

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-001386-WC

JILL THOMPSON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NOS. WC-13-96622, WC-13-93160, AND WC-11-95875

DAKKOTA INTEGRATED SYSTEMS;  
HON. OTTO D. WOLFF,  
ADMINISTRATIVE LAW JUDGE;  
and WORKERS' COMPENSATION  
BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, KRAMER, AND THOMPSON, JUDGES.

KRAMER, JUDGE: Jill Thompson instituted workers' compensation proceedings against her former employer, Dakkota Integrated Systems, alleging she sustained three upper right extremity injuries in the course and scope of her employment. An

Administrative Law Judge (ALJ) eventually dismissed the balance of Thompson's claims after determining that Thompson had failed to provide evidence establishing a causal link between her various alleged injuries and her employment with Dakkota. The Workers' Compensation Board (Board) affirmed. As she did before the Board, Thompson continues to argue that the ALJ incorrectly assessed the evidence of record. Upon review, we likewise affirm.

### **FACTUAL AND PROCEDURAL HISTORY**

Dakkota is a manufacturer of dashboard component parts which are subsequently installed into motor vehicles. Thompson worked for Dakkota as a forklift operator, a tester on a production line, and as an assembler of instrument panels. Below, Thompson's claims asserted three separate injuries, all to her right upper extremity. There are two insurers involved in this matter. The insurer at risk at the time of Thompson's first alleged injury, which purportedly occurred February 14, 2011, was Hartford. According to Thompson, this was a cumulative trauma-type injury causing right-side carpal tunnel syndrome (CTS). As to Thompson's other alleged injuries, the second purportedly occurred on January 10, 2012; Thompson characterized it as a sprain to her right hand caused when she was required to repeatedly pull out and push down a button. The third purportedly occurred on January 23, 2013; Thompson characterized it as a right wrist sprain and carpal tunnel syndrome resulting from repeatedly having to assemble parts. The insurer at risk for these injuries was QBE Specialty, Inc.

Following an extensive review of the evidence presented in this matter, the ALJ entered an opinion and order stating in relevant part:

Making determinations in this claim is difficult due to [Thompson's] pre-2011 right arm and hand medical problems and treatment. This history extends back into 1999. [Thompson's] first known incident of right arm problems occurred while she worked for Sysco Foods picking orders. She testified that when working with Sysco she had an injury to her right hand which caused numbness, tingling and a "pins and needles" sensation. She was diagnosed with right Carpal Tunnel Syndrome. She also experienced swelling in her wrist and was told to wear a brace. Her then-treating surgeon, Dr. Durham-Smith, recommended right carpal tunnel release surgery, but this recommended surgery was not performed. [Thompson] seems to recall it was not performed because her then-employer's workers' compensation carrier would not pay for such.

[Thompson's] first claim (2002) was dismissed by ALJ John Coleman. He acknowledged [Thompson] had CTS but she could not prove her carpal tunnel condition was work-related. [Thompson's] right wrist has been symptomatic since this claim was dismissed in December 2003.

Dr. Morton Kasdan, who at the time was clinical professor of hand surgery at U of L, diagnosed [Thompson] with right Carpal Tunnel Syndrome, which he did not believe was related to her work activities. In an April 1, 2003 document Dr. Kasdan wrote that it was "...especially interesting to note that she had a normal electrodiagnostic study in August (2002) and now (2003) has an abnormal study."

The following year she worked as a picker for Guess Jeans and continued to have symptoms of tingling and swelling in her right wrist. She indicated this particular employment demanded a lot of use of her right hand and wrist. In 2006 she worked for Southern Standard Cartons folding cereal boxes. She filed another workers' compensation claim for her right wrist problems.

[Thompson] also complained of right wrist problems in 2008 while still working for Southern Standard Cartons. She treated with a chiropractor. Her complaints included finger numbness in her right hand which she associated with her right carpal tunnel syndrome.

During 2009, [Thompson] worked for Medical Center Laundry. While there she filed yet another workers' compensation claim alleging a right wrist injury. In that litigation [Thompson] was evaluated by Dr. Warren Bilkey on November 30, 2009, only two weeks before she started working for [Dakkota]. In his report Dr. Bilkey opined [Thompson's] bilateral hand numbness was attributable to her work for Medical Center Laundry.

