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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-000016-WC

BRIGGS & STRATTON CORPORATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-12-88141

JEFFREY DAVIS; HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, D. LAMBERT, AND J. LAMBERT, JUDGES.

CLAYTON, JUDGE: Briggs & Stratton Corporation (hereinafter "Briggs")
petitions this Court to review the December 5, 2014 opinion of the Workers'
Compensation Board (hereinafter the "Board"), which affirmed in part, vacated in
part, and remanded the Administrative Law Judge's (hereinafter "ALJ") May 23,

2014 opinion and order and the June 30, 2014 opinion and order, which denied Briggs' petition for reconsideration.

The ALJ in its opinion and order found that Jeffrey Davis sustained injuries to his upper extremities due to cumulative trauma manifesting on March 22, 2012. The ALJ awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits increased by the 3 multiplier, and medical benefits. After a careful review of the record, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Davis started working for Briggs in September 2009; initially, he worked part-time, that is, two days per week. In August 2010, he began a full-time position as an operator and still worked as an operator as of December 2012. But on October 4, 2012, Davis filed a Form 101 alleging injuries to both hands and wrists due to repetitive use while working as an operator for Briggs. He claimed that the injury manifested on March 22, 2012.

Following the filing of the Form 101, Davis, on December 17, 2012, provided the medical report of Dr. Anthony McEldowney, who diagnosed him with bilateral carpal tunnel syndrome ("CTS"). Dr. McEldowney took Davis's medical history and performed a comprehensive physical examination and reviewed Davis's diagnostic test results. The diagnosis was CTS likely caused by Davis's work-related trauma to both hands, which the doctor considered to be a direct result of work-related cumulative trauma. Dr. McEldowney recommended

bilateral carpal tunnel release surgery, and stated Davis had not reached maximum medical improvement (“MMI”).

On January 7, 2013, Briggs responded by filing the report of Dr. Thomas Gabriel, who likewise diagnosed Davis with bilateral CTS, which the doctor also concluded was work related. Dr. Gabriel recommended that Davis seek treatment with a hand specialist, and a short period of modified work activities. He expected Davis would retain the physical capacity to return to his usual and customary job activities following additional treatment, even if surgery was required.

Davis left his regular job as an operator in the die cast department in January 2013 and did not return to it. He was moved to “aluminum machining” where he worked as an operator full time, forty hours a week. This job required Davis to pick up parts, load them into a machine, inspect the parts upon completion, and place them on a conveyor line.

On January 25, 2013, the ALJ placed the claim in abeyance until Davis attained MMI, and ordered Briggs to pay TTD benefits from the date of the order until Davis reached MMI. Briggs filed a petition for reconsideration maintaining that the ALJ should have only ordered it to pay TTD benefits from April 19, 2012, to July 22, 2012, since Davis’s treating physician returned him to unrestricted work on July 23, 2012, and he had returned to his previous job as an operator in the same department and performed the same duties. It argued that the order was improper since it required it to pay TTD benefits to Davis regardless of

whether he returned to a level of improvement that allowed him to return to employment. The ALJ denied this petition but noted that Briggs would be entitled to a credit for any TTD payments made to Davis.

On April 12, 2013, following Briggs' appeal to the Board, it dismissed Brigg's appeal as interlocutory since the orders were not final and appealable. However, the Board suggested the ALJ review the award of interlocutory TTD benefits in accordance with applicable statutory and case law. Nonetheless, the ALJ did not revisit the issue of interlocutory TTD benefits.

Next, Dr. Heather Gladwell performed a left carpal tunnel release on May 16, 2013, and a right carpal tunnel release on May 30, 2013. Davis returned to light duty work sometime in August 2013 and to unrestricted work on September 3, 2013. Dr. Gladwell determined that he attained MMI by September 4, 2013, and could return to work full duty without restriction.

