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RENDERED: SEPTEMBER 24, 2015
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2014-SC-000283-WC

LORITTA WHITWORTH — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2013-CA-001734-WC
WORKERS' COMPENSATION BOARD NO. 08-WC-74483

BIG LOTS, ET. AL. — APPELLEES

MEMORANDUM OPINION OF THE COURT

REVERSING AND REINSTATING

I. INTRODUCTION

This appeal arises out of the reopening of a workers' compensation claim. Appellant, Loritta Whitworth ("Whitworth") worked for Appellee, Big Lots (Big Lots") as a furniture sales manager. She was injured while attempting to stack a boxed recliner which fell on her left shoulder. Whitworth underwent shoulder surgery and had continued complaints of neck pain. ALJ Gott awarded permanent partial disability benefits in the original claim. Subsequently, Whitworth underwent a cervical fusion and filed a motion to reopen, pursuant to KRS 342.125. On reopening, ALJ Weatherby awarded permanent total disability benefits. The Workers' Compensation Board reversed. The Board concluded that ALJ Gott, in the original litigation, had determined that Whitworth sustained only a left shoulder injury which was the law of the case.

The Court of Appeals affirmed the Board. For the reasons set forth below, we reverse the Court of Appeals and reinstate the ALJ's Opinion and Award on reopening.

A. The Original Litigation before ALJ Gott

On July 23, 2009, Whitworth filed an Application for Resolution of Injury Claim ("Form 101") alleging an April 25, 2008 injury when a boxed recliner fell on her. Although the Form 101 describes the body part injured as "left upper extremity," Whitworth attached an August 7, 2008 cervical MRI report that reflects a history of left shoulder pain following an injury and that now she was having cervical pain.[1] On August 25, 2009, Big Lots filed a Notice of Claim Denial or Acceptance ("Form 111") and denied the claim on grounds of work-relatedness and notice.

Whitworth submitted records of Elizabethtown Orthopaedic Associates (Dr. Nash and Dr. Craig) as evidence. On July 24, 2008, she related left shoulder pain, numbness and tingling in the left hand. Dr. Nash's impression was tendinitis/impingement of left shoulder and possible cervical radiculitis. He ordered a cervical MRI and EMG/NCS, left arm. On August 20, 2008, Whitworth returned. Chief complaint was left shoulder and neck pain. The MRI showed degenerative disease, no true herniation. EMG/NCS were essentially normal. On October 7, 2008, Dr. Craig performed a left shoulder arthroscopy,

[1] 803 KAR 25:010 §(5)(1)(d) requires that a medical report including a description of the injury which is the basis for the claim be filed with the Form 101.

arthroscopic subacromial decompression and open distal clavicle resection. On November 3, 2008, Whitworth still had "pain radiating from her shoulder up into her neck." On January 15, 2009, Dr. Craig stated that he was "going to try and calm down her neck with a Medrol Dose Pack, continue with physical therapy and have them work with her neck as well." Dr. Craig's impression was status-post left shoulder scope and neck strain.

On February 11, 2009, Whitworth saw Dr. Nazar in consult.[2] History reflects a work-related injury on April 25, 2008. Whitworth had difficulty with a recliner while stacking furniture and felt she had pulled a muscle in the lateral lower neck and medial shoulder. She had had shoulder surgery, but continued to have pain. Whitworth described occasional left hand numbness and related that her arm feels weak. Lateral neck flexion and left rotation aggravated her symptoms. Dr. Nazar reviewed the cervical MRI. He did not believe surgery (discectomy or fusion) would be of benefit. Dr. Nazar opined that trigger point injections might be beneficial, as would a rehabilitative medicine consult, if orthopedics did not feel there was anything further they could do.

A March 6, 2009 KORT PT Discharge Summary reflects that Whitworth's reported symptoms included the cervical paraspinals. Exam revealed limitation in active cervical range of motion. Prognosis was poor.

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[2] According to Whitworth's deposition testimony, "Big Lots' insurance, Sedwick [sic] had issued ...some type of a nurse that would meet me at doctor appointments ...." After Dr. Craig had assigned MMI, and "pulled all of his rabbits out of his hat, he didn't know what else to do, ... this lady ... she was not accepting of what he [Dr. Craig] said, so she requested that I go to another doctor. ... and they had made me an appointment to go there."

