Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 30, 2021

CLAIM NO. 202000127

TRANE CO. PETITIONER

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

TIM PARSON
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING AND REMANDING

* * * * * *

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

STIVERS, Member. Trane Co. ("Trane") seeks review of the December 14, 2020, Opinion, Order, and Award of Hon. Grant S. Roark, Administrative Law Judge ("ALJ") finding Tim Parson ("Parson") sustained work-related injuries to his shoulders arising out of cumulative trauma occurring while in the employ of Trane. The ALJ awarded permanent partial disability ("PPD") benefits enhanced by the three multiplier contained in KRS 342.730(1)(c)1 and medical benefits. The ALJ also

found Parson's claims for work-related cumulative trauma neck and low back injuries should be dismissed. Trane also appeals from the January 11, 2021, Order overruling its Petition for Reconsideration.

On appeal, Trane frames two arguments. Trane argues the ALJ erred in relying upon Dr. Bruce Guberman's impairment rating instead of Dr. Rick Lyon's impairment rating. Next, Trane argues the ALJ erred in enhancing Parson's benefits by the three multiplier, as substantial evidence does not support enhancement.

BACKGROUND

Parson's Form 101 alleges injuries to multiple body parts on October 25, 2019, caused by "cumulative, NOC." The Form 101 identified the neck, back, and shoulder as the affected body parts.

Parson testified at a March 31, 2020, deposition and the October 14, 2020, hearing. Parson's deposition reveals he was born February 2, 1973, and began working for Trane in 1995. Parson obtained his GED in 2002 and has a commercial driver's license ("CDL"). He owns rental property in Garrard County upon which a doublewide trailer is located. He performs some minor repairs on the property. Parson is able to maintain his lawn using a riding lawn mower and a weed eater. He denied experiencing any injuries prior to working for Trane. In 1998, he pulled a muscle in his back working at Trane for which he filed an unsuccessful workers' compensation claim. On that occasion, he was treated by Dr. James Werkmeister, his primary care physician. He did not see a specialist for this back injury. He still experiences back symptoms.

Parson first worked for Trane on the coil line from 1995 to 1999. Parson described the nature of that job. Aside from his back problems, Parson had no issues performing this work. He then went to fabrication for approximately one year where he had no problems performing his job. After that, he moved to "527" running lasers and brakes where he worked approximately one year. He then moved to controls were he remained for approximately five years. He moved to the docks where he worked approximately five years. Parson provided a description of all his previous work duties. Although he did not engage in duties associated with hauling products, Parson operated a tractor-trailer in Trane's yard.

Parson moved to foam cell where he worked approximately one year. He provided a description of that job. He estimated that for the last five months in that job he worked at "a different part of foam cell" where he engaged in "patching up." Parson then moved to saws where he worked for approximately one year. He provided the following description of the job in saws:

> A: You had a machine that's cutting and forming the metal and you had to pull the metal off, put it on a rack.
>
> Q: How heavy are the pieces of metal you're taking off?
>
> A: I'd probably guess 35 pounds. Some of them lighter.
>
> Q: How long did you work this section?
>
> A: About a year.

While working in saws, Parson first experienced symptoms in his shoulders. He explained:

> Q: Did you have any difficulty doing this job?

> A: Well, that's when my shoulder stuff bothered me some. I didn't know what it was, so I figure I'd go to a job that would be easier on me.

Parson moved to a job as a lean leader where he worked for approximately five years. Because the lean leader position was discontinued, Parson ultimately worked the last six months of his Trane employment in controls. He provided the following explanation for his move to controls.

> Q: Was that the last job you held?
>
> A: No, they done away with that job and I ended up back in controls. They put me on the line for about six months, but I had to get out of there because the line was killing me.
>
> Q: They put you back on controls?
>
> A: I bid on controls.
>
> Q: Okay. And is that the last job you held?
>
> A: Yes.

As a result of working in controls, Parson "felt rough quite often, [his] shoulder, [his] back, either one." He last worked at Trane on October 25, 2019. He recounted his reason for quitting work at Trane and the physical problems he was experiencing at that time.