After the surgery for the CTS, Davis's claim was removed from abeyance on September 30, 2013. After a period of discovery, on March 21, 2014, the ALJ conducted a Benefit Review Conference ("BRC"). At the BRC, the parties stipulated to jurisdiction under the Workers' Compensation Act; that an employment relationship existed between Davis and Briggs; Davis's date of injury (March 22, 2012); Davis's date of birth (May 24, 1978); that timely notice was made by Davis to Briggs of injury; that TTD benefits were paid at the rate of \$368.67 per week from April 19, 2012, to July 22, 2012, (\$5,003.38), and January 25, 2013, to September 13, 2013, (\$11,767.63); Davis was currently working for

Briggs; his education level (9th grade - GED); and that he has specialized commercial driver's license ("CDL") training. The parties identified the contested issues as: benefits pursuant to Kentucky Revised Statutes (KRS) 342.730 and TTD (overpayment or underpayment).

A hearing was held on May 1, 2014. At the hearing, the parties further stipulated that Davis's average weekly wage was \$553.00 and that Briggs had paid medical expenses of \$7,680.27. Two witnesses testified – Davis and Chelsea Van Rooy, the occupational nurse for Briggs. (Davis also testified by deposition on December 10, 2012.) Davis explained that because of pain he left the die cast department in January 2013 and began working at the aluminum machining department. He stated that his current job in the aluminum machining department causes him pain and that he has considered leaving Briggs employment.

Davis testified that he did not believe he would be able to work for Briggs much longer due to his hand condition, and questioned whether he would be able to find comparable employment and wages in his hometown. Although Davis earned the same hourly wage of \$13.41 in both departments, he asserted that he earned more working in the die cast department than aluminum machining since he had more overtime opportunities in the previous position. In addition, Davis stated that prior to the date of his injury, March 22, 2012, he was taking four prescription pain medications on a daily basis, and he did not believe he could do his present job without the pain medication.

At his deposition, Davis had discussed that prior to March 22, 2012, he had received treatment for the gradual onset of low back pain for which he received medication. He was eventually referred to Dr. Richard Muench who began treating him in December 2011 for low back and right shoulder pain. Davis continues to see Dr. Muench on a monthly basis. Davis testified that prior to March 22, 2012, Dr. Muench, on a regular basis, prescribed Neurontin, Zanaflex, Percocet, Morphine and Ibuprofen for the unrelated chronic low back pain. Davis believed that this medication regimen provided partial relief to his hands and allowed him to perform his job duties at Briggs.

He does not believe he can return to his job in the die cast department because of the pain in his hands. He stated that he experiences numbness, tingling, pain, grip weakness and limited range of motion in both hands. Davis further noted that his job in aluminum machining is lighter in some ways than his job in the die cast department. Even though the duties with aluminum machining were easier, Davis stated it still required repetitive use of his hands, and he continues to experience constant hand pain. Davis does not believe that he would be able to complete his job tasks without the medication prescribed by Dr. Muench.

Chelsea Van Rooy, an occupational nurse for Briggs, also testified at the hearing. She observed that Davis worked as an operator for Briggs in both the die cast and the aluminum machining departments. She opined that regardless of the department in which Davis worked, the jobs of an operator are the same. Later,

she clarified that the jobs are different in the various departments but the job requirements are the same.

Both parties submitted various medical records including the records of Tri-County, Dr. Muench, and Dr. Gladwell. Additionally, Davis provided the medical reports of Dr. Jerry Morris and Dr. McEldowney. Dr. Morris opined that Davis's symptoms are the direct result of the work-related injury, that Davis had achieved MMI but required continuing pain management and orthopedic evaluation, that Davis had a 10% impairment rating for loss of range of motion and 3% impairment for pain, which yielded a 13% impairment rating pursuant to the 5th Edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter "AMA Guides.")

Briggs filed two medical reports of Dr. Gladwell's. She assessed Davis as having a 0% impairment rating and indicated that he could return to all activities with no long-term restrictions. She also challenged Dr. Morris's assessment. Dr. Morris prepared a rebuttal letter wherein he remained convinced of his earlier assessment.

At the hearing, it was stipulated that Davis was voluntarily paid TTD benefits by Briggs from April 19, 2012, to July 22, 2012; further, he was paid TTD benefits from January 26, 2013, through September 3, 2013, pursuant to the ALJ's January 2013 order. The amount of TTD benefits was a contested issue. Counsel for Briggs also agreed that Davis was entitled to TTD benefits for the

aforementioned period April 19, 2012, to July 22, 2012; and also, March 15, 2013, to March 25, 2013; and, May 15, 2013, through July 21, 2013.

