane contends the opinions of Drs. Gregory Snider and Rick Lyon establish Gadd did not sustain a work-related cumulative trauma lumbar spine injury. Thus, in the absence of objective medical findings for two and half years after retirement, a

finding of a compensable lumbar injury is unsupported by substantial evidence. Trane asserts "Dr. Gilbert's opinion to the contrary is neither sound nor substantial."

Next, Trane asserts the record does not support the ALJ's finding the three multiplier is applicable. It emphasizes when Gadd retired in 2017, he was not undergoing any low back treatment, had no restrictions concerning the low back, and had never reported to Trane personnel he was having problems performing his work. Trane cites to the opinions of Drs. Snider and Lyon that work restrictions are not appropriate. Although Dr. Gilbert believed Gadd was totally occupationally disabled, Trane notes he did not state this is solely due to Gadd's low back condition. Rather, Dr. Gilbert's opinion is based upon Gadd's alleged multiple physical problems and not solely due to his low back problems. It also complains Gadd's testimony that he is not physically capable of returning to his work at Trane does not reflect the basis for that testimony is due in part to problems with his heart, knees, and neck as opposed to only the lumbar spine. Thus, the ALJ should have found Gadd's low back injury does not preclude a return to his job at Trane. Trane asserts only Gadd's lumbar spine problems can serve as the basis for such a finding, and Gadd's testimony and Dr. Gilbert's opinions do not support such a finding.

Trane also complains Gadd worked full unrestricted duty up until he retired and then three years later claimed a physical inability to do that job. Thus, it is entitled to know the evidentiary basis for the finding Gadd's low back injury precludes him from performing the work he performed at the time of the injury "as opposed to his multitude of non-compensable comorbidities."

ANALYSIS

Gadd, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including causation and his entitlement to enhanced income benefits. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Gadd was successful in that burden, the question on appeal is whether there is 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). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). 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, the appealing party must

show there is 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 observed both Drs. Lyon and Gilbert noted "significant enough clinical examination findings" in concluding Gadd's lumbar spine condition qualified for a permanent impairment rating. However, Dr. Lyon concluded the low back condition is not work-related. The ALJ rejected Dr. Lyon's opinion and accepted Dr. Gilbert's explanation that the years of performing heavy manual labor for Trane resulted in increased wear and tear to Gadd's low back. Therefore, based upon Dr. Gilbert's opinion, the ALJ concluded Gadd's lumbar spine condition is work-related.

In his February 12, 2020, Form 107, Dr. Gilbert set forth the history he had received from Gadd. Dr. Gilbert's physical examination revealed spasms, tenderness, and limited range of motion throughout the spine. Gadd had a positive Spurling's test to the right and positive straight leg raise test to the right. Dr. Gilbert diagnosed spinal pain, spinal muscle spasms, and lumbar radiculopathy. He believed

the work event as described to him caused the impairment found and the impairment rating was not caused by anything other than the work event described. Thus, Gadd had no active impairment prior to the injury. Dr. Gilbert noted Gadd engaged in heavy manual labor for 33 years while working for Trane.

During his May 21, 2020, deposition, Dr. Gilbert was questioned regarding his failure to review the medical records spanning the two and a half years pre-dating his February 12, 2020, physical examination of Gadd. Dr. Gilbert responded as follows:

> Q: Okay. And to be clear Doctor, your evaluation, you did not review a single medical record in the two and a half years before your exam, but you did do a physical examination of him on February 12, 2020, and that's the basis of your opinions?
>
> A: No, the basis of my opinion is that the history I obtained from him, as well as the physical examination of him, and in view of Dr. Martin's – did x-rays that showed problems and she came up with the same diagnosis I did. And so clinical diagnosis is based on a history, a physical exam of the patient, as well as examination of other records.
>
> Q: Regarding that history of his condition that you relied upon, what did he tell you? What was that history?
>
> A: It said that he did 33 years of heavy manual labor at Trane. Dr. Martin's got even more detailed history about all that. I could read it or it's – I believe you-all have the record.

Dr. Gilbert testified that although he did not personally review Dr. Martin's x-rays, he relied upon her interpretation of those x-rays. He explained further:

> Q: Do you understand the circumstances of Dr. Martin's examination? Was that treatment? Was that litigation?

