Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 8, 2021

CLAIM NO. 202000104 & 202000103

TRANE CO. PETITIONER

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

TOMMY HAFLEY
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

STIVERS, Member. Trane Co. ("Trane") seeks review of the August 24, 2020, Opinion, Order, and Award of Hon. Grant S. Roark, Administrative Law Judge ("ALJ") finding Tommy Hafley ("Hafley") sustained work-related cumulative trauma injuries to his neck, lower back, and knees while in the employ of Trane. The ALJ found Hafley totally occupationally disabled and awarded permanent total

disability benefits and medical benefits.[1] Trane also appeals from the September 21, 2020, Order overruling its Petition for Reconsideration.

On appeal, Trane asserts the ALJ improperly relied upon Dr. John Gilbert's deficient report. Consequently, the award is erroneous and not supported by substantial evidence. Alternatively, Trane argues the ALJ committed an abuse of discretion in finding Hafley permanently totally disabled.

BACKGROUND

Hafley's Form 101 alleges cumulative trauma injuries to his neck, back, knee and elbow on October 31, 2018, caused by his employment at Trane. Hafley also filed a claim alleging hearing loss due to the repetitive exposure to loud noise in the workplace. By Order dated February 20, 2020, the ALJ consolidated both claims. Hafley submitted the report of Dr. Gilbert and the report and completed medical questionnaire of Dr. Julie Martin, D.C.. Trane submitted the independent medical evaluation ("IME") reports of Drs. Rafid Kakel and Daniel Primm.

Hafley testified at a March 30, 2020, deposition and the June 24, 2020, hearing. His deposition testimony establishes he was born on October 26, 1958, and began working for Trane on March 17, 1980. He last worked for Trane on August 31, 2018. Hafley completed the 10th grade and did not obtain a GED. He has no vocational training. Hafley testified that before working for Trane he worked in the parts department of a John Deere dealership.

[1] The ALJ also found Hafley sustained work-related hearing loss but since the 2% impairment rating assessed by the University Evaluator did not meet the statutory threshold, the ALJ only awarded medical benefits. As the ALJ's determination regarding Hafley's hearing loss claim is not in dispute, it will not be discussed further.

Hafley first worked for Trane in the stockroom for approximately six months. The job entailed a lot of lifting, some of which was heavy, and twisting. He moved to another position at the coil line where he worked for seven or eight months. During that time, he pushed brass tubes into coils and flared the tubes with a hammer so they would stay in the coils. He estimated the coils weighed between 40 and 80 pounds. Although this job bothered his wrist, he sought no medical treatment for this problem. He then moved to department 518 which is the "header cell." He provided the following description of that job:

> Q: Okay. And describe for me what's involved with that job.
>
> A: It's – they was like cast iron and they – and the drill press will drill holes in them and you've got to get a load of – a skid of them up, you've got to lift them up. They weighed anywhere between 30 to 40 pounds.
>
> Q: Okay. And you're using I guess a control panel to operate the drill press?
>
> A: Yes.
>
> Q: What's the most demanding aspect of that specific job?
>
> A: It's lifting them off of the press and putting them in the skid. They – they weighed anywhere – anywhere between 30 to 40 pounds apiece.
>
> Q: So lifting 30 to 40 pounds would be the most demanding aspect?
>
> A: Yes, on that job.
>
> Q: Okay. How long did you work the 518 department?
>
> A: I was there at that department I'd say a couple of years.

After that, he moved to "department 582, assembly." He described the nature of that job:

Q: Okay. And how long did you work in that line?

A: I'm not a hundred percent sure. I would say about two or three years.

Q: Okay. And what did you do on the assembly line?

A: We assemble what they call dampers and – I've forgot what the boxes was called. Some kind of other boxes. I've done forgot what – zone dampers.

Q: Okay. And physically what's involved with that? Describe to me the process of assembling a damper and one of these boxes.

A: A lot of up and down, climbing ladders, moving around, twisting, a lot of that, whole bunch of that.

Q: And why are you going up and down the ladder, twisting, et cetera, what's the purpose?

A: Well, they – well, they was so high you had to have a ladder to get up –

Q: Are you talking about the unit?

A: -- you know, put more stuff up. Yes, yes.

Q: Are you doing any lifting in that particular department?

A: A lot of – a lot of pushing and shoving.

Q: What are you pushing and shoving?

A: What they call the jack shaft.

Q: Jack shaft?

A: Yes, sir.

Q: And what's a jack shaft?

A: It controlled the – the dampers on the units.

Q: And like when you're pushing and shoving, I mean, are you using force? How does that play out in real time?

A: It's – you've got to do a lot of shoving into the section that it goes into. Sometimes you have to use a hammer.

…

Q: Did you have any difficulty doing that job?

A: Oh, yeah.

Q: What would you have from a – what was giving you trouble on that line?

A: Just everything where you've got to bend up and down. And it's kind of hard to describe, but a lot of shoving there. It took my [sic] toll – it took a toll right there.

Q: Well, what body parts did you have – were symptomatic or a problem on that particular line?

A: A lot of – like my back and stuff. You know, it's kind of – it's kind of hard to describe, but it was hard all the way around.

Q: Your whole body?

A: Yes.

Thereafter, Hafley worked on the paint line for six months. He provided the following description of the job:

Q: Was there anything demanding about working the paint line?

A: Very demanding, yes. It was –

Q: What's demanding about that?

A: Well, you hang the units on the line, on a conveyor line, continuous line that keeps going. And then when we were done, we had to take a hammer and – over our head and hammer the line to get the paint and stuff off.

Q: Get paint off the unit?

A: The lines, at the end of the night.

Q: Okay. And that was your sole job you did?

