

RENDERED: DECEMBER 4, 2015; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000692-WC

MAKER'S MARK

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. 12-WC-77538

COURTNEY R. CLARK; HONORABLE  
JOHN B. COLEMAN, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING IN PART, REVERSING IN PART,  
AND REMANDING

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BEFORE: COMBS, J. LAMBERT, AND VANMETER, JUDGES.

LAMBERT, J., JUDGE: Maker's Mark has petitioned this Court for review of the opinion of the Workers' Compensation Board (the Board) affirming the opinion and award of the Administrative Law Judge (ALJ). Specifically, Maker's Mark disputes the ALJ's award of temporary total disability (TTD) benefits, the

imposition of 18% interest on the TTD award, credit for unemployment benefit payments, and the compensability of physical therapy expenses. After careful review of the record and the parties' arguments, we affirm the award of physical therapy expenses and reverse the award of TTD benefits.

Courtney R. Clark is currently a thirty-six-year-old resident of New Haven, Kentucky. Clark filed a Form 101 Application for Resolution of Injury Claim on May 22, 2013, alleging that she had been injured in the course and scope of her employment at Maker's Mark on June 28, 2012. She alleged injuries to her upper extremities, right shoulder, and neck as a result of repetitive job duties. Maker's Mark disputed Clark's claim, arguing that her alleged injuries did not arise out of and in the course of her employment (lack of causation) and that Clark did not give due and timely notice of her injuries. Maker's Mark indicated that it had not paid Clark any TTD benefits.

Clark testified by deposition on July 25, 2013. Clark graduated from high school in 1997 and graduated from Mid-Continent University in 2011, where she studied business and received an Associate's in Science degree. She began working part-time at Maker's Mark through Nesco in 2008, working on the bottling line. She began working directly for Marker's Mark in 2010 on the same line, still on a part-time basis. She was offered a full-time position on August 1, 2012. Clark described the various positions on the bottling line, which included dipping bottles into a wax pot. Clark is right-hand dominant.

Clark explained that on the morning of June 28, 2012, she reported to bottling manager Eric Cramer that her hands were bothering her and that they were waking her up in the middle of the night because they were numb. She said her shoulder and neck were also bothering her. Clark noted that all of her symptoms began on that date. Maker's Mark sent her to Spring View Occupational Health where she saw Dana Logsdon, who referred her to a hand specialist and restricted her from using forcible grip with her right hand. She then saw Dr. Dubou in August 2012 and underwent a nerve test that month. She went back to Dr. Dubou later that month, and he performed an injection in her left thumb. In addition, Clark sought treatment from a chiropractor. Clark continued to work using one hand from June 28 through September 11, 2012. Clark returned to full-duty work on September 12, 2012.

Clark's symptoms at that time included numbness and cramping in both hands, tenderness in her neck and shoulders, and popping in both shoulders, worse on the right. At the time of her deposition, Clark had just begun forklift training. She knew that she was scheduled for an evaluation with Dr. James Farrage on August 14, 2013, which had been set up by her attorney. Maker's Mark had scheduled an evaluation with Dr. Fadel on September 24, 2013, and with Dr. Dubou on September 17, 2013. Clark had also filed a federal lawsuit against Maker's Mark.

Maker's Mark filed several records regarding Clark's medical history, including the medical records of Dr. Lida Oxnard and Dr. Michael T. Sewell, who

treated Clark in 2006 when she fell off of a horse and sustained injuries to her right hand and ribs. Dr. John K. Garner had been Clark's family physician since 2011. He saw her through May 2013 for various complaints, including insomnia, anxiety, intermittent fatigue, weight gain, neck strain, and edema. Chiropractor Dr. Rod Coxon saw Clark for complaints of neck pain in October 2012.