After commencing to work for [Dakkota], [Thompson], on May 27, 2010, told Roger Prus, Environmental Health and Safety Coordinator for [Dakkota], her right wrist was sore and swelling due to a previous case of carpal tunnel syndrome which she sustained during prior employment.

Then on February 15, 2011, [Thompson] told Jerry Collins, her line supervisor, that when working with prior employers she experienced wrist problems. She told Collins her present problems were not work-related. She completed an incident report and indicated her symptoms were due to "previous CT."

On March 29, 2011 [Thompson] provided Mr. Prus with a written message, in which she acknowledged her then-CTS symptoms were due to her pre-existing CTS and not related to her work for [Dakkota]. After providing this written statement to Prus she successfully applied for Short Term Disability (STD) benefits. In her application she, as well as her treating physician, indicated her wrist problems were unrelated to her work for [Dakkota]. [Thompson] remained in STD status until late 2011.

[Thompson] treated with Dr. Harter in early 2011. After providing treatment for her right hand, he released [Thompson] back to full duty work.

On January 10, 2012 [Thompson] was working on a job that required her to repeatedly pull out and push down a part using the palm of her right hand. She was again diagnosed as having a hand sprain and returned to work without restriction.

During 2011, [Thompson] returned to Dr. Harter who placed her wrist in a short cast. He diagnosed right CTS which he specifically indicated was non-work-related. She continued treating with him until January 2012. A week later she commenced treating with Dr. Gabriel.

[Thompson] continued to treat with Dr. Gabriel into 2013. On January 23, 2013, she again reported hurting her right wrist. She was diagnosed with a right hand sprain and carpal tunnel syndrome. [Thompson] ceased working for [Dakkota] on February 23, 2013, for reasons not related to her alleged injuries.

[Thompson] filed her office-visit records of her present primary treater Dr. Thomas M. Gabriel, Orthopaedic and Hand Surgeon. [Thompson] first saw Dr. Gabriel on January 25, 2012, after being treated for a right hand contusion two weeks prior by Dr. Harter. At her January 25, 2012 initial visit with Dr. Gabriel, [Thompson's] hand was painful and swollen. On February 22, 2012, Dr. Gabriel's assessment was Carpal Tunnel Syndrome, right wrist; and Cubital Tunnel, right elbow. Dr. Gabriel planned for her to return to full duty work, with no restrictions, on February 27, 2012.

The numbness, tingling, and pain in the right hand persisted, and during an office visit of June 19, 2012, with Dr. Gabriel, [Thompson] received injections in her carpal tunnel and tendon sheath. On August 22, 2012, Dr. Gabriel noted there was improvement from the injections, and he again released [Thompson] to return to work full duty, without restrictions.

On February 3, 2013, [Thompson] was seen again by Dr. Gabriel. He reported her cubital tunnel condition was improved, the carpal tunnel problem in her right wrist had improved since the injection of June 19, 2012. By February 26, 2013, the numbness and tingling had

returned and was persistent. [Thompson] returned to Dr. Gabriel's office complaining of severe right wrist pain radiating into the right shoulder. Her right wrist was in a splint (placed by OPS on 1/23/13), and she reported moderate relief from pain by taking Lortab or Norco.

[Thompson] expressed her concern to Dr. Gabriel that she was unable to work due to increased pain, and she wanted to discuss being taken off work. On February 26, 2013, Dr. Gabriel ordered no use of her right upper extremity including her hand. He discussed her treatment over the last year, and reviewed a February 10, 2012 NCS/EMG<sup>[1]</sup> study which demonstrated moderately severe right carpal tunnel syndrome and right cubital tunnel syndrome. Her symptoms had been present over one year. He noted conservative treatment, splints, injections, and work restrictions, provided little long-term relief. Dr. Gabriel scheduled surgical release, which was denied by [Dakkota's] workers' compensation carrier.

