

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 28, 2022

CLAIM NO. 202000365

TRANE COMPANY

PETITIONER

VS. APPEAL FROM HON. AMANDA M. PERKINS,
ADMINISTRATIVE LAW JUDGE

EDWARD HIGGINS and
HON. AMANDA M. PERKINS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
AND ORDER

* * * * *

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

ALVEY, Chairman. Trane Co. (“Trane”) appeals from the September 27, 2021 Opinion on Remand rendered by Hon. Amanda M. Perkins, Administrative Law Judge (“ALJ”). On remand, the ALJ determined Edward Higgins (“Higgins”) is entitled to the application of the 3x multiplier contained in KRS 342.730(1)(c)1 to the award of permanent partial disability (“PPD”) benefits for his cervical condition.

Trane also appeals from the October 27, 2021 Order denying its Petition for Reconsideration.

On appeal, Trane argues the ALJ erred and abused her discretion in finding the 3x multiplier applicable to Higgins' award of PPD benefits. Because the ALJ performed the appropriate analysis as directed and substantial evidence supports her determination, we affirm.

On June 25, 2021, this Board affirmed the determination by Hon. Paul Whalen, Administrative Law Judge, that Higgins sustained a work-related cervical injury for which he is entitled to PPD benefits based upon an 8% impairment rating. The claim was remanded for an appropriate analysis regarding the applicability of the 3x multiplier pursuant to KRS 342.730(1)(c)1.

In the September 27, 2021 Opinion on Remand, the ALJ determined the application of the 3x multiplier is appropriate. The ALJ noted Higgins' last job at Trane required bending, twisting, pushing, pulling, and lifting of up to forty to forty-five pounds. She additionally determined Higgins is incapable of performing his previous job at Trane due to residuals from his work-related neck condition despite his continued work without restrictions until he retired on October 24, 2019.

The ALJ noted KRS 342.730(1)(c)1 states as follows:

If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments.

The ALJ noted Higgins' testimony regarding his inability to turn his neck from side to side. She also noted Dr. Bruce Guberman's statement Higgins is unable to rapidly turn his head from side to side. She also noted Dr. Guberman opined Higgins is unable to return to his work at Trane. She found Dr. Guberman's opinions more credible than those expressed by Dr. Stacie Grossfeld because they were more consistent with Higgins' testimony. The ALJ found, "Higgins' work injury resulted in cervical range of motion deficits, which restricts his ability to push and pull motors to and from his workstation. Thus, Higgins is entitled to the three-multiplier." The ALJ cited to the holding in Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979) in support of her decision. She found Higgins' testimony regarding the ability to return to his work at Trane was "descriptive, persuasive, and consistent with Dr. Guberman's opinion."

Trane filed a Petition for Reconsideration, arguing the ALJ erred in finding Higgins is entitled to an enhancement of his PPD benefit award by the 3x multiplier. It argued the evidence does not support such a determination. It contended the only reason Higgins is not working is because he voluntarily accepted a nearly \$18,000.00 severance from Trane when the plant shut down. Trane requested additional findings of fact regarding:

1. The Plaintiff was laid off due to the Trane plant closing.
2. Higgins was able to continue working without restrictions until he accepted the \$18,000.00 severance.
3. The ALJ was aware Higgins testified he would have continued working if he had not been laid off.

4. The ALJ is aware Dr. Guberman is a cardiologist.
5. The ALJ is aware Dr. Grossfeld is a board-certified orthopedic surgeon.

In the October 27, 2021 Order denying Trane's Petition for Reconsideration, the ALJ found *verbatim* as follows:

This matter is before the undersigned Administrative Law Judge for consideration of Defendant's petition for reconsideration of the Order on Remand dated September 27, 2021. Defendant argued that the evidence cited did not support an award of a three-multiplier pursuant to KRS 342.730(1)(c)1.

The ALJ previously weighed the evidence, including Plaintiff's testimony and the reports of Drs. Guberman and Grossfeld. The ALJ was more persuaded by Dr. Guberman's opinion regarding Plaintiff's ability to return to his employment for Defendant. Defendant argued that Dr. Grossfeld's opinion should be given greater weight because she is a board-certified orthopedic surgeon and Dr. Guberman is a cardiologist. As explained in the Order, the ALJ finds Dr. Guberman's opinion more persuasive than Dr. Grossfeld's opinion. Dr. Guberman's opinion is consistent with Plaintiff's credible testimony regarding his physical ability to return to work for Defendant. The ALJ relied on Dr. Guberman's opinion in conjunction with Plaintiff's testimony to find that he could not return to work for Defendant. *Hush v. Abrams*, 584 S.W.2s 48 (Ky. 1979).

KRS 342.281 provides that an administrative law judge is limited on review on petition for reconsideration to the correction of errors patently appearing upon the face of the award, order or decision. The ALJ may not reweigh the evidence and change findings of facts on petition for reconsideration. *Garrett Mining Co. v. Nye*, 122 S.W.3d 513 (Ky. 2003). Having reviewed Defendant's petition for reconsideration, the ALJ finds that it is simply an impermissible re-argument of the merits of the claim, and the petition for reconsideration is **DENIED**.

The only issue before this Board is Trane's argument the ALJ erred in awarding the 3x multiplier pursuant to KRS 342.730(1)(c)1. It argues the ALJ's findings were clearly erroneous and not supported by probative evidence. Trane notes Higgins worked without restrictions until he was laid off, and asserts he testified he would have continued working if the job was still available.

Trane correctly notes Higgins bore the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Higgins was successful in his burden before the ALJ, we must determine whether substantial evidence supports her 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). Although a party may note evidence supporting a different outcome than 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 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).

This Board previously remanded this claim for the ALJ to perform the appropriate analysis in determining whether Higgins is entitled to the application of the 3x multiplier pursuant to KRS 342.730(1)(c)1, based upon the evidence. The ALJ was confronted with conflicting medical evidence. She reviewed Higgins' testimony, and the opinions of Drs. Guberman and Grossfeld. She determined Dr. Guberman's opinions more appropriate because they are consistent with Higgins' testimony.

Despite Trane's arguments to the contrary, the ALJ could rely upon Dr. Guberman's opinions, which we determine constitute substantial evidence, in applying the 3x multiplier. The ALJ set forth the basis of her determination, and why she found Dr. Guberman's opinions more appropriate than those expressed by Dr. Grossfeld. This was a proper exercise of the ALJ's discretion, and it will not be disturbed on appeal. Any attack on Dr. Guberman's opinions goes to the weight and credibility afforded his testimony, which was a matter solely for a determination by

the ALJ as fact-finder. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). We find the ALJ appropriately performed the analysis previously directed by this Board, and her determination is supported by substantial evidence. Therefore, we affirm.

Accordingly, the September 27, 2021 Opinion on Remand and the October 27, 2021 Order on Petition for Reconsideration rendered by Hon. Amanda M. Perkins, Administrative Law Judge, are hereby **AFFIRMED**. We additionally note Trane has requested oral arguments which we deem unnecessary. **IT IS HEREBY ORDERED AND ADJUDGED** the request for oral arguments is **DENIED**.

ALL CONCUR.

/s/ Michael W. Alvey
MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON DONALD J NIEHAUS
PO BOX 22610
LEXINGTON, KY 40522

COUNSEL FOR RESPONDENT:

LMS

HON MCKINNEY MORGAN
921 SOUTH MAIN STREET
LONDON, KY 40741

ADMINISTRATIVE LAW JUDGE:

LMS

HON AMANDA M PERKINS
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601