A: Yes, on that – in that department, yes.

Hafley then returned to the stockroom where he worked until he quit on October 31, 2018. He recounted the work involved in the stockroom.

Q: How long did you spend in the stockroom?

A: Until the day I retired.

Q: So roughly, how many –

A: October 31st. In the stockroom, the last time? I'm not a hundred percent sure. I want to say seven, eight years. I'm not – on the years, I'm not really sure – hundred percent sure on them.

Q: Well, just doing the quick math, it looks like you spent a couple months – or less than a year in a few other places. You worked maybe a couple years on Department 518 and 582. So would you have spent, I don't know, 20-something-plus years in the stockroom?

A: It was a lot – it was a while, yes.

Q: You spent the most time in the stockroom; is that fair?

A: Yes, sir.

Q: Okay. Was there any, you know, use of any equipment in the stockroom, any like tuggers or forklifts or anything?

A: Yes, I – I had drove a fork truck and what they call a stacker and a stand-up.

Q: What's a stacker?

A: Well, you stand on it and you drive with your left hand and you steer with the right hand. It's something like a fork truck, but you're standing up.

Q: Okay. What percentage of the time would you be operating the forklift and the stacker when you're in the stockroom?

A: I'm going to stay [sic] about 50 percent of the time.

Q: Fifty percent?

A: I'm not real – a hundred percent sure. I'm going to say anywhere between 30 to 50 percent, somewhere.

Q: Okay. And the forklift, does that have like air-ride seating, suspension seating?

A: No.

Q: It was a hard seat?

A: Yes.

Q: How fast does the forklift go?

A: Now, that I couldn't tell you, how fast.

Q: What about the stacker -- well, what kind of wheels are they, do you know?

A: They're steel.

Q: Can you describe the ride for me on a forklift? Is it smooth? Did you have any physical symptoms while you were operating that?

A: Oh, yeah it hurts your – yeah, it – you feel every bounce.

Q: Okay. What body parts gave you trouble while you were in the stockroom?

A: My legs. I'm going to say my whole body, because it – it's – it wasn't no air ride, that's for sure.

Q: And then what about the stacker, describe operation of that for me from a physical standpoint.

A: That's what I take parts to other departments to.

Q: Is that a similar sort of ride to the forklift, or is that more demanding, less demanding?

A: Yes, sir. It's a little more demanding. It's more demanding.

Q: In what way?

A: Well, a lot of bouncing. Lots of bouncing.

Q: And what are you bouncing over?

A: It's just the way that the stacker – just the way that – over that concrete.

…

Q: Okay. Looking back to the stockroom job, what was the most demanding aspect of that particular employment?

A: Lifting them boxes to one place to another.

Q: And what's in the boxes?

A: It's – it all depends on – it's different things.

Q: And where are you taking them from?

A: From the stockroom to the other departments that they supposed to go to.

Q: Would you use the stacker and the forklift to take those?

A: Yeah, but you've got to lift them and put them on there.

Q: Get them from – okay. How heavy are the boxes?

A: That depends on – some of them, anywhere between 30 or 40 pounds, some of them 50 pounds, different –

Q: So on average, somewhere between 30 and 50 pounds?

A: Average, yeah.

Q: Okay.

A: Yes.

On October 31, 2018, Hafley retired based on the following:

Q: Okay. And what is the circumstance or the nature why you're no longer working for Trane? Did you take the voluntary severance?

A: No. No, sir. They said I couldn't have it.

Q: Okay. Why did you leave work on October 31st, 2018?

A: That's what I'm – to be honest with you, because my body was telling me to leave.

Q: Okay. So you retired at that time?

A: Yes, sir.

Although he did not experience an acute injury to his knees while at Trane, his knees bothered him "a whole bunch." Since quitting work, Hafley has received injections in his knee administered by Dr. Keys in Danville, Kentucky.[2] Dr. Keys has treated him for approximately three years. Hafley testified Dr. Martin, a chiropractor who evaluated him, is the only medical personnel to advise him that the

[2] Dr. Keys' first name is not indicated in the record.

condition of his knees is work-related. His knees began bothering him approximately five years before he retired. Hafley recounted why he believes all the jobs performed at Trane affected his knees:

> Q: Okay. And what aspects of your job at Trane do you believe caused your knees, what job functions?
>
> A: Every single one of them.
>
> Q: Can you specify one of them, or did something stick out as being more of an issue than others?
>
> A: It's just a lot of walking, a lot of twisting and bending up there.
>
> Q: Now, when you're walking and you're standing, are you on a mat, are you on concrete, can you describe that for me?
>
> A: Concrete.
>
> Q: What sort of shoes would you wear?
>
> A: Steel toes.
>
> Q: And you've never had a specific acute isolated injury involving the knees?
>
> A: No, sir.

Although Dr. Keys was aware of his employment, Hafley never discussed with Dr. Keys what caused his knee conditions. Hafley identified the left knee as being more problematic. As a result, Dr. Keys has only injected the left knee. The injections help for a couple of weeks. Dr. Keys has not prescribed any medication for the knees. However, he recommended surgery be performed on both knees.

Hafley testified his neck has bothered him for approximately ten years. He denied sustaining an acute neck injury. His neck condition has been treated by a chiropractor, but he has not treated with the chiropractor since he left Trane. Hafley

again acknowledged a treating physician has not related his neck condition to his job. Before he left Trane, a doctor at the Lexington Clinic, whose name he could not recall, treated the neck condition and wanted to perform surgery. Hafley's primary physician, Dr. James Werkmeister in Lancaster, Kentucky, sent him to the physician at the Lexington Clinic. Hafley testified he underwent surgery by Dr. Keys for a left elbow condition.[3]

Hafley testified his knees and neck are the most problematic. He rated the pain in his knees as 10 on a scale of 1 to 10. This pain remains constant. He occasionally wore a left knee brace while working at Trane. He denied that his left knee condition has changed since retiring. He takes Tylenol for his left knee pain.