On July 10, 2013, Dr. Gabriel's diagnoses were: Right carpal tunnel syndrome, Right Cubital tunnel syndrome, and "R MF/RF finger tenosynovitis". Dr. Gabriel filled in a blank on a questionnaire sent to him by [Thompson's] counsel, indicating [Thompson's] present symptoms were caused by the reported injuries of February 14, 2011, January 10, 2012, and January 23, 2013. He described her situation as an "aggravation of preexisting condition." He did not determine a percentage of impairment because [Thompson] did not appear to be at Maximum Medical Improvement. Dr. Gabriel placed restrictions, which included light use of her right hand, no repetitive use, and 5 to 10 pounds maximum lift.

Dr. Gabriel's deposition was taken by [Thompson] on October 22, 2013. He testified he first saw [Thompson] on January 25, 2012, when she presented with her right hand in a cast, after being treated by Dr. Harter. Dr. Harter put her right wrist in a cast because of pain and

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<sup>1</sup> "EMG" is an abbreviation for "electromyogram." "NCV" is an abbreviation for "nerve conduction velocity."

swelling of the palm and “worsening median nerve symptoms.” Dr. Gabriel removed the cast and did a nerve study to determine whether [Thompson] was experiencing new carpal tunnel symptoms. Dr. Gabriel noted [Thompson] had a carpal tunnel release in 1997, with continuing occasional on-and-off again symptoms. Dr. Gabriel felt the (2012) hand trauma two weeks prior (pushing/pulling on a steering column part) certainly worsened her symptoms. After a physical exam, Dr. Gabriel determined [Thompson] had an aggravation of post-traumatic carpal tunnel syndrome and he recommended nerve studies.

In 2012 nerve studies were performed by Dr. Iyer, at Dr. Gabriel’s request. The results revealed a moderately severe right carpal tunnel syndrome. Dr. Gabriel then gave [Thompson] cortisone injections for carpal tunnel, which did provide some symptomatic relief. [Thompson] then began to develop trigger-finger, mostly in the right ring finger, and Dr. Gabriel administered more injections. [Thompson] returned to Dr. Gabriel in January 2013, she was still having carpal tunnel symptoms and tendon problems. Dr. Gabriel suggested release surgery. [Dakkota], as insured by Hartford, filed medical records by Dr. Harter, dated March 2, 2011 through January 18, 2012. On March 2, 2011, [Thompson] complained to Dr. Harter of numbness in the hand which radiated up into her shoulder, and night symptoms when wearing a brace while she tried to sleep. The diagnoses were “numbness” and “[illegible] arthritis”, and [Thompson] was to return as needed. [Thompson] returned to Dr. Harter on January 18, 2012, complaining of constant numbness, swelling, diffuse tenderness, and a contusion to her right hand. Because of [Thompson’s] chronic numbness, Dr. Harter suggested surgery to determine the severity of the median nerve irritation.

An Addendum to his January 18, 2012 office visit note was prepared by Dr. Harter. Dr. Harter documented [Thompson’s] carpal tunnel syndrome was no longer considered work-related. Dr. Harter planned to remove her cast and release her to her regular job without restriction.

[Dakkota] as insured by Hartford, filed the May 24, 2013 Independent Medical Evaluation (IME) report of Dr. Mark O. Gladstein, Orthopaedic Surgeon. Dr. Gladstein's examination focused on [Thompson's] two alleged right wrist injuries of January 10, 2012, and January 23, 2013. (He also evaluated [Thompson's] low back, but this claim was withdrawn by [Thompson]). So as to qualify to render expert medical opinions, Dr. Gladstein reviewed medical records dating back to 2002 (from Caritas Hospital) and as recent as January 26, 2013, (Baptist Hospital). Dr. Gladstein noted [Thompson] had a diagnosis of right carpal tunnel syndrome in 2002 and 2006, and experienced a subsequent injury to her right wrist which may have brought on her cubital tunnel syndrome. [Thompson] told Dr. Gladstein there was no carpal tunnel injury in April 2011. Dr. Gladstein opined [Thompson] was at maximum medical improvement, and did not have any functional impairment as a result of the alleged injuries of February or April 2011. Dr. Gladstein concluded his report writing, "I feel that operative interventions should be delayed until her symptoms, which are not related to Workman's Comp injuries, become significantly disabling."