Maker's Mark filed the medical records of Dr. Richard H. Dubou. Dr. Dubou saw Clark on August 2, 2012, after she reported difficulty with her hands, including tingling and numbness, in late June 2012. He was aware that her job at Maker's Mark was on the dipping line and that the jobs rotated every thirty minutes to avoid overuse syndrome. After his examination, Dr. Dubou recommended that Clark undergo an EMG to determine whether she had a mild compression of the median nerve. The August 16, 2012, EMG, as reviewed by Dr. Patrick Leung, was normal. In a letter dated August 21, 2012, Dr. Dubou noted the normal EMG study, but stated that a radial nerve was innervated on the back of her thumb. He injected the radial tunnel with Aristocort and Xylocaine and gave her a thumb immobilizer to wear to reduce her symptoms. He recommended that Clark continue to take Etodolac (Lodine) and Moxide. Clark was to remain on one-handed duty. By letter dated September 11, 2012, Dr. Dubou reported that the injection worked and that she had a full range of motion without any tremor. He supported her desire to return to full duty work and recommended that she continue taking her medications. Dr. Dubou stated he wanted to see Clark in two weeks to see if she had reached maximum medical improvement (MMI). If she was doing

well, he would not need to see her again. By letter dated October 4, 2012, Dr. Dubou stated that he had been advised that Clark was doing well and had not had any additional difficulties. He stated that she had reached MMI, did not have any permanent impairment or restrictions, and could work as she wished.

Clark moved to amend her Form 101 in August 2013 to include an additional injury to her left shoulder. Maker's Mark objected and stated that she had not filed any evidence in support of a left shoulder injury as a result of her work activities. The ALJ denied the motion, but stated the matter may be reconsidered if Clark submitted medical evidence to establish a left shoulder injury that arose in the course of her employment.

Clark introduced the August 14, 2013, medical report of Dr. James Farrage. Based upon his examination, Dr. Farrage diagnosed her with bilateral upper extremity repetitive use syndrome and myofascial symptoms, including right shoulder impingement and flexor tendinitis, with ongoing issues of pain, decreased strength, and impaired functional capacity. Clark was otherwise neurologically stable. Dr. Farrage stated that Clark had reached MMI and encouraged her to continue her home exercise program and follow up with her primary treating physician as symptoms dictated. He assigned a lifting restriction of no more than 20 pounds on an occasional basis and up to 10 pounds on a frequent basis. Clark was also to avoid repetitive upper extremity activities, including gripping and above shoulder level motions. In his opinion, Clark did not retain the physical capacity to return to her previous work because it required highly repetitive,

sustained upper extremity use. Dr. Farrage assigned a 5% whole person permanent impairment pursuant to the AMA *Guides* related to her work.

Clark filed a second motion to amend her Form 101, this time including evidence to establish a left shoulder injury based upon Dr. Farrage's report. Maker's Mark again objected to Clark's motion, arguing that she did not include the date, type, or cause of the alleged left shoulder injury. The ALJ granted Clark's motion based upon Dr. Farrage's impression of bilateral upper extremity repetitive use syndrome.

Maker's Mark introduced the November 5, 2013, medical report of Dr. Ronald J. Fadel, who performed an independent medical examination of Clark's right shoulder. Clark reported to Dr. Fadel that she did not have any complaints. Dr. Fadel took a history from Clark, noting that she had returned to work without restriction after being treated by Dr. Dubou and subsequently experienced right shoulder pain while dipping bottles in wax. After seeing Dr. Farrage for an IME, she followed up with Dr. Frank Bonnarens, who evaluated her and referred her to physical therapy for her shoulder complaints. Clark reported that her problem resolved, and she was released to work without restrictions. Other follow up appointments were canceled, but she was advised to attend the IME with Dr. Fadel. After reviewing the medical records and examining Clark, Dr. Fadel diagnosed an acute sprain injury in the right shoulder with underlying multi-directional instability and muscular deconditioning related to "the events of 6/28/12[.]" Dr. Fadel stated that she had reached MMI for her work-related

conditions, but he was unable to decide the date of MMI based on his interview and examination of Clark. He reported that Clark had become tearful when he took her history, stating that “all she wished for was to return to her job.” Dr. Fadel recommended a home exercise program, did not assign any permanent work restrictions or impairment rating, and stated she had the physical ability to return to her position with Maker’s Mark, including repetitive work.

Clark filed a supplemental report from Dr. Farrage dated May 16, 2014. Based upon his review of Dr. Fadel’s IME report, Dr. Farrage stated that Clark had reached MMI, but that she continued to have an issue with strength in her shoulder and grip. He assigned a 30-pound lifting restriction on an occasional basis and a 15-pound lifting restriction on a frequent basis. He also recommended that Clark avoid repetitive upper extremity activities, including gripping and over the shoulder level motions. However, she retained the physical capacity to return to her previous job, subject to the restrictions. Dr. Farrage assigned a 5% whole person impairment rating based upon the Strength Model of the AMA *Guides*. Dr. Farrage did not see any significant changes from Clark’s previous examination values or results.