Hafley rated his neck pain as 10 on a scale of 1 to 10. However, the severity of the neck pain fluctuates and occasionally extends into his arms. Dr. Keys has not treated his neck condition and he takes no medication for this problem. Hafley has seen Dr. Radcliff, a chiropractor, for his neck problems.[4] Dr. Radcliff did not inform him this condition is work-related.

Hafley testified he is not working and mainly stays around his house. He will not go to the store because of the knee condition. Hafley assessed his greatest physical limitation as walking. He stated "… walking is almost out of the question, almost. I might walk to the mailbox and that's about the farthest I'm going to walk too far."

[3] Since the ALJ has determined Hafley did not sustain a cumulative trauma elbow injury, the problems with the elbow will not be discussed.

[4] Dr. Radcliff's first name is not indicated in the record.

At the hearing, Hafley again provided the chronology of the various departments in which he worked while employed at Trane and a description of the work performed in each. His job duties did not entail light physical work and he primarily stood the entire day. He explained how the use of his neck, back, and knees was implicated in his daily work:

> Q: Okay. Now, when you've alleged an accumulative [sic] trauma, what's called a wear and tear case on a few of your body parts, and I want to ask you about those individual [sic]. Okay. Let's start with your neck. How did you have to use your neck doing the physical jobs you told the Judge about while working for Trane?
>
> A: Well, you do a lot of pulling and tugging up there and the lifting part. It's a lot of – you use your neck quite a bit -- quite a bit. You do a lot of pulling and tugging on stuff.
>
> Q: And you said the last seven or eight years you would be picking up and moving parts and taking 'em to different locations, is that right?
>
> A: Yes. Yes, sir.
>
> Q: Okay. Now, Tommy, same question about your back. How did you use your back while you were working for Trane?
>
> A: It would be, like, special like them coil lines, stuff, ain't no headers, you gotta do that manual. You gotta do that –
>
> Q: When you say – just so we're clear, when you say do that, do what?
>
> A: I got to lift them cast iron headers out of the skids and put 'em on the press.
>
> Q: Okay. And same question about your knees. How'd you use your knees when you work [sic] for Trane?
>
> A: A lot of walking. A lot of waking up there on that concrete.
>
> Q: All right.

A: And up and down -- up and down with trucks and just daily stuff like that.

Q: Did you ever have to do any climbing work or anything – ladder work, any of that nature?

A: Yes, I did. There's some – that one job I had up there is you have to climb the ladder 'cause I'm not a tall person anyway, but yes, sir, I did. Not – not 100 percent climbing all the time, no.

Q: But it was a regular part of your day?

A: Yes, sir. Yes, sir.

Hafley estimated he has received a total of 15 to 20 knee injections which help for a couple of weeks. The treatment of his knees has not provided any long-term benefit. He wears a knee brace prescribed by Dr. Keys "a whole lot." When Hafley experiences low back pain, he utilizes a heating pad and something like BioFreeze. Hafley testified his neck problems cause a lot of headaches. His neck will sometimes become painful when he walks. On other occasions, he wakes up with a stiff neck. Approximately once a month, he experiences an all-day headache. Hafley testified the doctors have indicated these headaches are migraine headaches.

Hafley discussed his current problems with his knees:

Q: Okay. Now, last question about this, Tommy. Your knees, what problems, if any, do you have out of your knees?

A: They – it's every day. I wake up – sometimes I – I sleep a lot in recliners 'cause I – my knees, I can't get my –situated in bed. It's – it's a every day thing.

Q: Does any activity level affect your knee pain?

A: Oh, yes, I couldn't – I couldn't walk very far, and that holds me up.

Q: Okay. Do any of these problems give you issues with sitting or standing for a period of time?

A: Yes. I can sit for a while, then I have to kind of stand up, then I – it's back and forth, it's – yes, it – it does bother – yeah.

Q: Now, tell the Judge what a sit for a while mean [sic]. Could you estimate the number of minutes you've sit before you got to get up?

A: Well, I say after 50 miles, I'm – I'm ready – I got to stand up.

Q: Okay. And when you say 50 miles, obviously you're in a car for that 50 miles, is that right?

A: Yes, sir.

Q: Okay. Okay. Same question about standing. How long could you – do you think you could – would stand at one time now before you'd have to change positions?

A: I'd say probably about anywhere between five and 10 minutes.

Q: What is your biggest problem when you stand too long? Where's the pain at?

A: In my knees.

Q: Okay.

A: In my knees.

Q: Do your physical problems affect your ability to lift now?

A: Oh, yes, sir. Yes, sir, it does.

Q: Do you try to limit yourself to a certain weight? If so, what is that level?

A: It couldn't be too heavy. I just can't – I can't lift that well. I don't even try to lift nothing.

Q: Well, once again, too heavy doesn't tell the Judge anything. Can you –

A: I'm sorry. I say ---

Q: Can you lift a 10-pound bag of potatoes?

A: Yes, I – that's – a sack of potatoes hurts.

Q: Okay. You think you could do that in a jam?

A: Sir?

> Q: Do you think you could do a 10-pound bag of potatoes in a jam?
>
> A: Oh, no, no. No, sir.