On April 21, 2009, Whitworth saw Dr. Bilkey for an IME. She filed his report as evidence. It reflects that Whitworth related pain in the left shoulder and at the base of her neck, pins and needles in her left hand. Dr. Bilkey could not assess cervical facet range of motion due to guarding. He explained that Whitworth had sustained a lift injury, that "[s]he is a small person who lifted a boxed recliner and injured her left shoulder. She was found to have impingement syndrome and underwent surgical repair. There is significant residual shoulder pain, neck pain and headache." Dr. Bilkey attributed his diagnoses to the work injury, and opined that all prior evaluation and treatment appear to have been reasonable, necessary and work-related. He assigned 11% ppi, body as a whole, 5th Ed. AMA, based upon loss of shoulder motion and distal clavicle resection.

Defense counsel subsequently deposed Dr. Bilkey. Dr. Bilkey explained that the mechanism of Whitworth's injury was two-fold, "one being a lift component and the other ... direct trauma." Asked why Whitworth's surgeon had performed a distal clavicle resection, Dr. Bilkey testified, "for all I know is, they're thinking that the AC joint is the cause of the pain." Dr. Bilkey explained that the patient should be better after the surgery, "[i]f that's the entire source of their pain." Defense counsel also asked, "If after this surgery, and at the present time she's saying that her condition is the same as before the surgery, would that indicate to you that perhaps her problem is not in her shoulder?" Dr. Bilkey testified, "That indicates to me either the problem that the surgeon

operated on was not the cause of her ongoing symptoms or that she acquired some complication related to the surgery."[3]

On August 9, 2009, Whitworth underwent a second cervical MRI for a clinical indication of neck pain.

On October 21, 2009, Whitworth testified by deposition. Asked what body part she injured on the subject injury date, Whitworth testified her "left shoulder and neck area." Whitworth explained that the store was in "inventory prep mode." She "had a recliner already stacked ... on a pallet, and the second recliner was to go on top of that box ...." Whitworth had requested help two or three times, did not receive it, and figured she would do it herself. She "went back there and had the box tilted ... then continued to push it up, [and] the box came back at [her]." Defense counsel asked Whitworth how her *shoulder* felt. Her response is telling:

> Q. Now, what's your status today, we're sitting here at this table, how does your shoulder feel?
>
> A. I would like to stand up and stretch my neck a little, it's very sore, almost to the point of burning from here, at this very moment, from here down into here, all the way around my back.
>
> Q. You're indicating up by your ear?
>
> A. This area right here.
>
> Q. Or your neck?
>
> A. It's my neck.
>
> ....

[3] In his IME report, Dr. Moskal noted that "[t]here are no complications of surgery performed by Dr. Craig."

Q. Now, you know that the medical doctors haven't found anything wrong with your neck, isn't that right.

A. According to the papers, yes.

Q. Did the shoulder surgery help any?

A. I'm not a physician, but in my opinion – I can't say that it did or didn't because I wouldn't know if they had not done it, I wouldn't know what to compare it to.

Q. Okay.

A. However, I really don't see a lot of relief from it, no.

Defense counsel also questioned Whitworth about her medical treatment:

Q. Now, what about Dr. William Nash, what has he – what has he done for you?

A. He is an associate in Dr. Craig's office.

Q. Now, he requested an MRI of the neck and an EMG nerve conduction study of the left arm for the neck and it seems like just from looking at his notes that he ...evaluated you for your neck, is that your understanding?

A. Probably.

Q. And Dr. Craig also ordered another cervical MRI for further evaluation of the neck, is that your understanding?

A. I know that Dr. Craig ordered something, but as far as the terminology – I'm not familiar with that.

Q. Okay. So Dr. Craig was also treating you for your neck.

A. I don't know that treating me is a good word. Nothing has ever been [done] – they may have taken their pictures of my neck, but –

On November 6, 2009, Dr. Moskal performed an IME at Big Lots' request. He asked Whitworth where her pain was immediately after the injury. She stated she had a lot of pain and that it was in her neck. Dr. Moskal reviewed medical records documenting Whitworth's complaints of neck pain, as well as the 2008 and 2009 cervical MRIs, which he concluded "have no relationship to vocation."

On February 17, 2010, ALJ Gott conducted a benefit review conference followed by a formal hearing. The parties stipulated an "alleged" April 25, 2008 injury. Work-relatedness was preserved as a contested issue in general. Big Lots did not raise the failure to plead the neck on the Form 101 as an issue. At hearing, Whitworth testified that she still has a lot of pain. She described the pain as starting at the upper part of her neck. She also testified that the shoulder surgery did not change her level of pain.

On March 24, 2010, ALJ Gott rendered an Opinion, Award and Order. In the "Summary of the Evidence," he noted the following:

Whitworth's testimony that "[s]he was injured at work on April 25, 2008, while stacking recliners. A recliner slid off the top of another box and struck her left side between the neck and shoulder. ... At the Hearing, she said she has pain that starts at the upper part of her neck ...."