> A: Because I was feeling rough, I was worried about them getting rid of me, so I figured I'd better get out of there while I could.
>
> Q: Did they offer you a severance?
>
> A: Yes.
>
> Q: Do you recall how much you received?
>
> A: Not for sure. Somewhere in the 20-something thousand.

> Q: Okay. And were they laying people off because they're moving the factory?
>
> A: Yes.
>
> Q: So you jumped at the opportunity to take the money?
>
> A: Yes.
>
> Q: When you left, were you having any physical problems?
>
> A: Well, my shoulder and stuff still bothers me all the time.

At the time he quit work at Trane, he was not under any work restrictions or receiving medical treatment. Parson furnished additional reasons for quitting:

> Q: Okay. Could you return to Trane right now to perform the jobs you were doing, you know, in an ideal circumstance, if Trane wasn't shutting down?
>
> A: That was one reason I left, because I was feeling rough every day. I needed something different. If I was the lean leader again, I could probably do it.
>
> Q: Okay. Could you do the other work?
>
> A: A lot of that other work hurt, so I was just ready to get out of there.

Shortly thereafter, Parson began working for Central Kentucky Hauling driving a truck. He has no work restrictions and has not missed any work. He denied experiencing an acute shoulder injury. At the time of his deposition, he had not undergone treatment for his shoulders nor taken any medication for shoulder problems. He testified he first developed shoulder problems while working at Trane in either saws or foam cell. Parson provided the following regarding why he believed the condition of his shoulders was caused by his work at Trane:

> Q: And how do you relate your shoulder as being caused by the work specifically?
>
> A: I guess just wear and tear. I wasn't for sure anything was wrong until I left Trane, but I was wanted to be checked out because I knew I was having issue [sic].
>
> Q: So you haven't had any treatment for the shoulders; is that correct?
>
> A: I ain't had no medicine for it, no.

The condition of his shoulders does not impede his work at Central Kentucky Hauling. He denied having any previous neck injuries or undergoing neck treatment. At the time of his deposition, Parson had worked for Central Kentucky Hauling for approximately four weeks working 45 to 60 hours weekly. His job at Central Kentucky Hauling entailed picking up and hauling garbage. He has no other duties outside of operating a Mack truck with a side loader on it.

At the hearing, Parson reiterated much of his deposition testimony and again described the jobs he performed at Trane. He also testified regarding the most difficult jobs he performed at Trane. Parson provided the aspects of the foam cell job which he believed caused problems in his shoulders.

> A: That's when I – shoulder, so that's the first time I noticed having any trouble with my shoulders is when I was back there in foam cell.
>
> Q: Okay. And so, what do you believe caused you to experience that shoulder pain doing the foam cell?
>
> A: I felt like it was flipping those panels on the back side over there and loading. There was two of us there for a while. You'd have – one of us would have to walk around the other side. It took two of us to flip them because they wanted them cleaned on both sides. So we was flipping them, cleaning them, and then having to flip them back. Then you would have to walk around and help load it onto the racks.

Q: Okay. How much did those weigh?

A: Well, some of them were small, so some of them ain't that bad, but the ones that were 10 foot or 12, however tall – some of those big D units are tall and they might be 36 to 40-something inches wide, depending on which ones they are. I'm not for sure what they weighed, but I know it took two of us. One person wasn't going to be flipping them.

Q: Okay. So that obviously was – was that lifting, heavy lifting?

A: Heavy lifting and flipping. I know my partner, he complained about his shoulders, which at that time it seemed like it was more my back bothering me.

…

Q: Okay. And were you – when you were in the foam department, were you constantly and repetitively flipping those – those pads or the tiles, the panels?

A: Yeah.

Parson's work at Trane involved some overhead work which he described as follows:

Q: Okay. Did your work at Trane involve any overhead work?

A: Well, yeah. A lot of times you're putting wires and stuff above your head, putting running wires, and you try not to work over your head too much. I know a lot of times when I was putting those roofs on those units you had to stretch out and sometimes you were working over your head, pushing, trying to screw those panels in.