Hafley had not worked since he left Trane on October 31, 2018. Hafley believed he is unable to perform any of his previous work at Trane because he could not perform the requisite lifting and walking. He has not been able to receive medical treatment because of "the virus." He only takes over-the-counter medication. Over the past couple of years, he has occasionally used a walker when his knees "lock up." Although his right knee is bad, he has been unable to receive injections. He estimated that of the time spent in the stockroom, approximately 80% entailed using equipment such as a forklift and a stand up. Of the 80%, Hafley estimated one-half involved sitting down operating a forklift and the other half using a stand up or stacker. The remaining 20% of his time was spent loading skids. Hafley denied his back condition has changed since he quit work. Hafley also denied terminating his employment with Trane because of an anticipated well-publicized plant shut down.

When he left Trane, Hafley was under no work restrictions. Further, Hafley never advised Trane personnel he was experiencing problems with his neck, back, or knees. Hafley explained why he believes his work caused his cumulative trauma injuries.

> Q: When did you determine that your accumulative trauma complaints that you mentioned earlier were related to your work with Trane?
>
> A: I'm – myself, I'm no expert, but I just figuring on all them years I worked there.
>
> Q: Do you know when you came to that conclusion?

A: Actually, I – before I left –

Q: You never told anyone?

A: I couldn't –

In the August 24, 2020, decision, the ALJ provided the following findings of fact and conclusions of law in support of his determination Hafley sustained cumulative trauma work injuries to his neck, lower back, and knees.

Causation/Work-Relatedness/Injury Under the Act

> As an initial, threshold issue, the defendant disputes whether plaintiff suffered any cumulative trauma injuries as he alleges. It relies on its experts, Dr. Kakel and Dr. Primm, each of whom examined plaintiff and noted age-related, degenerative changes with no objective evidence of advanced arthritic changes beyond what would normally be expected of someone plaintiff's age, regardless of occupation. For his part, plaintiff relies on his expert, Dr. Gilbert, who diagnosed cumulative trauma injuries to plaintiff's neck, back, thoracic spine, bilateral knees, and left elbow, all caused by the wear and tear associated with plaintiff's physical activities for the defendant for approximately 38 years. The defendant further points out that none of plaintiff's treating providers have indicated plaintiff has conditions that are due to his work activities, and that plaintiff was able to work his regular job, without restrictions, until Trane moved its jobs to South Carolina. It thus maintains plaintiff has failed to carry his burden of proving any work-related permanent "injury" within the meaning of KRS 342.0011(1).
>
> The burden of proof and risk of non-persuasion are on the claimant, relative to each and every essential element of his claim. *Burton v. Foster Wheeler Corp.*, Ky., 72 S.W.3d 925 (2002). With the December 12, 1996, amendments to the Act, these elements now include a "harmful change in the human organism evidenced by objective medical findings." KRS 342.0011(1). The term "objective medical findings" is defined in KRS 342.0011(33) as "information gained through direct observation and testing of the patient applying objective or standardized methods." The supreme court addressed

the definition of "objective medical findings" in *Gibbs v. Premier Scale Co.*, Ky., 50 S.W.3d 754 (2001). The court held that a diagnosis of a harmful change based solely on complaints of symptoms was not sufficient to establish entitlement to benefits.

Moreover, to qualify for an award of permanent benefits, the claimant must establish her condition warrants a permanent impairment rating using the AMA Guides. KRS 342.0011(1) and KRS 342.0011(33). KRS 342.0011(1) defines "injury" in relevant part as follows:

> (1) 'Injury' means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.

KRS 342.0011(33) defines "objective medical findings" accordingly:

> (33) 'Objective medical findings' means information gained through direct observation and testing of the patient applying objective or standardized methods.

In *Gibbs v. Premier Scale Co.*, 50 S.W.3d 754 (Ky. 2001), the Supreme Court of Kentucky first considered the definition of "objective medical findings" as required by KRS 342.0011(1) and defined in KRS 342.0011(33). The court, in *Gibbs*, explained:

> KRS 342.0011(33) limits 'objective medical findings' to information gained by direct observation and testing applying objective or standardized methods. Thus, the plain language of KRS 342.0011(33) supports the view that a diagnosis is not an objective medical finding but rather that a diagnosis must be supported by objective medical findings in order to establish the 9 presence of a compensable injury. The fact that a particular diagnosis

> is made in the standard manner will not render it an 'objective medical finding.' We recognize that a diagnosis of a harmful change which is based solely on complaints of symptoms may constitute a valid diagnosis for the purpose of medical treatment and that symptoms which are reported by a patient may be viewed by the medical profession as evidence of a harmful change. However, KRS 342.0011(1) and (33) clearly require more, and the courts are bound by those requirements even in instances where they exclude what might seem to some to be a class of worthy claims. A patient's complaints of symptoms clearly are not objective medical findings as the term is defined by KRS 342.0011(33). Therefore, we must conclude that a diagnosis based upon a worker's complaints of symptoms but not supported by objective medical findings is insufficient to prove an 'injury' for the purposes of Chapter 342.

Id. at 761-762. The court then went on to say that for an injury to qualify as a harmful change, it does not necessarily require documentation by means of diagnostic testing such as x-ray, CT scan, EMG or MRI to be compensable. The court stated, "[w]e know of no reason why the existence of a harmful change could not be established, indirectly, through information gained by direct observation and/or testing applying objective or standardized methods that demonstrate the existence of symptoms of such a change." Id. at 762. The court also recognized that to be compensable, a diagnosis may be derived from symptoms that were confirmed by direct observation and/or testing applying objective or standardized methods in order to comply with the requirements of KRS 342.0011(1).