Clark filed another report from Dr. Farrage dated June 16, 2014. Dr. Farrage had received a description of Clark’s job as well as the report of the functional capacity evaluation performed in December 2013. Based upon the FCE results, Dr. Farrage stated that Clark could safely perform the duties of her job description without any specific restrictions. He agreed that she could return to

full duty status, and he rescinded his previously assigned impairment. Dr. Farrage agreed with Clark's treating physician that she did not have a permanent impairment.

Maker's Mark filed the May 29, 2014, report of Dr. Bonnarens from Orthopaedic Associates of Kentuckiana, PLLC. Clark was seen in follow up for her right shoulder, and she indicated that she was not having any problems with it. She was able to perform her regular job without any difficulty or pain. Clark had been taken off work when she received an impairment rating, although she wanted to continue working because her shoulder was not bothering her. Her physical examination that day was normal, and she had reached MMI. Clark had not incurred any permanent impairment, and she was able to return to her regular job.

The ALJ held a benefit review conference followed by a final hearing on September 12, 2014. At the beginning of the hearing, the ALJ confirmed the stipulations reached at the benefit review conference, including coverage under the Act, that an employment relationship existed, that Clark had received work-related injuries on June 28, 2012, and that she had provided due and timely notice.

Maker's Mark had not paid any TTD benefits, but had paid \$3,725.00 in medical expenses. Clark's average weekly wage was \$776.14, and they agreed that Maker's Mark was entitled to credit for the unemployment insurance benefits paid when Clark was temporarily totally disabled. The parties also agreed that Clark had not incurred any permanent impairment. The remaining contested issues were TTD benefits and unreimbursed medical benefits.



Clark updated her deposition testimony during the hearing. She testified that after June 28, 2012, she did not miss any work until Michelle Kuykendall sent her home on September 13, 2013, telling her to not come back to work “until I got fixed[,]” referring to her upper extremity problems. This was based upon the report of Dr. Farrage. During that period of more than one year, Clark did not miss work and was able to perform her work activities without restrictions. She began receiving unemployment benefits at a rate of \$415.00 per week on September 13, 2013. She received those benefits through December 12, 2013, when she returned to work after passing a functional capacity evaluation. During the time she was off work, Clark stated she was under restrictions from Dr. Bonnarens. Clark also received unemployment benefits from May 29, 2014, when she was sent home from work, through July 3, 2014. She was sent home based upon another report from Dr. Farrage that imposed restrictions on her ability to work. She returned to her regular job duties after completing a second functional capacity evaluation, and she had worked her regular job duties since that time. On cross-examination, Clark stated that she disagreed with Dr. Farrage that she needed to be off of work or be subject to any restrictions. She knew that Dr. Farrage had rescinded his August 14, 2013, report by a new report dated October 7, 2013. She also disagreed with Dr. Farrage’s May 16, 2014, report imposing restrictions, and she knew that Dr. Farrage had again rescinded this report on June 16, 2014. During the first period she was off from work, Clark actively but unsuccessfully sought TTD benefits from Maker’s Mark. Upon questioning by the ALJ, Clark

confirmed that Dr. Dubou had placed her on one-handed duty from August 2, 2013, through October 1, 2013. She was not able to use her right hand during that time.

The parties filed post-hearing briefs arguing their respective positions. Maker's Mark argued that she was not entitled to any additional workers' compensation benefits because she caused her absences from work by filing the reports of Dr. Farrage, which were later rescinded. Maker's Mark also argued that she was not entitled to payment for her physical therapy expenses from 2013 when she was off from work. In her brief, Clark asserted that she was entitled to TTD benefits from September 13, 2013, through December 12, 2013, and from May 29, 2014, through July 3, 2014, with Maker's Mark receiving credit for those weeks that she received unemployment insurance benefits. Clark also argued that she was entitled to payment of her past, unpaid medical expenses.