In the ALJ's May 23, 2014 opinion and order regarding benefits under KRS 342.730, the ALJ found Davis to be a credible witness and Dr. Morris's report to be most compelling. The ALJ then evaluated the claim using the *Fawbush*¹ analysis and determined that Davis was entitled to PPD benefits with a 3 multiplier under KRS 342.730(1)(c)1. Considering the TTD benefits, the ALJ discussed that Briggs agreed that Davis was entitled to TTD benefits for certain periods and awarded TTD benefits at the rate of \$368.67 for those periods. Finally, the ALJ awarded medical benefits.

Briggs filed a petition for reconsideration, which the ALJ answered in a June 13, 2014 opinion and order denying the petition for reconsideration. Briggs petitioned the Board for a review of this order. Subsequently, the Board affirmed in part, vacated in part, and remanded the decisions of the ALJ. Briggs now petitions for review of this order to our Court.

STANDARD OF REVIEW

The purpose of review of the Board's decision in this Court "is to correct the Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." *Western Baptist Hospital v. Kelly*, 827 S.W.2d 685 (Ky. 1992). The ALJ's findings of fact are reviewed under

¹ *Fawbush v. Gwinn*, 103 S.W.3d 5 (Ky. 2003).

a clearly erroneous standard of review. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Questions of law are reviewed *de novo*. *Purchase Transportation Service v. Estate of Wilson*, 39 S.W.3d 816, 817-818 (Ky. 2001). With these standards in mind, we turn to the case at hand.

ANALYSIS

On appeal, Briggs argues that the Board misconstrued KRS 342.730(1)(b) and controlling precedent when it affirmed the ALJ's finding of permanent partial impairment and awarded PPD benefits; that the Board misconstrued KRS 342.730(1)(c)(1) and controlling precedent when it affirmed the ALJ's finding that Davis lacked physical capacity to perform the same type of work; that the Board erred when it held that the ALJ's conclusion of permanent partial disability was supported by substantial evidence; and that the Board erred as a matter of law when it did not direct the ALJ to render an order that awards Briggs credit for TTD benefits paid during periods when Davis was performing his usual and customary work and require him to repay the unentitled benefits from either income benefits or personal funds.

Davis responds that the Board did not misconstrue KRS 342.730(1)(b) when it affirmed the ALJ's finding of permanent partial impairment and that its finding was supported by substantial evidence. Further, the Board's decision affirming the ALJ determination under KRS 342.730(1)(c)(1) that Davis lacked the physical capacity to return to the same type of work was proper; and finally, that

the Board did not err as a matter of law when it did not direct the ALJ to award Briggs credit for TTD benefits when Davis was working.

Davis, as the claimant in a workers' compensation proceeding, has the burden of proving each essential element of the cause of action including the extent and duration of his disability as well as the application of the multipliers under KRS 372.730(1)(c). *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). Because Davis was successful in meeting this burden, the question on appeal is whether substantial evidence exists on the 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 some evidence of substance and relevant consequence that has the fitness to induce conviction in the minds of reasonable people. *Smyzer v. B.F. Goodrich Chemical Co.*, 474 S.W.2d 367 (Ky. 1971).

PPD Benefits

First, we address Briggs' argument that the Board misconstrued KRS 342.730(1)(b) when it affirmed the ALJ's finding of permanent partial impairment and awarded PPD benefits. Further, Briggs claims that the award of PPD benefits was not supported by substantial evidence. We agree with the Board that the ALJ properly applied the statute and that substantial evidence supported the decision.

On appeal, Briggs raises the same issues that it brought before the Board. It now argues that the Board's decision misapplied KRS 342.730(1) and was clearly erroneous. We begin by addressing Briggs' claim that the ALJ erred

because KRS 342.730(1) requires that an award of PPD benefits necessitates a permanent impairment rating as determined by the *AMA Guides*.

Specifically, Briggs alleges that the ALJ erred by relying on Dr. Morris's opinion because his opinion was based on an incomplete medical history and was not in conformity with the *AMA Guides*. Additionally, Briggs maintains that any assessment that disregards the express terms of the *AMA Guides* cannot constitute substantial evidence. *Jones v. Brasch-Berry General Contractors*, 189 S.W.3d 149, 154 (Ky. App. 2006). In fact, in *Jones*, the doctor acknowledged that he was testifying outside the *AMA Guides*, which contrast with the ALJ's decision that Dr. Morris followed the *Guides*.