[Dakkota] as insured by Hartford, filed the May 15, 2013 and June 24, 2013 reports of Dr. Joseph Zerga, Neurosurgeon. To prepare to draft these reports, Dr. Zerga reviewed numerous records, examined [Thompson], and answered specific written questions propounded to him by defense counsel. On May 15, 2013, Dr. Zerga assessed a 3% whole person impairment for [Thompson's] right upper extremity. He felt she could return to her employment, but could not do some repetitive work activities. Dr. Zerga's June 24, 2013 response to defense counsel's questions regarding causation, was, "It is my opinion, within reasonable medical probability, that Ms. Thompson has bilateral carpal tunnel. She has no evidence of ulnar neuropathy on testing. She has no evidence of ulnar neuropathy on examination or history." Although Dr. Zerga indicated [Thompson] had right-sided carpal tunnel, he wrote, "My



opinion is that she had a preexisting active carpal tunnel and that the problems she had in the winter of 2011 was actually tendonitis/joint inflammation.” Dr. Zerga wrote, “The patient has no evidence of any anatomical change or injury from the winter of 2011.”

Ultimately, the ALJ determined Thompson had failed to prove her three alleged injuries were work-related and thus compensable under the Worker’s Compensation Act. The Board affirmed, and this appeal followed.

### **STANDARD OF REVIEW**

The burden of proof and risk of non-persuasion in the setting of workers’ compensation rests with the party holding the affirmative of any issue before the ALJ. Thus, where the ALJ determines that a worker has satisfied his burden of proof with regard to a question of fact, the issue on appeal is whether substantial evidence supported the determination. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). “Substantial evidence” has been defined as “evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Smyzer v. B.F. Goodrich Chemical Co.*, 474 S.W.2d 367, 369 (Ky. 1971). Conversely, where the fact-finder’s decision is to deny relief to the party with the burden of proof and persuasion, it is not enough for that party to note evidence which would have supported a conclusion contrary to the ALJ’s decision; such evidence is not an adequate basis

for reversal. *McCloud v. Beth-Elkhorn Corp.*, 514 S.W.2d 46 (Ky. 1974). Rather, the issue on appeal is whether the evidence in that party's favor is so compelling that, as a matter of law, no reasonable person could have failed to have been persuaded by it. *Carnes v. Tremco Mfg. Co.*, 30 S.W.3d 172, 176 (Ky. 2000); *see also Francis*, 708 S.W.2d at 643.

## ANALYSIS

As to Thompson's alleged February 14, 2011 injury, the ALJ's opinion and order provides:

[Thompson] contends she sustained a February 14, 2011 work-related right wrist injury while working for Defendant, as insured by Hartford. This alleged injury was a cumulative trauma type injury resulting in right sided carpal tunnel syndrome. For several reasons it is determined [Thompson] has not presented ample persuasive evidence to link her alleged 2011 CTS to a 2011 work incident.

At her final hearing, [Thompson] testified about a 2011 work incident, "I was doing a job and I injured, well, I guess the repetitive motion kind of flared it up." A claimant may testify about her condition, and such is competent and probative, but some expert medical proof on the issue of causation should be presented. Caudill v. Maloney's Discount Store, 560 S.W.2d 15 (Ky. 1977).

Beside [Thompson's] "guess" that her repetitive work tasks she performed while working for [Dakkota] in 2011 caused an injury or flare-up of her right carpal tunnel syndrome, there is little persuasive medical proof to validate her "guess." The persuasiveness of Dr. Gabriel's input regarding [Thompson's] alleged 2011

repetitive trauma work-related injury is eviscerated by his answer, “That is absolutely correct”, to Dakkota’s, as insured by Hartford, question, “So you wouldn’t have personal knowledge of her complaints any time before January 26<sup>th</sup> of 2012?” Dr. Gabriel also acknowledged, “What happened between 2003 and 2012 when I first saw her, I don’t know when that carpal tunnel stuff got worse.” And, Dr. Gabriel testified, “I think all along, if you want to—you know, regardless of nerve studies from 2003 to January 2012, she had stable on-again/off-again, intermittent carpal tunnel symptoms.”

Dr. Gabriel’s input does not suggest a possible link between [Thompson’s] 2011 symptoms and a 2011 work incident. His testimony indicates he knows little, if anything, about a 2011 work incident, which might have caused Plaintiff’s 2011 right CTS symptoms.