At the time of the hearing, his work at Central Kentucky Hauling entailed driving a truck 90% of the time. Parson believed he experienced problems in both shoulders at approximately the same time.

Q: Okay. So did you say that your left shoulder and your right shoulder pain began around the same time as your neck pain?

A: It seems like it, but I couldn't say for sure.

Q: All right. What kind of problems are you experiencing in your left shoulder?

A: Well, it was like the top of them would be sore and aching. You just won't want to be moving too much. It would make you more stiff.

Q: All right. Is the pain sharp, dull, anything like that?

A: It's just an ache.

Q: Okay. What about your right shoulder? Are you still having pain with your right shoulder?

A: Yeah, but not near what it was.

Q: Okay. Is your left shoulder worse?

A: Yes.

Q: All right. How would you describe your right shoulder pain?

A: My right, most of the time it just – it's annoying sometimes.

Q: All right.

Parson testified he is incapable of performing the work he performed at the end of his Trane employment.

Q: Okay. All right. From a physical standpoint, do you feel like you can go back and do the work you did at Trane at the time you left?

A: No, that's the reason I went and got my CDL because I knew I wasn't going to be able to do no factory work no more.

> Q: Okay. And why do you – why do you think you cannot return to work at Trane from a physical standpoint?
>
> A: Well, if I was doing what I was doing before, climbing out and into units and working the air guns or the guns they have, my shoulders, neck and – you feel like crap going in there, and I'm thinking if they're rough enough, you ain't going to last. They either get rid of you or you ain't going to be able to handle it and you're going to have to go.

While working at Trane, Parson had no restrictions regarding the use of his shoulders, missed no work because of his shoulders, and received no complaints about his job performance. However, he believed he "wasn't going to be able to last there anyway the way [he] felt" and that he "couldn't last at Trane the way [his] neck and shoulders were acting." He supplied the following regarding the time he spent engaging in work requiring his arms to be above his head:

> Q: Now, your attorney asked you a little bit more detail about the specific mechanisms of how you performed with the work with respect to overhead work. What percentage of the time would you work your shoulders above or your arms above your head?
>
> A: When you worked in foam cell or sabbaninnis (phonetic), when you was putting stuff on the top racks, if it was a load, you had racks that probably had five layers you're putting panels on. So if it's five layers, you're putting it down. If it's metal, you kind of bring it straight out. If it was the top two, you're trying to lift it up and put it up over your head. And then when you put them on the racks and send them to the lines after they've already been foamed, most of them you have – they're probably five, and the top two you would have to raise up. Really over your head you might have – the top is the only time you'd be over your head.
>
> Q: So not that often then?
>
> A: Not there, not that often.

> Q: I mean, less than five percent of the time that you worked at Trane are you doing stuff above your head?
>
> A: Or even when I welded, you're working above your head. Half the time when you're welding. I'm going to say probably at least 13 percent of the time.
>
> Q: Thirteen percent of the time you're above your head?
>
> A: If you're going to screw, you're working above your head or, yeah, right at your head.

The October 14, 2020, Benefit Review Conference Order and Memorandum reflects the contested issues were work-related injury/causation, permanent income benefits per KRS 342.730, ability to return to work, and unpaid or contested medical expenses. Listed under Other contested issues was "RTW dates/wages; Injury under the Act."

The ALJ first determined Parson had not met his burden of proving work-related cumulative trauma injuries to his neck and lower back. However, since the medical experts concluded Parson sustained work injuries to both shoulders, the ALJ found as follows:

> The next issue becomes the extent of plaintiff's impairment attributable to his bilateral shoulder claim. Both the defendant's expert, Dr. Lyon, and the plaintiff's expert, Dr. Guberman, assigned impairment ratings for plaintiff's bilateral shoulders. Dr. Lyon found 5%, but indicated only 3% was due to work-related cumulative trauma. Dr. Guberman assigned 7% bilateral shoulder impairment. As between these ratings, the ALJ is ultimately most persuaded by Dr. Guberman's impairment rating. His 7% is more in keeping with the problems plaintiff indicated he had performing his job with the defendant and **with Dr. Lyon's opinion that plaintiff's shoulder condition also causes plaintiff's neck pain**. It is therefore determined plaintiff has a 7% impairment rating for his bilateral shoulders. (Emphasis added).