The Board rejected Briggs' argument. First, it instructed that for purposes of granting an award of PPD benefits, an impairment rating pursuant to the *AMA Guides* is mandatory. See KRS 342.0011(11)(b), (35) and (36). Next, the Board cited *Kentucky River Enterprises, Inc. v. Elkins*, 107 S.W.3d 206 (Ky. 2003), wherein the Kentucky Supreme Court articulated that the proper interpretation of the *AMA Guides* is a medical question solely within the province of the medical experts. In another case, the Kentucky Supreme Court has held that "[t]he proper interpretation of the *Guides* and the proper assessment of impairment are medical questions." *Lanter v. Ky. State Police*, 171 S.W.3d 45, 52 (Ky. 2005).

Further, the Board, citing *George Humfleet Mobile Homes v. Christman*, 125 S.W.3d 288 (Ky. 2004), observed that the Supreme Court held that an ALJ is not authorized to independently interpret the *AMA Guides* but, as fact-

finder, may consult the *Guides* in the process of assigning the weight and credibility of the evidence. Hence, if a medical expert's testimony allows an ALJ to reasonably infer that the impairment is based upon the AMA *Guides*, the ALJ is free to adopt the expert's impairment rating. In sum, the Board clarified that if there is sufficient information in a medical expert's testimony from which an ALJ can reasonably infer that the assessed impairment is based upon the 5th Edition of the AMA *Guides*, the ALJ as fact-finder is free to adopt that expert's impairment rating for purposes of calculating an injured worker's permanent disability rating pursuant to KRS 342.730(1)(b).

Significantly, the ALJ is always the finder of fact and "has the sole authority to determine the quality, character, and substance of the evidence."

Square D Co. v. Tipton, 862 S.W.2d 308, 309 (Ky. 1993) (citation omitted).

In the case at hand, since the medical evidence is conflicting upon a "medical question," the ALJ, as fact-finder, is vested with sole authority to judge the credibility of conflicting medical evidence. *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615 (Ky. 2004); *Jones v. Brasch-Berry Gen. Contractors*, *supra*.

Briggs also suggests that the ALJ's determination of the impairment rating was not based on substantial evidence. It references Dr. Gladwell's physical examination where she found Davis had a full range of motion after surgery.

Second, Briggs argued that Dr. Morris did not properly assess the impairment based on the tables. Nevertheless, Briggs recognizes that the ALJ has the authority to draw reasonable inferences from the evidence. But it says that Dr. Morris's

assessment disregarded the express terms, tables, and charts of the *AMA Guides*. Then, Briggs contends that the Board should consult the *AMA Guides* to ascertain whether Dr. Morris made an error using the tables.

Clearly, regarding Dr. Gladwell's difference of opinion with Dr. Morris regarding Davis's disability, the ALJ is the fact-finder and may disregard conflicting evidence. Second, as noted above, neither the ALJ nor the Board is expected to render a medical opinion. See *Kentucky River Enterprises, Inc. v. Elkins, supra* and *George Humfleet Mobile Homes v. Christman, supra*. The Board summarized the findings of Dr. Morris and the manner in which he referred regularly to the *AMA Guides*. Further, the Board noted that Dr. Morris provided a rebuttal letter to Dr. Gladwell's assessment of his impairment rating. And Dr. Morris never admitted that his impairment rating was inaccurately calculated. When there is conflicting medical testimony, it is for the ALJ to weigh the evidence and decide which opinion is the most credible and reliable. *Brown-Forman Corp.*, 127 S.W.3d at 621 (Ky. 2004). That is what occurred in the case at bar. The Board held that the ALJ reasonably concluded, based on medical testimony of a physician, the impairment rating in the *AMA Guides* and that substantial evidence supported this determination. We concur.

Multiplier 3

Under *Fawbush v. Gwinn*, 103 S.W.3d 5, an ALJ, as fact-finder, must make three essential findings of fact: whether the worker can return to the type of work performed at the time of injury, whether the worker has returned to work at

an average weekly wage equal to or greater than the pre-injury wages and later ceases employment, and whether the worker can continue to earn this level of wage for the indefinite future.