The ALJ entered an opinion and award on November 7, 2014. On the issue of Clark's entitlement to TTD benefits, the ALJ awarded benefits for three separate periods: 1) from August 2, 2012, through October 4, 2012, when she was not allowed to use her right hand at work pursuant to Dr. Dubou's restriction; 2) from September 16, 2013, through December 12, 2013, based upon the report of Dr. Farrage; and 3) from May 29, 2014, through June 16, 2014, again based upon the report of Dr. Farrage. The ALJ reasoned that Clark had not reached MMI during these time periods and had not reached a level of improvement to return to her regular duties. In so holding, the ALJ relied upon *Double L. Constr., Inc. v.*

*Mitchell*, 182 S.W.3d 509 (Ky. 2006), for the proposition that “[a] worker is entitled to temporary total disability during the performance of minimal work as long as the worker is unable to return to the employment performed at the time of injury.” The ALJ gave Maker’s Mark a credit of \$5,390.55 for the unemployment insurance benefits Clark received during the times she was entitled to TTD benefits. In addition, the ALJ awarded Clark 18% interest on her award of TTD benefits pursuant to Kentucky Revised Statutes (KRS) 342.040, finding that Maker’s Mark’s denial of TTD benefits was without reasonable foundation. The ALJ reasoned, “[g]iving credit to Dr. Farrage’s opinion now without [giving] credit to his earlier opinions regarding temporary restrictions or maximum medical improvement would be fundamentally unfair.” Finally, the ALJ found Clark’s physical therapy expenses to be compensable pursuant to KRS 342.020.

Maker’s Mark filed a petition for reconsideration and requested additional findings related to the award of TTD benefits, the imposition of 18% interest, the proper amount of credit to which it was entitled, and the compensability of the physical therapy expenses. On reconsideration, the ALJ upheld the periods of TTD, stating:

The ALJ remains convinced by the opinion of Dr. Farrage that [Clark] was under restrictions during these last two periods of temporary total disability. Once again I note that [Maker’s Mark] abided by those restrictions and would not allow [Clark] to return to work because of those restrictions. It is indeed disingenuous to now argue that [Clark] was not temporarily totally disabled during this period of time.

However, the ALJ determined that during the first period of TTD, Clark was only entitled to an interest rate of 12%, stating that “[i]t is reasonable to believe that this return to employment would not require payment of temporary total disability benefits.” Regarding the credit for unemployment insurance benefits, the ALJ reasoned that because taxes were taken out of her unemployment benefits, whereas workers’ compensation benefits were not taxable, that Maker’s Mark should only be credited for the net amount Clark received. Finally, the ALJ upheld the compensability of the medical expenses.

Maker’s Mark appealed the ALJ’s decision to the Board. It argued that TTD is not payable if an employee is back to work at his or her regular job or if the medical evidence indicates that the employee is at MMI or is capable of performing his or her regular job. Maker’s Mark also disputed the reliability of Dr. Farrage’s medical opinions. In addition, Maker’s Mark contested the award of 18% interest and argued that the ALJ should not have reduced the credit for the unemployment insurance benefits Clark received. In her brief, Clark argued that the ALJ’s decision was supported by substantial evidence of record and should be upheld. The Board entered an opinion and order affirming on April 10, 2015. This petition for review now follows.

On appeal, Maker’s Mark continues to argue that the ALJ erred in awarding TTD benefits, in awarding 18% interest on the TTD award, in reducing the credit for unemployment insurance benefits Clark received, and in deeming the physical

therapy expenses to be compensable. Clark argues that the ALJ's award should be upheld.

This Court's standard of review in workers' compensation appeals is well-settled in the Commonwealth. "The function of further review of the [Board] in the Court of Appeals 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 Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

Kentucky law establishes that "[t]he claimant in a workman's compensation case has the burden of proof and the risk of persuading the board in his favor." *Snawder v. Stice*, 576 S.W.2d 276, 279 (Ky. App. 1979) (citations omitted). "When the decision of the fact-finder favors the person with the burden of proof, his only burden on appeal is to show that there was some evidence of substance to support the finding, meaning evidence which would permit a fact-finder to reasonably find as it did." *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). However, "[i]f the board finds against a claimant who had the burden of proof and the risk of persuasion, the court upon review is confined to determining whether or not the total evidence was so strong as to compel a finding in claimant's favor." *Snawder*, 576 S.W.2d at 280 (citations omitted). Because the decision favored Clark, we must determine whether there was some evidence of substance to support the ALJ's findings.