The ALJ concluded Parson is entitled to enhanced PPD benefits pursuant to KRS 342.730(1)(c)1 based on the following:

> On the issue of multipliers, Dr. Lyon concluded plaintiff requires no restrictions and could, therefore, return to the job he held at the time of his injury. Conversely, Dr. Guberman concluded plaintiff should be restricted from overhead work and lifting, pulling, or carrying more than 10 pounds frequently, and does not retain the physical ability to return to the job he held at the time of his injury. The defendant maintains Dr. Lyon's opinion on this issue is more persuasive because he is an orthopedic specialist, unlike Dr. Guberman. However, the ALJ is most persuaded by plaintiff's own credible testimony that he was having problems performing his job before he left and that he does not believe he could return to performing that job on a regular basis. Accordingly, based on plaintiff's testimony and Dr. Guberman's opinion, 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 and KRS 342.730(1)(c)(1). His award of benefits is, therefore, calculated as follows:
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> $941.40 x 2/3 = $627.60 x .07 x .85 x 3 = $112.03 per week.

Trane filed a Petition for Reconsideration complaining Parson's sole reason for quitting was due to plant closure and a $20,000.00 severance payment. It noted Parson had undergone no medical treatment for his shoulders, was under no work restrictions, and received no complaints about his job performance. Trane complained the ALJ failed to address these issues and relied upon Parson's testimony regarding his ability to perform his last job at Trane. It observed Parson was able to pass a CDL physical examination and is now operating a garbage truck into which he climbs by pulling himself up. Further, Parson was maintaining a relatively active lifestyle outside of work.

Trane asserted additional findings were required concerning the ALJ's reliance upon the impairment rating of Dr. Guberman, a cardiologist, as opposed to the impairment rating assessed by Dr. Lyon, an orthopedic surgeon. Trane complained Parson's shoulder symptoms were unsubstantiated by objective findings. It requested the ALJ reconsider the impairment rating attributable to the work injury and enhancement of the PPD benefits by the three multiplier. Alternatively, it requested additional findings regarding Parson's reason for leaving Trane, the fact he had received no treatment for his shoulders, was under no work restrictions, and uses his shoulders in his new employment. The ALJ overruled the Petition for Reconsideration as a re-argument of the merits.

Trane first asserts the medical evidence establishes Parson only had a 3% whole person impairment rating as a result of his work injuries. It again complains the ALJ relied upon a cardiologist's impairment rating rather than an orthopedic surgeon's impairment rating. Trane notes Parson estimated he worked 13% of his employment time with his arms extended over his head. Thus, the ALJ's reliance upon Dr. Guberman's opinion is misplaced, as he assumed Parson had worked with his arms above his shoulders 75% of the time. Trane argues that as an orthopedic surgeon, Dr. Lyon is much more qualified to assess an impairment rating for the condition of the shoulders. Further, Dr. Lyon also possessed an accurate understanding of Parson's job duties.

Trane next complains the ALJ committed an abuse of discretion by finding Parson did not possess the capacity to return to the type of job he was performing at the time of the injury. Trane asserts this is especially true since Parson

was not working under any restrictions. It complains the reliance upon Parson's testimony that he was having trouble performing his job prior to leaving Trane and did not believe he could return to performing that job on a regular basis is error.