As applied to the present case, the Administrative Law Judge is persuaded plaintiff has carried his burden of proving he suffered injuries to his neck, back, and knees. In reaching this conclusion, the ALJ notes that even the defendant's expert, Dr. Kakel, acknowledged plaintiff has clinical findings of significant degenerative

> changes in the neck, knees and back to support impairment ratings for those body parts. As Dr. Kakel's opinions in this regard echo Dr. Gilbert, the ALJ is persuaded plaintiff has permanent harmful changes to his neck, knees and lower back.
>
> However, the bigger issue is whether plaintiff's neck, lower back and bilateral knee problems are due to repetitive wear and tear as Dr. Gilbert concluded or, instead, are due simply to natural aging as Dr. Kakel and Dr. Primm opined. On this issue, the ALJ is ultimately persuaded by Dr. Gilbert's opinions. Although his report only ascribes plaintiff's injuries to "wear and tear" without further elaboration, that description is, in context, Dr. Gilbert's summary of the job duties plaintiff explained to him during the examination, but which were not detailed in Dr. Gilbert's report. In his own testimony, plaintiff described the fact that his job duties for the 38 years he worked for the defendant involved repetitively pulling and stacking parts weighing up to 50 pounds. He further explained that, although he worked different jobs for the defendant over the years, none of them would be considered light duty, and most of his job required him to stand most of the day. Combining the fact that plaintiff worked for the defendant for approximately 38 years performing physical activities as he described in his testimony along with Dr. Gilbert's conclusions leads the ALJ to determine plaintiff's lower back, bilateral knees and neck conditions are work-related. With respect to plaintiff's elbow condition, the ALJ notes that even Dr. Gilbert did not provide a permanent impairment rating for it and plaintiff did not mention any elbow problems when first asked to describe his current symptoms at the final hearing. These facts lead the ALJ to conclude plaintiff did not suffer any work-related injuries to his left elbow.
>
> Based on the foregoing, it is determined plaintiff has carried his burden of proving work-related cumulative trauma injuries to his neck, lower back, and bilateral knees as a result of his work activities which are, therefore, compensable.

The ALJ provided the following analysis in finding Hafley totally permanently disabled.

Benefits per KRS 342.730

The next issue becomes the extent of plaintiff's impairment/disability. Plaintiff maintains she is permanently and totally disabled, while the defendant argues plaintiff has only a partial impairment 11 if any portion of his claim is compensable. Having reviewed the evidence of record, the ALJ is persuaded plaintiff has an 8% cervical impairment rating as assigned by Dr. Kakel, a 10% left knee impairment and 10% right knee impairment as determined by Dr. Gilbert, and an 8% lumbar impairment as assigned by Dr. Kakel. The real question is whether plaintiff's injuries prevent him from returning to any gainful employment on a regular and sustained basis.

Permanent total disability is defined in KRS 342.0011 (11) (c) as "the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury…" "Work" is defined in KRS 342.0011 (34) as "providing services to another in return for remuneration on a regular and sustained basis in a competitive economy." To determine whether a claimant is permanently totally disabled, the ALJ is required to conduct a five-step analysis. The ALJ must initially determine whether a work-related injury has occurred, whether the claimant has a permanent impairment rating, and whether there is a disability rating. If these three threshold requirements are satisfied, the ALJ must then consider whether the claimant is unable to perform any type of work, and whether the finding of permanent total disability is work-related. *City of Ashland v. Stumbo*, 461 S.W.3d 392 (Ky. 2015). The ALJ's analysis must be an individualized examination of a variety of factors, including the worker's post-injury physical, emotional, intellectual, and vocational status. *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48, 51 (Ky. 2000).

As applied to the present case, it has already been determined plaintiff has work-related injuries which resulted in permanent impairment ratings. Such impairment ratings necessarily yield disability ratings under KRS 342.730. As for the remaining elements, the

> ALJ is persuaded from both Dr. Gilbert and Dr. Kakel that plaintiff does not retain the physical ability to return to the job he held at the time of his injury. Dr. Gilbert indicated his belief that plaintiff cannot return to any employment, all Dr. Kakel indicated plaintiff could only return to light duty. However, the ALJ is persuaded plaintiff's age, education and work experience take it highly unlikely he would be able to attain and retain light duty employment within his physical capabilities. Plaintiff is currently 61 years old, has only a 10th grade education, and most of his adult worklife has been with the defendant, to which he cannot physically return, even based on the defendant's expert.
>
> Given plaintiff's advanced age, limited education, and singular work history for the defendant, the ALJ is persuaded plaintiff is not likely to be able to find and maintain suitable employment in a competitive economy. For these reasons, it is determined plaintiff is permanently and totally disabled. His award of benefits is calculated as follows:
>
> $973.78 x 2/3 = $649.19 per week.
>
> Plaintiff's hearing loss claim was also consolidated with the physical injury claim. The University evaluator, Dr. Jones, whose opinion is afforded presumptive evidentiary weight under KRS 342.315, assigned only a 2% permanent impairment rating, it is therefore determined plaintiff has only a 2% impairment for his work related hearing loss, which does not meet the 8% threshold set forth in KRS 342-7305 to qualify for income benefits.

Trane filed a Petition for Reconsideration making the same arguments put forth on appeal. It also requested additional findings of fact regarding the determinations Hafley sustained cumulative trauma injuries and is totally occupationally disabled. As previously noted, the ALJ overruled the Petition for Reconsideration as a re-argument of the merits.

On appeal, Trane argues Dr. Gilbert, upon whom the ALJ relied in finding Hafley sustained work-related cumulative trauma injuries, possessed an

inaccurate understanding of Hafley's work. Therefore, the ALJ was precluded from ignoring the credible opinions of its two experts, Drs. Kakel and Primm. In Trane's view, there is no credible evidence demonstrating Hafley's work contributed in any manner to his alleged injuries. On the other hand, Drs. Kakel and Primm possessed an accurate understanding of Hafley's work and concluded the alleged injuries were not related to his job duties.