#### TEMPORARY TOTAL DISABILITY

The first issue we shall address is whether the ALJ properly awarded TTD benefits to Clark during three separate time periods. “Entitlement of a workers' compensation claimant to TTD benefits is a question of fact to be determined in accordance with KRS 342.0011(11)(a).” *Bowerman v. Black Equip. Co.*, 297 S.W.3d 858, 874 (Ky. App. 2009). KRS 342.0011(11)(a) defines TTD as “the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment[.]” In *Mitchell*, 182 S.W.3d at 513, the Supreme Court of Kentucky further explained:

As defined by KRS 342.0011(11)(a), there are two requirements for TTD: 1.) that the worker must not have reached MMI; and 2.) that the worker must not have reached a level of improvement that would permit a return to employment. *See Magellan Behavioral Health v. Helms*, 140 S.W.3d 579, 581 (Ky. App. 2004). In the present case, the employer has made an “all or nothing” argument that is based entirely on the second requirement. Yet, implicit in the *Central Kentucky Steel v. Wise*, [19 S.W.3d 657 (Ky. 2000)], decision is that, unlike the definition of permanent total disability, the definition of TTD does not require a temporary inability to perform “any type of work.” *See* KRS 342.0011(11)(c).

Two aspects of the philosophy underlying workers' compensation acts are: 1.) that injured workers are to be compensated for a loss of the ability to earn a living without regard to fault; and 2.) that the cost of an industrial injury should be borne by the employment in which the injury occurred, thereby encouraging the employer to promote workplace safety.

The *Mitchell* Court went on to state that “[a]s defined in KRS 342.0011(11)(a), temporary total disability is not based on a finding of AMA impairment. Nor, as determined in *Central Kentucky Steel v. Wise, supra*, is it based on an inability to perform any type of work.” *Id.* at 515. We note that *Mitchell* involved concurrent employments.

More recently, in *Arnold v. Toyota Motor Mfg.*, 375 S.W.3d 56, 60-61 (Ky. 2012), the Supreme Court observed:

A worker's entitlement to TTD may or may not begin on the date of injury. TTD is payable under KRS 342.0011(11)(a) during periods when a worker has not reached MMI from the effects of an injury and has not reached a level of improvement that would permit a return to customary employment. Both factors must be present throughout an awarded period of TTD. Chapter 342 holds an employer liable for all of the injurious consequences of a work-related injury that are not attributable to an independent, intervening cause. Although 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. [footnotes omitted.]

In its petition, Maker’s Mark included a “summary of evidence” at the conclusion of its statement of material facts, which we shall include herein because it is helpful to our resolution of the appeal:

August 2, 2012, to October 4, 2012:

- Dr. Dubou assigned light duty restrictions – one handed duty.

- [Clark] is actually at work during this period performing her regular duty job albeit with the light duty restrictions and using her non-dominant hand.

September 16, 2013, to December 12, 2013:

- Dr. Farrage issues a report on August 14, 2013, saying MMI with permanent restrictions; on October 7, 2013, Dr. Farrage issued a statement rescinding his earlier report.
- Dr. Fadel issued a report on November 5, 2013, saying [Clark] was at MMI, had the physical ability to return to work and needed no further treatment.
- [Clark] believes she can perform her regular job duties during this period. She returned to her regular job duties December 12, 2013.

May 29, 2014, to June 16, 2014:

- Dr. Farrage issues a report on May 16, 2014, stating MMI but listing permanent work restrictions; Dr. Farrage issues a report on June 16, 2014, rescinding the permanent work restrictions.
- Dr. Bonnarens issues a report dated May 29, 2014, that he disagreed with Dr. Farrage. He “strongly recommend[ed] she return to work unrestricted, doing her regular job, and again the impairment would be 0.”
- [Clark] believes she can perform her regular job duties during this time.



- Dr. Fadel's November 5, 2013, report on MMI and full duty release is still applicable.