In addition to a lack of expert medical proof linking a 2011 work incident to [Thompson’s] 2011 right CTS, there are facts that indicate a 2011 work incident was not the cause of her symptoms. These facts include, but are not limited to, the First Report of Injury dated February 14, 2011, in which it was noted, “employee reported that they (sic) have a previous carpal tunnel injury from a previous employer”; Attachment E to Roger Prus’ deposition transcript is a To Whom It May Concern letter by Jerry Collins, [Dakkota’s] Production Supervisor, documenting his February 15, 2011 conversation with [Thompson], noting, “Jill stated at the time she didn’t need Roger because this wasn’t a work related item.”

Thompson has not presented persuasive evidence linking her alleged 2011 right carpal tunnel symptoms to a 2011 work incident. In fact, the proof seems to indicate the opposite. . . .

Since the ALJ’s opinion and order, Thompson has stated three times, and over the course of three separate pleadings (*i.e.*, in her petition for reconsideration before the ALJ; her petition for review before the Board; and her petition for review before this Court) that she has not “abandoned per se” her claim

regarding her alleged February 14, 2011 injury, but it “was not the focus of [her] current complaints and as such, [her] proof focused on the 2012 and 2013 right upper extremity injuries.” Her intent behind this statement is unclear. What is clear, however, is that while she ostensibly included her alleged February 2011 injury as a subject of her appeal before the Board and this Court, none of her pleadings or briefs since the ALJ’s opinion and order put forth any argument that the ALJ’s decision to dismiss this particular claim was erroneous. “Any part of a judgment appealed from that is not briefed is affirmed as being confessed.” *See, e.g., Osborne v. Payne*, 31 S.W.3d 911, 916 (Ky. 2000). Thus, as the Board determined in its own review of this matter, we similarly find no error in this aspect of the ALJ’s decision.

Next, as to Thompson’s alleged 2012 and 2013 injuries the ALJ’s opinion and order provides in relevant part:

[Thompson] contends the repetitive nature of her work for [Dakkota], from 2009 through 2013, caused her present symptoms of right CTS. [Thompson] contends that in January, 2012 she was performing work which required her to repetitively use her right hand to pull out and push down on a steering column part, and this action caused painful symptoms in the palm of her right hand and elbow.

For these symptoms she initially treated with OPS-Newburg, where she was diagnosed as having sustained a right had sprain, she was returned to work without restrictions. [Thompson] eventually began treatment with Dr. Harter, who, in a January 18, 2012 office-visit record wrote, “what she did not tell us and I did not know was that her carpal tunnel syndrome is no longer work-related. When she comes back we will remove the cast

and hopefully be able to release her to do her regular job without restrictions.”

On January 25, 2012 [Thompson] began treatment with Dr. Gabriel. Dr. Gabriel treated [Thompson] until August 22, 2012, at that time he released her to return to work. [Thompson] returned to her job as an assembler. During Dr. Gabriel’s treatment, his diagnosis was “a post-traumatic carpal tunnel syndrome.”

[Thompson] testified her next right wrist work injury occurred on January 23, 2013. On that day her work required her to use the palms of her hands to push a plastic cap into ignition assemblies. [Thompson] returned to Dr. Gabriel on January 30, 2013. Dr. Gabriel then proposed carpal tunnel release surgery. The surgery was scheduled for March, 2013, but the request for preauthorization was denied by QBS. Dr. Gabriel last saw [Thompson] on February 26, 2013.

As to a link between her work for [Dakkota] and her symptoms, Dr. Gabriel testified “I felt that it was an aggravation of a pre-existing condition.” Dr. Gabriel was asked, “Nevertheless, are you able to formulate an opinion through objective findings that would document a worsening particularly since the January 10, 2012 and January 23, 2013 blunt trauma injuries to the right upper extremity?”, and he responded, “What precipitated that? I have no idea, other than she presented to me with ‘my fingers are numb’ and ‘this is different with what I remember.” He then answered “Correct” to the question “—these traumas (the 2012 and 2013 events), made it worse?” He further explained, “... you know, precipitate, probably aggravate, maybe not go from no carpal tunnel to the moderately severe carpal tunnel, but certainly make the carpal tunnel worse.”