Trane contends Dr. Gilbert's opinion concerning causation is deficient as he failed to offer an explanation for his conclusion Hafley's injuries are due to his employment. Trane also complains the ALJ failed to review the video footage depicting the rigors of Hafley's job. It contends the supermarket area where Hafley worked is an "easy position from a physical demand perspective." Trane notes Dr. Gilbert failed to address any of the specifics of Hafley's job. Similarly, Dr. Gilbert failed to consider Hafley's age, genetics, smoking, and body habitus as contributing factors. It complains Dr. Gilbert did not provide any analysis or cite to any studies or literature as to how "this supposed 'heavy manual labor'" caused the alleged injuries. In light of Dr. Gilbert's failure to have an accurate understanding of Hafley's job and to consider his co-morbidities, Trane contends the ALJ was precluded from relying upon Dr. Gilbert's opinions. Trane lists a litany of reasons the opinions of its physicians are compelling.

Trane also cites to Hafley's testimony that all of his treating physicians were aware of the nature of his work but none advised him his work at Trane was a contributing factor to his problems. Trane posits that if Hafley's doctors felt his work was causing his problems they would have informed him. Therefore, the ALJ erred

in ignoring this evidence. Trane contends Cepero v. Fabricated Metals, 132 S.W.3d 839 (Ky. 2004) is implicated as Dr. Gilbert had inaccurate or incomplete information when rendering his causation opinion.

Alternatively, Trane argues the ALJ erroneously found Hafley, an individual who worked up until retirement without restrictions and received minimal treatment, permanently totally disabled. It argues that, Hafley's assertion to the contrary, Hafley retired due to an impending plant closure. Trane also notes Hafley only took over-the-counter medications while employed by Trane. It also relies upon Hafley's failure to advise personnel at Trane of any physical problems which he now contends are work-related. Trane complains that although the ALJ considered Hafley's age, education, and work experience, he "failed to resolve the discrepancy of how [Hafley] was able to perform KRS 342.0011(34) 'work,' without restrictions, up until October 31, 2018…" In further support for its position, Trane argues none of Hafley's treating physicians assigned work restrictions during the time he was employed by Trane. It concludes by arguing the ALJ's analysis is deficient because he failed to explain why Hafley is unable to continue performing his job in the supermarket area which is a sedentary job. Trane seeks reversal of the ALJ's decision.

ANALYSIS

Hafley, 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. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Hafley was successful in that burden, the question on appeal is whether

substantial evidence of record supports 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, 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 find no merit in Trane's argument the ALJ erred in relying upon Dr. Gilbert's opinions because he possessed an inaccurate understanding of Hafley's work and also failed to provide an explanation for his opinion Hafley's injuries are work-related. In his February 12, 2020, report, Dr. Gilbert provided the following work history:

> Hafley is a 61-year-old white male who did heavy manual labor at Trane for 38.5 years as receiver. He describes wear and tear over the years. He describes spinal pain mostly in his neck and back and cervicogenic headaches. He describes pain, numbness and weakness radiating into the left arm and both legs in a multi-dermatomal and myotomal type distribution. He has tried to just tough it out with ibuprofen, Aleve, Advil, and Tylenol. He says his knees give him a lot of pain, both knees. He describes pain and mainly weakness in both knees. He has troubled [sic] stooping, crawling, crouching or doing any heavy lifting. He has tried chiropractic, physical therapy off and on over the years. He saw Dr. Marin in 12/2019 who did x-rays showing spondylolisthesis at C3-C4 grade 1 and degenerative changes i.e., osteoarthrosis from C2 through T1 as well as changes in the thoracic spine and diagnosed elbow and knee pain and spinal dysfunction and facet syndrome.

Dr. Gilbert's physical examination revealed spasm, tenderness, and limited range of motion in the cervical, thoracic, and lumbar regions. Hafley had positive Spurling's test bilaterally and positive straight leg raise test bilaterally. There

was "reproducible 4+/5 strength in the bilateral knees, flexion, extension, and tenderness in both knees." Dr. Gilbert diagnosed:

> Spinal pain, muscle spasms, cervical and lumbar radiculopathy in a dermatomal and myotomal distribution with bilateral knee pain and weakness, which is reproducible in the bilateral knee flexors and extensors secondary cumulative traumas over the year.

Dr. Gilbert believed the work event described to him by Hafley was the cause of his impairment and none of the impairment was due to a cause other than the work event described. Pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), he assessed a 15% rating for the cervical spine condition, 10% rating for the lumbar spine condition, 10% rating for each knee condition, and 5% rating for the thoracic spine condition yielding a total whole person impairment rating of 42%. In response to whether Hafley described the physical requirements of the type of work performed at the time of injury, Dr. Gilbert stated "Heavy manual labor at train [sic] corporation for 38.5 years." He opined Hafley's "spinal pain, cervical and lumbar radiculopathies and bilateral knee pain and weakness preclude the type of work previously performed." He rated Hafley as "sedentary" and "100% occupationally disabled from any occupation for the foreseeable future."

Based on Dr. Gilbert's report, the ALJ could reasonably infer Hafley provided him with a description of the job duties he performed as well as the physical nature of each of those jobs. The ALJ could also reasonably conclude Dr. Gilbert's opinion Hafley sustained work-related cumulative trauma injuries to his knees, neck, and lower back were premised upon the history received from Hafley regarding the

type of work he performed and physical exertion required in performing those job duties. Significantly, the ALJ did not solely rely upon Dr. Gilbert's report in finding Hafley sustained cumulative trauma injuries due to his employment with Trane for 38.5 years performing strenuous manual labor. The ALJ cited to Hafley's testimony regarding his job duties including repetitive pulling and stacking parts weighing up to 50 pounds. He noted Hafley explained that although he worked in different jobs over the many years, none of them would be considered light duty and most of them required standing most of the day. Hafley's testimony combined with Dr. Gilbert's opinions, constitute substantial evidence supporting the ALJ's determination Hafley sustained work-related injuries to his knees, back, and shoulders.