> A: She's been in practice forever. She's I think a certified disability examiner.
>
> Q: So essentially your opinion of the review of these x-rays is not your own, it's Dr. Martin's?
>
> A: Yeah, I mean, I – she found a few different things than me, but she came up with a diagnosis of lumbar facet syndrome, that's a degenerative thing, knee pain, cervical, thoracic, lumbar dysfunction.

Dr. Gilbert did not believe Gadd was malingering as he found him to be straight-forward and the information he provided accurate. Therefore, Dr. Gilbert felt he "had enough to render an accurate diagnosis in this case" and had "everything [he] needed to make a clinical diagnosis." In addition, Dr. Gilbert did not attribute any significance to the lawn care job Gadd performed following his retirement from Trane. He explained:

> A: He may have mentioned it. I didn't put it down as anything significant. I think, from what I got out of him, that he did heavy manual labor for 33 years. I think that outweighs any other.

Dr. Gilbert did not attribute any significance to the notation contained within the Berea Clinic records revealing low back pain explaining as follows:

> Q: So just to be clear, Doctor, you say it's of no medical consequence that the first time this man's charted with low back pain, he's discussing it in terms of lawn care work that he had recently done in December 2018?
>
> A: He had had an acute flare-up on top of his chronic condition.
>
> Q: And to be clear, Doctor, this is the first time you're hearing of this; is that correct?
>
> A: No, he may have mentioned it, I just don't recall. I don't think it's significant.
>
> …

> A: The positive findings I found were muscle spasms and tenderness and a reduced range of motion throughout his spine. And he had a positive Spurling's test to the right and a positive straight leg raise test to the right. And he had weakness in his knees, four over five, which was reproducible.

Dr. Gilbert testified there were no other possible causes of Gadd's low back condition other than cumulative trauma he experienced working for Trane.

> Q: What other possible causes of this condition can there be if we don't look, if we don't point to cumulative trauma from work at Trane?
>
> A: I don't have any other cause.

Dr. Gilbert elaborated further regarding the significance of a positive straight leg raise test elicited during the course of his examination:

> Q: Okay. And, Doctor, what is a straight leg test – a straight leg test?
>
> A: It's where you straighten the leg and lift it. It stretches the sciatic nerve, which in turn pulls on the nerve roots. If it's positive or causes pain down a leg, in 60 percent of the cases there's a underlying ruptured disk.
>
> Q: Okay. And, Doctor, regarding this specific exam of Mr. Gadd, did you record a positive straight leg test to the right?
>
> A: Yes.
>
> Q: Okay. And, Doctor, did those physical exam findings correlate with Mr. Gadd's complaints that were proffered to you on the day of the exam?
>
> A: Yes.

Dr. Gilbert considered the history provided by Dr. Martin in her report:

> Q: Okay. And, Doctor, did you say that you reviewed a record from Dr. Julie Ann Martin?

A: Yes.

Q: Okay. And I think you said that you reviewed a more extensive work history in that report; is that correct?

A: Yes.

Q: All right. And did you take that into account in arriving at your diagnoses, your opinions?

A: Yes.

…

Q: Okay. And, Doctor, those job duties described and taking into account that Mr. Gadd worked 33 years for Trane, is that kind of manual work and heavy work with repetitive bending, lifting and twisting and reaching that would be caused by – or would cause a cumulative trauma to the body parts that you've addressed on your report?

A: Yes.

…

A: She also found muscle tension, muscle spasm in the neck, the mid back, and the low back.

The opinions set forth in Dr. Gilbert's report and his testimony recited herein comprise substantial evidence supporting the ALJ's finding regarding causation. While the contrary opinions pertaining to causation expressed by Drs. Snider and Lyon may have been articulated in greater detail, such testimony represented nothing more than conflicting evidence compelling no particular result. Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003). Likewise, the fact Dr. Gilbert did not personally review the medical records cited by Trane in formulating his opinion concerning causation merely went to the weight and credibility to be afforded his testimony, which was a matter to be decided exclusively within the ALJ's province

as fact-finder. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Hence, we find no error in the ALJ's reliance upon Dr. Gilbert in determining Gadd sustained a work-related low back injury. As fact-finder, the ALJ is vested with the authority to weigh the medical evidence, and if "the physicians in a case genuinely express medically sound, but differing, opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006).