It is confusing how Dr. Gabriel can testify, in response to an unambiguous question, “What precipitated that? I have no idea...”, and then, a few questions later, testify [Thompson’s] traumas of 2012 and 2013 precipitated her present symptoms. Apparently Dr. Gabriel relied solely on what [Thompson] told him about her supposed 2012

and 2013 traumas, because he did not have nor did he review any of [Thompson's] pre-2012 medical records. He testified "... I don't know about all those records... I don't have any records that show she was actively engaged in any treatment for her carpal tunnel other than to say, well, wear a wrist splint at night or something else like that." Without any real knowledge of [Thompson's] pre-2012 medical status, Dr. Gabriel's comments on what "precipitated" her present symptoms carry little weight.

Under cross-examination Dr. Gabriel acknowledged it was absolutely correct he had no personal knowledge of her complaints any time before January 26, 2013. He reiterated, "What happened between 2003 and 2012 when I first saw her, I don't know when that carpal tunnel stuff got worse."

In contrast to Dr. Gabriel's input, [Dakkota], as insured by QBE, arranged for Dr. Joseph Zerga, neurosurgeon, to examine [Thompson] on May 15, 2013. Unlike Dr. Gabriel, he reviewed [Thompson's] medical records dating back to 2002, and continuing to April 26, 2013. So as to qualify to render expert medical opinions, Dr. Zerga not only reviewed [Thompson's] pre-2012 medical records but he also conducted a physical examination of [Thompson], obtained a medical history from [Thompson], and performed EMG/NCV studies. Dr. Zerga noted [Thompson] had only findings of mild carpal tunnel and some paresthesias in her right hand. He assessed a 3% WPI for the present condition of her right wrist. As to her condition being work-related, he wrote, "I do believe that Ms. Thompson's right upper extremity carpal tunnel is related to the cumulative use of her right hand."

Hartford's Dr. Gladstein, like Dr. Zerga, diagnosed [Thompson] with right CTS, with her symptoms compatible with this diagnosis dating back to at least 2002, and in particular 2006. Dr. Gladstein concluded, "It is also my opinion that cumulative trauma does not play a significant part in this patient's right upper extremity complaints." He continued, "I would recommend this patient's ongoing symptoms be treated

in a conservative manner and I feel that operative intervention should be delayed until her symptoms, which are not related to Workman's Comp injuries, become significantly disabling."

The most reliable expert opinions regarding causation come from Dr. Gladstein. Unlike Dr. Gabriel, Dr. Gladstein had available and reviewed medical records pertaining to [Thompson's] wrist symptoms dating back to 2002. As noted by Dr. Gladstein, her 2002 records, "clearly delineate that this patient was seen at Caritas in 2002 complaining of right hand symptoms, which had been intermittently present for about one month." With these records and other information being available, Dr. Gladstein wrote, "It is also my opinion that cumulative trauma does not play a significant role in the patient's right upper extremity complaints."

Based upon the above, it is determined [Thompson] has not presented ample persuasive evidence linking her present right carpal tunnel symptoms to her alleged work incidents of 2012 and/or 2013.

Plaintiff, having failed to link her present right wrist symptoms to her work for [Dakkota], has not proven the essential element of causation, and her claim will be dismissed in its entirety.

On appeal, Thompson asks this Court to reverse the ALJ's decision and remand for the ALJ to reconsider certain evidence that was favorable to her case because, she asserts, the ALJ committed errors in assessing it so flagrant as to cause gross injustice. *See, e.g., Edwards v. Louisville Ladder*, 957 S.W.2d 290, 293 (Ky. App. 1997). For the most part, the evidence to which Thompson refers consists of Dr. Gabriel's testimony. Thompson's argument is that, contrary to what the ALJ's opinion and order indicate, Dr. Gabriel did not *only* rely upon what she represented to him about what she alleged were her 2012 and 2013 traumas

when he rendered his medical causation opinions in this matter. Thompson points out Dr. Gabriel testified during his deposition that he was also aware of her August 6, 2002 and February 25, 2003 EMG/NCV studies (which reflected what he characterized as a relatively normal condition of her right wrist), and that he contrasted them with her later February 10, 2012 EMG/NCV study (which reflected what he characterized as moderate to severe carpal tunnel in her right wrist). Thompson also asserts that Dr. Gabriel was given 2002 and 2003 records from Dr. Jeffrey Durham-Smith (one of Thompson's former treating physicians), and a 2009 IME record from Dr. Warren Bilkey (who was retained by Dakkota, as insured by Hartford, to evaluate Thompson).