Briggs maintains that the ALJ incorrectly determined that Davis did not retain the physical capacity to perform the same type of work he did on March 22, 2012. A review of the record, however, shows that after considering the *Fawbush* analysis, the ALJ found, based on Davis's sworn testimony and medical evidence provided by Dr. Morris, that Davis was unable to perform the same job duties as he had prior to his injuries, and therefore, could not return to the work in the die cast department. The ALJ, in particular, highlighted Davis's CTS, his education, and the job situation in his geographical region.

Initially, using the *Fawbush* analysis, the ALJ determined that Davis met the first requirement of the analysis. Next, the ALJ conceded that Davis returned to work for Briggs earning the same average weekly wage that he had before the injury. *See* KRS 342.730(1)(c)(2). Accordingly, the ALJ observed that under this scenario both the 2 multiplier and the 3 multiplier could apply, and as such, he had to ascertain whether Davis was likely or unlikely to be able to continue to earn a wage for the indefinite future that equals or exceeds the wage at the time of the injury. After considering Dr. Morris's medical reports and Davis's testimony, the ALJ found that Davis would be unable to continue to earn this wage, and consequently, found that the third prong of the *Fawbush* analysis applied.

Briggs asserted that medical testimony did not exist to support Davis's inability to return to the same position, and further, the Board incorrectly cited controlling precedent. In particular, Briggs discussed *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979). Briggs contended that *Hush* states that lay testimony is insufficient to establish disability and medical testimony is necessary. It then stated that a lack of evidence existed that Davis did not have the physical capacity to perform the same type of work.

A review shows that the ALJ highlighted *Hush* for the proposition that evidence is sufficient to establish a disability when medical evidence unequivocally establishes the bodily condition and competent lay testimony supports it. Thus, the ALJ indicated that both medical evidence and lay testimony were provided that Davis could not return to work.

The Board, citing *Hush*, acknowledged that Dr. Morris's opinion did not specifically address restrictions or Davis's ability to return to his position and that Dr. Gladwell, Davis's treating physician, had returned him to full duty. But the Board still concluded that other medical testimony regarding Davis's CTS and his own testimony regarding his inability to return to the position provided substantial evidence to support the ALJ's findings.

We agree. First, notably, in *Arnold v. Toyota Motor Mfg.* 375 S.W.3d 56, 61 (Ky. 2012), the Court, referencing *Hush*, stated that while causation and the date of MMI are medical questions, a worker's testimony may provide adequate support for a finding concerning his inability to work at a particular point in time.

This statement by the Court contradicts Briggs' contention that *Hush* stands for the proposition that specific medical evidence is required regarding Davis's work or activity restrictions related to his physical capacity to perform his previous job duties.

The *Fawbush* analysis is predicated upon the ALJ's authority to determine the facts and to select the relevant provision of KRS 342.730. Pursuant to KRS 342.730, the ALJ is authorized, if the evidence indicates that the worker is unlikely to be able to continue working and earning a wage that equals or exceeds the wage at the time of injury for the indefinite future, to determine the application of paragraph (c)(1). Here, the ALJ decided to apply paragraph (c)(1) upon a finding of permanent alteration in Davis's ability to earn money because of his injury. Clearly, he was unable to continue in his position as an operator for Briggs without taking narcotic pain medication, and therefore, could not maintain his previous job position indefinitely. Under these circumstances, we are convinced that the decision to apply (c)(1) was reasonable.

In sum, the Board held that substantial evidence existed to support the ALJ's determination that Davis is physically unable to return to his job as a die cast operator and that the 3 multiplier is appropriate. We agree. The ALJ carefully set out his methodology for making this factual finding. Keeping in mind that the ALJ is the fact-finder and that lay testimony as to ability is perfectly permissible to rely upon, we find no error in the findings or the analysis. *See Hush v. Abrams, supra.*

TTD Benefits

Finally, we consider Briggs' argument that the Board erred as a matter of law when it did not direct the ALJ to render an order that awards Briggs credit for TTD benefits paid during periods when Davis was performing his usual and customary work. Further, Briggs maintains that the Board should have required Davis to repay the unentitled benefits from either income benefits or personal funds.