Trane maintains the ALJ failed to address how a 47-year-old man is able to continue performing his job without restrictions until he was laid off and voluntarily accepted a $20,000.00 severance benefit. It argues that although Parson testified that 13% of his time at Trane was spent working with his arms over his head he did not identify any overhead work associated with working in controls. Rather, Parson consistently attributed his neck and shoulder complaints to his work in the foam cell line. According to Trane, working in controls is a relatively easy position demanding very little physical work. Trane also contends Parson's testimony reveals his shoulder condition is not debilitating as his left shoulder symptom was just an ache and the right shoulder was sometimes annoying. By Parson's own account, Trane insists the condition of his shoulders did not prevent him from returning to the work he was performing when he was laid off. Since Parson's symptoms were not severe enough to require medical treatment or work restrictions, Trane argues they were not significant enough to justify enhancement of the income benefits via the three multiplier. As it did in its Petition for Reconsideration, Trane asserts Dr. Lyon's opinions are much more convincing since he is a board certified orthopedic surgeon. Trane complains that because Parson returned to work without restrictions and has maintained an active lifestyle, the ALJ is prohibited from finding he is unable to perform the relatively easy work he was performing at the time he left Trane.

ANALYSIS

Parson, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including the impairment rating attributable to the work injuries and entitlement to enhanced income benefits. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since the ALJ found Parson met his burden of proof concerning the injuries to his shoulders, 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). An ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-

Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

We conclude substantial evidence supports the ALJ's finding Parson retains a 7% impairment rating as a result of the injuries to his shoulders. Trane fervently contends Dr. Lyon's testimony is the only testimony of probative value since he is the only orthopedic surgeon to offer an opinion concerning the impairment rating. In his report, Dr. Lyon diagnosed "left greater than right shoulder pain, bursitis, tendinopathy bilateral shoulders." He calculated a total impairment rating of 5% for both shoulders. However, Dr. Lyon apportioned only 3% of the impairment rating to Parson's work injuries because imaging studies revealed typical age-related changes and the majority of individuals Parson's age develop similar symptoms.

On the other hand, Dr. Guberman assessed a 7% impairment rating and provided the following regarding the impairment rating attributable to each shoulder condition:

> In regard to the right shoulder cumulative trauma injury, from Figure 16-40 on page 476 of the Guides, the claimant receives a 3 (three) percent impairment of the upper extremity for range of motion abnormalities in flexion and extension of the right shoulder. From Figure 16-43 on page 477 of the Guides, the claimant receives a 1 (one) percent impairment of the upper extremity for range of motion abnormalities in abduction and adduction of the right shoulder. From Figure 16-46 on page 479 of the Guides, the claimant receives a 1 (one) percent impairment of the upper extremity for range of motion abnormalities in internal and external rotation of the right shoulder. These are added for a total of a 5 (five) percent impairment of the upper extremity. From Table 16-3 on page 439 of the Guides, the 5 (five) percent impairment of the upper extremity equals a 3 (three) percent impairment of the whole person. That is the impairment rating recommended for the right shoulder cumulative trauma injury.
>
> In regard to the left shoulder cumulative trauma injury, from Figure 16-40 on page 476 of the Guides, the claimant receives a 3 (three) percent impairment of the upper extremity for range of motion abnormalities in flexion and extension of the left shoulder. From Figure 16-43 on page 477 of the Guides, the claimant receives a 2 (two) percent impairment of the upper extremity for range of motion abnormalities in abduction and adduction of the left shoulder. From Figure 16-46 on page 479 of the Guides, the claimant receives a 1 (one) percent impairment of the upper extremity for range of motion abnormalities in internal and external rotation of the left shoulder. These are added for a total of a 6 (six) percent impairment of the upper extremity. From Table 16-3 on page 439 of the Guides, the 6 (six) percent impairment of the upper extremity equals a 4 (four) percent impairment of the whole person. That is the impairment rating recommended for the left shoulder cumulative trauma injury.

Dr. Guberman's impairment rating was not challenged in any fashion by Trane as Dr. Lyon did not offer an opinion Dr. Guberman's calculation of the impairment rating is not in accordance with the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") and thus erroneous. A medical professional did not offer a criticism of Dr. Guberman's impairment rating. Even if one had, this Board has consistently held that such information would not necessarily be legally determinative or in any way binding as to the ALJ's authority, as fact-finder, to pick and choose whom and what to believe. The AMA Guides are clear that its purpose is to provide objective standards for the "estimating" of permanent impairment ratings by physicians. Because Dr. Guberman is a licensed medical physician, the ALJ may appropriately assume his expertise in utilizing the AMA Guides is comparable or superior to any other expert medical witnesses of record. What is more, the ALJ, as fact-finder, has no responsibility to look beneath an impairment rating or meticulously sift through the AMA Guides to determine whether an impairment assessment harmonizes with that treatise's underlying criteria. Except under compelling circumstances where it is obvious even to a lay person that a gross misapplication of the AMA Guides has occurred, the issue of which physician's AMA rating is most credible is a matter of discretion for the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