We find nothing in the record indicating Dr. Gilbert had an inaccurate understanding of Hafley's job duties. Trane's argument that Dr. Gilbert had an inaccurate understanding of Hafley's work is unaccompanied by a reference to the specific evidence which supports its argument. Further, the fact Dr. Gilbert did not provide a detailed explanation supporting his opinion the injuries are work-related merely went to the credibility of his opinions and not the admissibility. Dr. Gilbert's opinions, though succinct, qualify as substantial evidence sufficiently supporting the ALJ's finding concerning the cause of the injuries. While the contrary opinions pertaining to causation expressed by Drs. Kakel and Primm may have been articulated in greater detail, such testimony represented nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003). Likewise, Dr. Gilbert's lack of specificity in explaining his expert opinion regarding 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's opinions.

Similarly, Hafley's testimony that none of his treating physicians linked the problems with his knees, neck, and lower back to his work at Trane is something the ALJ within his discretion may attribute significance. However, the ALJ enjoys the discretion to ignore that fact in light of the remaining record and this Board has no authority to invade his discretion.

We also find no merit in Trane's assertion the ALJ failed to review the videotape depicting Hafley's duties in the stockroom. Although the ALJ failed to reference the videotape, Trane did not request additional findings of fact or a more explicit ruling concerning this omission in its Petition for Reconsideration. Thus, the issue is not properly preserved for review by this Board. *See* Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 893 (Ky. 2007) (failure to make statutorily-required findings of fact is a patent error which must be requested in a petition for reconsideration in order to preserve further judicial review).

After examination of the record, we believe Cepero, supra, is inapplicable in the case *sub judice*. Cepero, supra, was an unusual case involving not only a complete failure to disclose but affirmative efforts by the employee to cover up a significant injury to the left knee only two and a half years prior to the alleged work-related injury to the same knee. The prior, non-work-related injury had left Cepero 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 history by the employee and had no other apparent means of becoming so informed. Every physician who was adequately informed of this prior history opined Cepero's left knee impairment was not work-related but, instead, was attributable to the non-work-related injury two and a half years previous. We find nothing akin to Cepero in the case *sub judice*.

Because the opinions of Dr. Gilbert and Hafley's testimony regarding the physical tasks he performed for Trane over 38.5 years constitute substantial evidence supporting the ALJ's determination Hafley sustained work-related cumulative trauma injuries to his neck, lower back, and knees, the ALJ's decision in that respect must be affirmed. Stated another way, because the ALJ's finding of work-related injuries to Hafley's knees, neck, and lower back are supported by substantial evidence, this Board has no authority to disturb the ALJ's determination. Special Fund v. Francis, supra.

Likewise, we find no error in the ALJ's determination Hafley is permanently totally occupationally disabled. As an initial matter, we note Trane does not assert the ALJ failed to conduct the five-step analysis required by City of Ashland v. Stumbo, 461 S.W.3d 392 (Ky. 2015). Rather, Trane complains that because Hafley retired without work restrictions and received minimal treatment he is not permanently totally disabled. Trane offers no evidentiary support for its assertion Hafley retired due to an impending plant closure. Hafley denied the well-advertised impending plant closure was the basis for his retirement explaining he

could no longer physically perform the work at Trane. Within his discretion, the ALJ may accept Hafley's explanation for leaving Trane.

Trane also complains Hafley only took over-the-counter medication while working and never advised Trane personnel he was experiencing any physical problems during his employment with Trane. It contends the ALJ's analysis is deficient because he did explain why Hafley is unable to continue performing his job in the supermarket area which is a sedentary job. In his report, Dr. Gilbert expressly stated Hafley's spinal pain, cervical and lumbar radiculopathies and bilateral knee pain and weakness preclude him from returning to work at Trane. Although he rated Hafley as sedentary, he also stated Hafley was 100% occupationally disabled from any occupation. Apparently, the ALJ concluded Hafley's little use of medication and lack of physical complaints were of little import in comparison to Dr. Gilbert's opinions.

Moreover, in his May 7, 2020, IME report, as noted by Trane, Dr. Kakel concluded Hafley's diagnosed conditions did not comprise cumulative trauma injuries related to his employment at Trane. However, Dr. Kakel determined that, pursuant to the AMA Guides, Hafley's cervical condition merited an 8% impairment rating. Similarly, pursuant to the AMA Guides, he found Hafley's lumbar condition also merited an 8% impairment rating. Dr. Kakel assessed no impairment rating for Hafley's right knee condition but assessed an 8% impairment rating for the left knee condition. Regarding Hafley's ability to return to work at Trane, Dr. Kakel expressed the following opinion:

> No, it is my opinion he does not retain the physical capacity to return to the previous type of work he

> performed. He could work with permanent restrictions in a less strenuous type of job. He does have bilateral knee arthritis and degenerative disease of the cervical spine which are progressive and cause him pain and limitations.

The opinions of Drs. Gilbert and Kakel set forth herein constitute substantial evidence supporting the ALJ's finding Hafley is totally occupationally disabled. Both physicians were unequivocal in their opinions that Hafley was not capable of returning to his previous employment at Trane. Further, Dr. Gilbert concluded Hafley was totally occupationally disabled.