However, Thompson's argument fails to address why any of that additional information should have lent additional weight to Dr. Gabriel's opinions that Thompson sustained carpal tunnel injuries or a worsening of a preexisting carpal tunnel condition on January 10, 2012, and January 23, 2013. As Dr. Gabriel indicated in his deposition, the EMG/NCV studies merely reflected Thompson's condition as it existed when those studies were conducted (*i.e.*, in August 6, 2002, February 25, 2003, and February 10, 2012). Dr. Bilkey's IME report indicates that Thompson was exhibiting "residual symptoms of bilateral hand numbness" that appeared "to be related to mild carpal tunnel syndrome" on November 30, 2009. At best, this evidence merely demonstrates Thompson's carpal tunnel condition came into being or worsened *sometime* between August 6, 2002, and February 10, 2012. Stated differently, there remains no reason to doubt Dr. Gabriel's own



testimony, as quoted by the ALJ, that “what happened between 2003 and 2012 when [he] first saw her, [he didn’t] know when that carpal tunnel stuff got worse.”

Furthermore, Dr. Gabriel testified in his deposition that he had *not* been given the opportunity to review Dr. Durham-Smith’s medical records. Dr. Durham-Smith’s office records from 2002 and 2003 also undermine the notions that well before 2012 Thompson either did not already have carpal tunnel, or did not have a form of carpal tunnel that was already in the process of worsening. A February 26, 2003 office note reflects that Dr. Durham-Smith reviewed the aforementioned February 25, 2003 EMG/NCV; recognized that it was “pos for ulnar entrapment at wrist and 25% deterioration”; recommended surgery to “decompress CT [carpal tunnel]” of Thompson’s right wrist;<sup>2</sup> and wrote Thompson a note directing her to remain off of work until the surgery was performed. Indeed, as noted by the ALJ, Thompson herself testified the only reason she did not undergo the recommended surgery at that time was that her then-employer “didn’t want to pay for it.”

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<sup>2</sup> In a previous office note of February 19, 2003, Dr. Durham-Smith wrote “a lot more pain in hand and on ulnar side L wrist. Numbness, paraesthesias worse, waking her. Pain radiates to neck. Repeat EMG.” In her brief, Thompson asserts that because this note refers to her left wrist, and Dr. Durham-Smith’s later note of February 26, 2003 simply refers to “wrist,” Dr. Durham-Smith was merely recognizing worsening symptoms in and proposing surgery for her left wrist. Thompson is incorrect. The February 25, 2003 EMG/NCV study referenced in this note related to Thompson’s complaints of “right hand numbness and tingling,” and stated findings of “mild isolated entrapment neuropathy of the right ulnar nerve in the region of the wrist” and “a 25% loss of ulnar motor CMAP amplitude” since “the prior study performed on 8/6/02.” Dr. Durham-Smith also clarified in a later document entitled “adult medical report for social security or SSI disability benefits,” dated May 14, 2003, that the surgery he had recommended (*i.e.*, a decompression of the ulnar median nerve) related to carpal tunnel syndrome in Thompson’s right wrist.

Additionally, Dr. Gabriel admitted during his deposition that he was unaware Dr. Durham-Smith had diagnosed Thompson with and had recommended surgery for carpal tunnel in 2003; he testified that he thought Dr. Durham-Smith had actually recommended surgery in March, 2011. Dr. Gabriel admitted he was unable to make any medical determination regarding whether or not Thompson required surgery for right-sided carpal tunnel in 2003. Dr. Gabriel testified that in the history Thompson related to him, she did not make it clear “one way or the other” whether her carpal tunnel symptoms were actively ongoing before she began working with Dakkota. He was unaware that in 2003 Thompson had filed a prior worker’s compensation claim regarding carpal tunnel in her upper right extremity. He was unaware that in 2009, during a deposition relating to another worker’s compensation claim filed by Thompson against a prior employer, Thompson had testified that she had carpal tunnel in both of her hands; that she has always had problems with her left hand and her right hand; and that she “will always have the numbness and the pain” in both hands. Dr. Gabriel further testified that he did not even know if Thompson had sustained an injury or aggravated a right-side carpal tunnel condition on January 23, 2013, and that her

complaints that began on that date may have instead stemmed from the “wearing off” of the cortisone injections that he had given Thompson in June 2012.<sup>3</sup> In short, nothing Thompson has presented compels this Court to conclude that the ALJ committed any kind of error, flagrant or otherwise, in assessing the quality of Dr. Gabriel’s testimony.