In this case, the ALJ concluded Dr. Guberman's calculations in determining the impairment rating were accurate. Well established is the premise an impairment rating pursuant to the AMA Guides is a medical determination, which

may only be made by medical experts. *See* Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003). Consequently, Trane's argument concerning Dr. Guberman's impairment rating represents an independent review of the AMA Guides by an attorney at law, not a physician. This Board has consistently stated that the proper method for impeaching a physician's methodology under the AMA Guides is through cross-examination or the opinion of another medical expert. In Brasch-Berry General Contractors v. Jones, 189 S.W.3d 149 (Ky. App. 2006), the ALJ relied on a physician who placed the worker in a DRE lumbar Category IV and assigned a 26% impairment rating, even though he repeatedly testified that if the AMA Guides were strictly followed the worker would only qualify for a Category III impairment. Two other physicians in that claim placed the injured worker in a lumbar Category III that called for an impairment of 10-16%. The Court affirmed the Board's reversal of the ALJ's decision since the medical opinion which persuaded the ALJ was not in accordance with the AMA Guides and, for that reason, did not qualify as substantial evidence. Unlike the above situation, Dr. Guberman gave no such qualifying testimony about his calculation of the 7% impairment rating.

Trane chose not to cross-examine Dr. Guberman or have Dr. Lyon review his impairment rating and calculations. Thus, the record is devoid of any medical testimony challenging Dr. Guberman's calculation of the 7% impairment rating. Trane contends that Dr. Lyon, as an orthopedic surgeon, is more qualified to offer an opinion regarding Parson's shoulder condition. Since Dr. Guberman is a licensed physician, the ALJ had the right to rely upon his impairment rating even

though he is not an orthopedic surgeon. The ALJ enjoys the discretion to reject Dr. Lyon's impairment rating. That discretion will not be usurped.

We find no merit in Trane's contention Dr. Guberman had an inaccurate understanding of the physical requirements of Parson's job since, as asserted by Trane, Dr. Guberman understood Parson worked with his arms above his shoulders approximately 75% of the time but Parson stated he only worked overheard 13% of the time. A careful review of Dr. Guberman's report reveals he noted Parson told him "the last day he worked he was operating controls," and he was informed that specific job involved standing and burning wire and 75% of the time Parson had to use his arms above the level of his shoulders for repeated lifting and moving of the wiring. Trane's protestations aside, Dr. Guberman did not state that 75% of Parson's work for Trane was spent working above shoulder level. Rather, Dr. Guberman received a history that Parson's final work station in controls required him to use his arms above shoulder level 75% of the time. Thus, Dr. Guberman had an accurate understanding of Parson's work in controls, his last job with Trane. Consequently, Trane's complaint concerning the history Dr. Guberman obtained is unfounded. We also point out the facts that Parson was not undergoing medical treatment, had no work restrictions, and quit after receiving a severance benefit is something the ALJ may consider but are not determinative of an issue.

The ALJ also concluded Dr. Guberman's impairment rating was more in keeping with the problems Parson encountered in performing his job at Trane. Parson's testimony recited herein establishes his shoulder problems originated while working on the foam cell line or in saws. The ALJ apparently chose to ignore Dr.

Lyon's opinion based upon Parson's testimony that his problems surfaced as a result of his work and not in part due to typical age-related changes as opined by Dr. Lyon. The ALJ's determination Parson sustained a 7% impairment rating as a result of injuries to his shoulders is affirmed.