In its brief, Briggs provides a lengthy explanation regarding TTD benefits and proposes that the issue is a legal one requiring a decision by our Court. Clearly, TTD benefits exist only until a worker's condition stabilizes so that the extent and duration of any permanent occupational disability can be determined, and KRS 342.730(1)(b) contemplates that periods of TTD may occur within a period of permanent partial disability. *See W.L. Harper Construction Co., Inc. v. Baker*, 858 S.W.2d 202 (Ky. App. 1993).

The Board, in fact, stated in its opinion:

. . . we vacate in part and remand the claim to the ALJ with directions to clarify whether Briggs is entitled to a credit for TTD benefits already paid, specifically those voluntarily paid from April 19, 2012 to July 22, 2012 and those paid from January 25, 2013 through September 3, 2013 pursuant to the January 25, 2013 interlocutory order.

A review of the evidence regarding TTD benefits shows that the January 25, 2013 order of the ALJ required Briggs to pay TTD benefits to Davis from the date of the order until MMI. Next, Briggs petitioned for reconsideration,

and the ALJ denied the petition, but in the February 15, 2013 order offered that “[d]efendant will, of course, be entitled to a credit for any payments made to or on behalf of the plaintiff.”

When the decision was appealed to the Board, it denied it as interlocutory but the order suggested that “the ALJ to review the award of TTD benefits in accordance with applicable case law.” However, apparently, the ALJ did not do so. During the pendency of this case, for part of the time, Davis returned to work as an operator in the aluminum machining department rather than the die cast department. Additionally, two surgeries were performed to remedy his carpal tunnel injury.

The next mention of the dates of TTD benefits was at the BRC. At that time, the parties stipulated TTD benefits were paid at the rate of \$368.67 per week from April 19, 2012, to July 22, 2012, (\$5,003.38), and January 25, 2013, to September 13, 2013, (\$11,767.63).

The ALJ noted in its opinion and order:

At the Final Hearing the defendant agreed that the plaintiff was entitled to temporary total disability benefits from April 19, 2012 to July 22, 2012, again from March 15, 2013 to March 25, 2013, again on May 15 and May 16, 2013, again from May 17, 2013 through May 27, 2013, again on May 28, 2013 to June 10, 2013, and again on June 11, 2013 to July 21, 2013.

Based upon the medical records and reports of Dr. Gladwell, I make the factual determination that the plaintiff was entitled to recover from the defendant and its workers’ compensation insurer temporary total disability benefits at the rate of \$368.67 per week for the above-specified periods of time.

Further, the ALJ in paragraph five of the opinion and order also stipulated that TTD benefits were also paid at the same rate from April 19, 2012, to July 22, 2012, and from January 25, 2013, to September 3, 2013. Obviously, some confusion exists regarding TTD payments. Adding to the lack of clarity, the ALJ held that the “[d]efendant shall be entitled to a credit for workers’ compensation benefits heretofore paid.”

Thus, the efficacy of the Board’s decision to vacate and remand the part of the ALJ’s opinion and order regarding TTD payments makes sense. Neither this Court nor the Board functions as fact-finders in these cases. Rather, the ALJ must provide a sufficient basis to support his determination in awarding TTD benefits. *Cornett v. Corbin Materials, Inc.*, 807 S.W.2d 56 (Ky. 1991). The Board telegraphed in vacating the portion of the ALJ’s opinion and order regarding TTD payments that the ALJ must, as the fact-finder, indicate the appropriate periods for TTD benefits and ascertain whether Briggs is entitled to a credit for all TTD benefits already paid. In particular, the ALJ must address the TTD benefits, which were voluntarily paid from April 19, 2012, to July 22, 2012, and those paid from January 25, 2013, through September 3, 2013, pursuant to the January 25, 2013 interlocutory order.

CONCLUSION

The decision of the Workers' Compensation Board is affirmed including the portion of the ALJ's opinion and order that was vacated and remanded.

ALL CONCUR.

BRIEF FOR APPELLANT:

Sharlott K. Higdon
Paducah, Kentucky

BRIEF FOR APPELLEE JEFFREY
DAVIS:

James D. Howes
Louisville, Kentucky