Next, Thompson argues that the ALJ should have treated Dr. Zerga’s opinions regarding her medical condition (as described above in the ALJ’s order) as “inferior” to Dr. Gabriel’s opinions because Dr. Zerga apparently did not review Dr. Durham-Smith’s records. But, this argument lacks merit. It ignores Dr. Gabriel’s testimony that he did not review Dr. Durham-Smith’s records prior to formulating his own opinions, either. It is also unclear why Thompson believes that a review of Dr. Durham-Smith’s records would have altered Dr. Zerga’s

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<sup>3</sup> In this respect, Dr. Gabriel testified:

Q: . . . I’m here for the injuries, as we stated before, from January 10<sup>th</sup>, 2012 to January 23<sup>rd</sup> of 2013, and I believe you said you started seeing her, was in January 25<sup>th</sup>?

GABRIEL: Correct.

Q: Of 2012?

GABRIEL: ’12, correct.

Q: And at that point, was that when she reported the injury, you said, to her palm

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GABRIEL: Correct.

Q: --aspect of her wrist? And then you said you saw her again—

GABRIEL: --several times throughout that year, and then there was about a, maybe, four month break from—it appears like it was maybe August of 2012, where I said—I gave that she has the diagnosis of carpal tunnel, was still doing okay with the injection that she had in June, that she was having some middle finger issues again, she had improvement with the injection that she had in June, and then I did not see her again until, what is that, five months later when she said she reaggravated it. Now the question is truly reaggravate it, or did the cortisone injections that were given in June “wear off”?

Q: Okay.

GABRIEL: I don’t know the answer to that question.

conclusions that Thompson suffered from preexisting, non-work-related, right-side CTS; like Dr. Zerga, Dr. Durham-Smith similarly concluded that Thompson had right-side CTS dating back to at least 2002.

Lastly, Thompson argues:

If it is still believed that Dr. Gladstein's reports should be treated as superior, then it can be found that he, in fact, supports the 2012 and 2013 right upper extremity injuries. Despite the fact that he merely mentions these injuries in passing, he concludes "[Thompson] has a subsequent injury to the hypothenar muscles of the right wrist that *may* have brought on her cubital tunnel syndrome." Thus, even if this Court agrees that Dr. Gladstein's report should be treated as controlling, then it follows that compensability for her 2012 and 2013 injuries should be found compensable. This is an error that both the ALJ and the Board made because of their misunderstanding of the evidence.

(Emphasis added.)

To be sure, Dr. Gladstein's report does, as Thompson indicates, include the following statement:

Ms. Thompson does have evidence of right carpal tunnel syndrome. She has had ongoing symptoms compatible with this diagnosis dating back to at least 2002, and in particular, 2006. She has had a subsequent injury to the hypothenar muscles of the right wrist that may have brought on her cubital tunnel syndrome.

However, the fact that the ALJ's attention to this statement was limited to only mentioning it once in his opinion is not indicative of any kind of error in his assessment of the evidence; it is more indicative of a decision to place little value upon it. *See Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000)

(“The fact-finder may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party’s total proof.” (Citing *Caudill v. Maloney’s Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977))). This is because Dr. Gladstein’s “passing” statement does not identify the “subsequent injury” in question; when it occurred; whether it was work-related; and falls far short of qualifying as an expert opinion that, within reasonable medical probability, Thompson *did* sustain injuries in 2012 and 2013 that “brought on her cubital tunnel syndrome.”

### CONCLUSION

Thompson had not demonstrated that the ALJ committed any error in assessing the evidence of record in this matter, nor has she identified any evidence that would compel a different result. We therefore AFFIRM.

ALL CONCUR.

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