That said, we vacate the ALJ's finding the three multiplier is applicable and the award of PPD benefits enhanced by the three multiplier and remand the claim for additional findings. In finding the three multiplier applicable, the ALJ stated he relied upon Gadd's testimony that his lumbar condition caused "significant enough pain that he would have difficulty performing the tow motor operator job" he was performing at the time of the injury. However, Gadd did not offer any such deposition testimony. Further, at the September 14, 2020, hearing, Gadd offered no such testimony. At the hearing, Gadd testified as follows regarding his ability to perform the work he was performing at the time of the injury:

> Q: How many hours a day did you typically work at Trane?
>
> A: A couple of years before I retired, 10 to 12 hours a day.
>
> Q: Five days a week or five and a half?
>
> A: Sometimes seven.
>
> Q: You retired in 2017. What led you to make that decision, Kenny?
>
> A: I was getting to where I physically couldn't do the job.

Q: Physically, what was bothering you?

A: Knees, back, neck.

Q: My understanding is that you received some treatment all in all over the years for your knees and your low back; is that correct?

A: Correct.

Regarding the significance of his knee and low back injuries, Gadd testified:

Q: Which one do you believe you suffered the most restrictions based upon activities from?

A: Knees.

Q: The knees?

A: Yes.

..

Q: Which is the worst one that bothers you and limits you?

A: The right knee.

Q: Do you have pain in the right knee all of the time, or does it come and go?

A: Comes and goes.

Gadd characterized his low back symptoms as muscle aches and sometimes throbbing pain limited mostly to his low back and not down either leg. The only testimony elicited from Gadd regarding his ability to return to the work he was performing for Trane at the time he retired is as follows:

Q: You left there in '17. Do you believe you could go back at any time after that and do your job completely and competitively?

> A: No, sir. As a matter of fact, I did receive a letter from Trane more or less asking me if I wanted to come back, and, I mean, that was a quick decision. No, there was no way I could physically be able to get back and do things I used to do.

Gadd acknowledged he had undergone surgery on both knees.[3]

In order for the ALJ to enhance the PPD benefits by the three multiplier set forth in KRS 342.730(1)(c)1, he must find that, due solely to Gadd's low back injury, he does not retain the capacity to return to the job he was performing at the time of the injury. Gadd provided no testimony that his low back condition is the sole cause of his inability to return to the work he was performing at the time of the injury. Moreover, the ALJ's summary of Gadd's testimony at the deposition and hearing does not recount any testimony from Gadd that his lumbar pain caused difficulty performing the tow motor operator job.

Without additional fact-finding and further explanation, the ALJ's decision does not apprise the parties and this Board of the basis for enhancement of the PPD benefits by the three multiplier. The ALJ must provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the

[3] Although Gadd testified he underwent surgery in 2002 and 2007, he did not state which knee was operated on in each year.

minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). This is especially true since Trane's Petition for Reconsideration requested the evidentiary basis for the finding the three multiplier is applicable.

The ALJ cited to Gadd's testimony that his lumbar condition caused such pain that he would no longer be able to perform the tow motor operator job he performed at the time of the injury. Because Gadd offered no such testimony, the claim must be remanded for additional findings. All parties to a workers' compensation dispute are entitled to findings of fact based upon a correct understanding of the evidence submitted during adjudication of the claim. When it is demonstrated the fact-finder may have held an erroneous understanding of relevant evidence in reaching a decision, the Courts have authorized remand to the ALJ for further proceedings. *See* Cook v. Paducah Recapping Service, 694 S.W.2d 694 (Ky. 1985); Whitaker v. Peabody Coal Company, 788 S.W.2d 269 (Ky. 1990). The ALJ must accurately cite to the evidence in the record in support of his decision. Because we are unable to determine the evidence upon which the ALJ relied in determining the three multiplier is applicable, we vacate the award and remand for additional findings regarding applicability of KRS 342.730(1)(c)1.

Accordingly, those portions of the ALJ's November 13, 2020, Opinion, Order, and Award and the December 15, 2020, Order finding Gadd sustained a low back injury meriting a 5% impairment rating are **AFFIRMED**.

Those portions of the November 13, 2020, Opinion, Order, and Award and the December 15, 2020, Order concerning the finding Gadd does not retain the ability to return to the job he was performing at the time of the injury and the award of the PPD benefits enhanced pursuant to KRS 342.730(1)(c)1 are **VACATED**. This claim is **REMANDED** to the ALJ for additional findings and a decision regarding Gadd's entitlement to income benefits enhanced by the three multiplier in accordance with the views expressed herein.

ALVEY, CHAIRMAN, CONCURS.

BORDERS, MEMBER, NOT SITTING.

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