1) August 2, 2012, through October 4, 2012:

Maker's Mark contends that because Clark was performing her pre-injury job, albeit with accommodation, she should not be entitled to an award of TTD during this time. As Maker's Mark states in its brief, Clark did not request an award of TTD during this period; rather, the ALJ opted to award benefits during this period of time when Clark was performing the duties of her regular job but under restrictions imposed by Dr. Dubou. The ALJ specifically found that Clark was able to continue working her regular job during that period of time using only her left hand. However, the ALJ went on to find that even though Clark was able to perform "minimal work activity with no use of her dominant hand," she still met the definition to be awarded TTD. Clark, on the other hand, asserts that her pre-injury job required the unrestricted use of both of her arms and that her production quota was not the same as it had been pre-injury.

We must agree with Maker's Mark that because Clark had returned to and was performing her pre-injury job, she is not entitled to an award of TTD for that period of time. While there is no argument that she had not yet reached MMI, she could not meet the second prong of the test; namely, that she had not reached a level that would permit a return to her regular employment. The cases cited by the ALJ and Clark are distinguishable because they involved a return to something other than the injured employee's regular employment. Here, Clark returned to her

regular employment. Therefore, she is not entitled to an award of TTD benefits from August 2, 2012, through October 4, 2012.

2) September 16, 2013, through December 12, 2013:

Next, we shall consider the period of TTD awarded in 2013. The ALJ reasoned that because Clark had been sent home based upon Dr. Farrage's September 2013 report and did not return to work until December, she therefore met the definition of TTD. We note that Clark had been performing her regular duty work for close to one year without any problems. Clark posits that because she had not completed the treatment regimen of her treating orthopedist and did not return to work until December 2013, she was entitled to this award.

We recognize that in order to prevail on appeal, Clark must only establish that some evidence of substance supports the ALJ's award. Here, we cannot hold that such evidence exists in the record. We agree with Maker's Mark that Dr. Farrage's opinions that Clark had a permanent impairment rating and permanent restrictions and had not reached MMI are not credible. Both opinions were later rescinded. It is irrelevant that Maker's Mark removed Clark from work during those periods of time. Accordingly, the medical reports of Dr. Farrage cannot form the basis for an award of TTD, especially in light of Clark's consistent claim that she was able to perform her regular duty work.

3) May 29, 2014, through June 16, 2014:

Finally, we shall consider the time period in 2014 when the ALJ awarded TTD benefits. This period began when Dr. Farrage again placed Clark under

restrictions and Maker's Mark took her off of work, and it ended when Dr. Farrage again rescinded his previous report. We agree with Maker's Mark that there is no evidence supporting Clark's entitlement to TTD benefits during this time period. She had certainly reached MMI well before that time, and she was removed on the basis of Dr. Farrage's faulty report. Therefore, there is no support in the record for an award of TTD in 2014.

Accordingly, we hold that the ALJ abused his discretion in awarding, and the Board erred in upholding, the award of TTD benefits to Clark. Based on this holding, we do not need to address the ALJ's decisions to award 18% interest and the credit for unemployment insurance benefits.

#### PHYSICAL THERAPY EXPENSES

Next, Maker's Mark contends that Clark failed to present any evidence that her physical therapy expenses were compensable. KRS 342.020(1) provides for the payment of medical expenses:

In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease.

We agree with the ALJ and Clark that she was undergoing this physical therapy in order to return to work in 2013 and that it is therefore compensable. That Clark did not incur any permanent disability is irrelevant. *See FEI Installation, Inc. v.*

*Williams*, 214 S.W.3d 313, 318-19 (Ky. 2007) (holding “that disability exists for the purposes of KRS 342.020(1) for so long as a work-related injury causes impairment, regardless of whether the impairment rises to a level that it warrants a permanent impairment rating, permanent disability rating, or permanent income benefits.”). Here, Clark incurred a temporary impairment. Accordingly, the ALJ did not abuse his discretion in finding the contested physical therapy expenses to be compensable.

For the foregoing reasons, the portions of the ALJ’s opinion awarding TTD benefits is reversed, and the portion deeming the physical therapy expenses compensable is affirmed. This matter is remanded for further proceedings in accordance with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

David D. Black  
Louisville, Kentucky

BRIEF FOR APPELLEE,  
COURTNEY R. CLARK:

Ched Jennings  
Louisville, Kentucky