In conducting his analysis pursuant to the City of Ashland, supra, the ALJ noted the impairment ratings yielded disability ratings under KRS 342.730. Concerning the remaining elements of the analysis, relying upon Drs. Gilbert and Kakel, the ALJ concluded Hafley did not retain the physical ability to return to the job he held at the time of his injuries. In light of the opinions of Drs. Gilbert and Kakel, the ALJ was persuaded Hafley's age, education, and work experience made it unlikely he could "attain and retain light duty employment within his physical capabilities." Significant to the ALJ was the fact Hafley was 61-years-old, possessed a 10th grade education, and had worked most of his adult life for Trane performing a job to which Drs. Gilbert and Kakel opined he could not return. Therefore, based on all these factors, the ALJ concluded Hafley would not be able to find and maintain suitable employment in a competitive economy and was thus permanently totally disabled. We are unable to conclude the ALJ's determination is unsupported by the record.

Notably, during his deposition, Hafley identified the physical problems he currently experiences as a result of the problems with his neck, lower back, and knees and stated he was incapable of returning to his job at Trane. His testimony succinctly set forth his physical problems and why this prevented him from returning to his work at Trane. This testimony also constitutes substantial evidence supporting the ALJ's determination Hafley is permanently totally disabled.

In determining whether a particular worker is partially or totally occupationally disabled as defined by KRS 342.0011, in Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48, 51 (Ky. 2000), the Kentucky Supreme Court explained the analysis "requires a weighing of the evidence concerning whether the worker will be able to earn an income by providing services on a **regular and sustained** basis in a competitive economy." (Emphasis ours). The Supreme Court explained further:

> An analysis of the factors set forth in KRS 342.0011(11)(b), (11)(c), and (34) clearly requires an individualized determination of what the worker is and is not able to do after recovering from the work injury. Consistent with *Osborne v. Johnson, supra,* it necessarily includes a consideration of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work consistently under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be able to work dependably and whether the worker's physical restrictions will interfere with vocational capabilities. The definition of "work" clearly contemplates that a worker is not required to be homebound in order to be found to be totally occupationally disabled. *See, Osborne v. Johnson, supra,* at 803.
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> …

> A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured. *Hush v. Abrams,* Ky., 584 S.W.2d 48 (1979).

Id. at 51-52.

The Supreme Court reaffirmed this holding the next year in McNutt Construction/First General Services v. Scott, 40 S.W.3d 854, 860 (Ky. 2001) . There, the Supreme Court stated:

> An analysis of the factors set forth in KRS 342.0011(11)(b), (11)(c), and (34) clearly requires an individualized determination of what the worker is and is not able to do after recovering from the work injury. Consistent with *Osborne v. Johnson, supra,* it necessarily includes a consideration of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work **consistently** under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be **dependable** and whether his physiological restrictions prohibit him from using the skills which are **within his individual vocational capabilities**. The definition of "work" clearly contemplates that a worker is not required to be homebound in order to be found to be totally occupationally disabled. *See, Osborne v. Johnson, supra,* at 803. (Emphasis ours).
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> …
>
> It is among the functions of the ALJ to translate the lay and medical evidence into a finding of occupational disability. Although the ALJ must necessarily consider the worker's medical condition when determining the extent of his occupational disability at a particular point in time, the ALJ is not required to rely upon the vocational opinions of either the medical experts or the vocational experts. *See, Eaton Axle Corp. v. Nally,* Ky., 688 S.W.2d 334 (1985); *Seventh Street Road Tobacco Warehouse v. Stillwell,* Ky., 550 S.W.2d 469 (1976). A

> worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured. *Hush v. Abrams,* Ky., 584 S.W.2d 48 (1979).

Here, the ALJ stated he considered Hafley's age, 61, education, and the fact that in the last 38.5 years he had worked solely for Trane. Accordingly, these factors caused the ALJ to conclude Hafley was incapable of sedentary employment in another field. Consequently, because of his advanced age, lack of a high school diploma, and previous work experience, the ALJ concluded Hafley was not able to obtain physically suitable employment in a competitive economy. Those findings by the ALJ are supported by the opinions of Dr. Gilbert, Hafley's testimony, and to some extent, Dr. Kakel's opinions.

As noted by the Supreme Court, the facts of each claim involve an individualized determination of whether an injured worker will be able to earn income on a regular and sustained basis in a competitive economy. Here, the ALJ was presented with a worker who had engaged in strenuous work for one employer for 38.5 years. Drs. Gilbert and Kakel agreed Hafley could not return to work at Trane. Further, Dr. Gilbert opined Hafley was totally occupationally disabled. Thus, the ALJ's findings are supported by the record and we may not disturb them.

Trane's assertion aside, the ALJ was not required to resolve what it perceived as the discrepancy of how Hafley was able to perform work without restrictions until October 21, 2018. Rather, the ALJ was free to accept Hafley's testimony he was physically unable to work after that date. The fact Hafley's treating physicians assigned no work restrictions while he was employed by Trane is a fact the ALJ may or may not consider.

Finally, we find nothing in the record indicating Hafley worked in a sedentary supermarket job. Rather, his testimony establishes he worked in the stockroom for the last twenty years which Hafley identified as strenuous manual labor. He provided a description of the nature of his work in the stockroom and that testimony was not rebutted by Trane.

In conclusion, because substantial evidence supports the ALJ's determinations Hafley sustained cumulative trauma work-related injuries to his knees, low back, and neck and is permanently totally occupationally disabled, we are without authority to disturb his decision on appeal. Special Fund v. Francis, supra.

Accordingly, the August 24, 2020, Opinion, Order, and Award and the September 21, 2020, Order overruling the Petition for Reconsideration are **AFFIRMED**.

ALVEY, CHAIRMAN CONCURS.

BORDERS, MEMBER, NOT SITTING.

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