Similarly, we are unconvinced by Trane's argument that substantial evidence does not support enhancement of Parson's income benefits by the three multiplier. In his March 19, 2020, Form 107 report, Dr. Guberman expressed the following opinion:

> The claimant states he stopped working on October 25, 2019 when he took a severance package because the plant was relocating. He states, however, he was having difficulty maintaining employment even before he took his severance package. He states he does not believe he could perform that type of work at the present time because his neck and shoulder pain have worsened and that work required, as mentioned above, frequent use of his arms, at times overhead and above his shoulder level.

Dr. Guberman imposed the following restrictions on Parson's work activities resulting from the injuries:

> Does the plaintiff/employee retain the physical capacity to return to the type of work performed at the time of injury? No.
>
> If not, why?
>
> In my opinion, he is unable to use his arms repeatedly for overhead work, and furthermore, in my opinion, he is unable to lift, carry, push or pull objects weighing more than 25 to 30 pounds occasionally or more than 5 to 10 pounds frequently.
>
> Which restrictions, if any, should be placed upon plaintiff/employee's work activities as the result of the injury?

> In my opinion, he is unable to use his arms repeatedly for overhead work, and furthermore, in my opinion, he is unable to lift, carry, push or pull objects weighing more than 25 to 30 pounds occasionally or more than 5 to 10 pounds frequently.

Dr. Guberman's opinions, though succinct, comprise substantial evidence supporting the ALJ's finding Parson does not retain the capacity to perform the type of work he was performing at the time of the injury. While the contrary opinion of Dr. Lyon may have been articulated in greater detail, such opinions represented nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003).

We again emphasize that Dr. Guberman had an accurate understanding of the work Parson performed at the time he ceased working for Trane. As noted, Dr. Guberman received a history from Parson of the type of work he was performing in controls. Since working in controls entailed the use of the arms above the head 75% of the time, the ALJ was free to conclude that Parson did not have the capacity to perform the work in controls which he was performing when he ceased working at Trane. Significantly, Dr. Lyon's finding Parson sustained work-related injuries to his shoulder is based upon Parson's "demonstration of the required motion confirms some overhead work, which is a known risk factor for the development of shoulder pain." From this, the ALJ could reasonably infer the use of Parson's arms above shoulder level resulted in the work injuries. In accepting Dr. Guberman's impairment rating, the ALJ found Dr. Lyon expressed the opinion that Parson's shoulder condition also caused his neck pain. A review of Dr. Lyon's report does not reflect he expressed such a straight-forward opinion. Rather, he stated Parson denied any

radicular cervical complaints and stated his neck complaints seem to be related to his shoulders. Even though Dr. Lyon did not comment further on this notation, the ALJ was free to infer from that statement Dr. Lyon agreed with Parson that his neck complaints were related to his shoulder problems. As such, any neck complaints generated from the work injury site would also be work-related.

When the issue is the claimant's ability to labor and the application of the three multiplier, it is within the province of the ALJ to rely on the claimant's self-assessment of his ability to perform his prior work. *See* Ira A. Watson Department Store v. Hamilton, supra; Carte v. Loretto Motherhouse Infirmary, 19 S.W.3d 122 (Ky. App. 2000). We have consistently held that within the ALJ's province is the authority to rely on a claimant's self-assessment of his/her ability to labor based on his/her physical condition. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979). Clearly, the ALJ's decision to apply the three multiplier pursuant to KRS 342.730(1)(c)1, is based in part on Parson's testimony that he did not have the capacity to return to the type of work performed at the time of injury. His testimony is sufficient to support the ALJ's decision; therefore, it may be not set aside on appeal. Special Fund v. Francis, supra. Consequently, medical evidence and lay evidence support the ALJ's determination Parson did not possess the capacity to return to the work he performed at the time of the injury.

Accordingly, the December 14, 2020, Opinion, Order, and Award and the January 11, 2021, Order overruling the Petition for Reconsideration are **AFFIRMED**. However, because the ALJ did not order Parson's claims for low back

and neck injuries dismissed, the claim is **REMANDED** to the ALJ for entry of an amended opinion dismissing those claims.

ALVEY, CHAIRMAN, CONCURS.

BORDERS, MEMBER, NOT SITTING.

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