Records from Dr. Nash and Dr. Craig, which include the cervical MRI showing degenerative disease, reflect that "[n]eck pain was reported in follow-up visits."

Dr. Nazar's impression which the ALJ summarized as "a shoulder sprain/strain, and no neck injury for which surgery would be of benefit."[4]

The ALJ also noted Dr. Bilkey's report and deposition. The ALJ explained that he had "carefully" reviewed the 45-page report of Dr. Moskal who "did not find a work-related condition."

In his "Findings and Conclusions," the ALJ explained that he relied "on the medical evidence of Dr. Bilkey, along with the credible testimony of Whitworth, to find that she sustained her burden of proving a work-related injury ...." Further, that "Defendant ... made no argument in support of the notice defense .... There is no serious evidence supporting a notice defense, nor is there, in the ALJ's opinion, persuasive evidence supporting the argument that Whitfield's injury is not work related."

Persuaded by Dr. Bilkey's 11% rating and Whitworth's "credible description" of her limitations, the ALJ awarded PPD benefits with a three multiplier.[5] The Award and Order section of the ALJ's decision includes the standard language including an award of medicals "reasonably required for the care [sic] and relief from the effects of the left shoulder injury."[6] Clearly, the

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[4] Dr. Nazar only stated that he did not believe surgery (discectomy or fusion) would be of benefit. He did not conclude that there was "no neck injury"; neither did the ALJ.

[5] KRS 342.730(1)(c)(1).

[6] KRS 342.020(1) provides in relevant part: "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...."

effects of the shoulder injury included Whitworth's cervical complaints when ALJ Gott decided the case.

B. The Reopening before ALJ Weatherby

On July 14, 2011, Whitworth filed a motion to reopen pursuant to KRS 342.125, "in that there has been a change of condition."[7] In June 2011, Whitworth had seen Dr. Doyle. She related a history of the subject work injury, that she had undergone left shoulder surgery which did not help and that she was having worsening pain in her neck, shoulder and arms. On July 13, 2011, Dr. Doyle performed a C4-C6 anterior cervical discectomy and fusion. Dr. Doyle opined that her work injury aroused a previously dormant non-disabling disease or condition.

ALJ Weatherby's February 11, 2013 Opinion and Award on Reopening provides:

> A Benefit Review Conference/Formal Hearing was held on December 11, 2011 at which time the claim was submitted for decision. The contested issues are worsening of condition temporary or permanent that is attributable to the work injury as filed, statute of limitations, joinder as required by KRS 342.270(1), extent and duration and work-relatedness, proper use

[7] By Frankfort Motion Docket ("FMD") Order rendered August 4, 2011, the Motion to Reopen was passed for 30 days, because medical records were not attached. On August 19, 2011, Whitworth filed an Amended Motion to Reopen in compliance with the August 4, 2011 FMD Order. By FMD Order rendered August 31, 2011, Chief ALJ Overfield determined that Whitworth made a *prima facie* case for reopening pursuant to KRS 342.125 and reopened the claim to the extent that "it shall be assigned to an Administrative Law Judge for further adjudication." Big Lots appealed to the Board which determined that the Order reopening was interlocutory and dismissed the appeal. Big Lots appealed to the Court of Appeals which affirmed the Board. Ultimately, the reopening was assigned to ALJ Weatherby.

of AMA Guides, notice and whether or not the claim was properly reopened.

...

13. KRS 342.270(1) states in relevant part:

> When the application is filed by the employee or during the pendency of that claim, he ... shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him .... Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.

15 [sic]. The Plaintiff ... began treating for the injury to her shoulder in June of 2008 ... and as early as July 2008, the notes from her treatment reference complaints of neck pain. The Plaintiff's Form 101 was filed in July of 2009 and referenced the left upper extremity.

15. The Plaintiff is not a physician and the evidence demonstrates early on that she voiced complaints regarding neck pain. It is understandable that Plaintiff intended that the left upper extremity encompass neck pain that she had clearly been experiencing for at least a year prior to the filing of the Form 101. It is certainly clear that she had communicated that pain to her treating physician. The ALJ finds that the term left upper extremity in this context is sufficient to encompass a cervical spine injury.

16. The Defendant has had access to the Plaintiff's medical treatment records and ... has not been prejudiced by any confusion ... in referencing the upper extremity. ... The Plaintiff clearly gave notice of an injury as noted by the ALJ in the original Opinion and Award.

17. Finally, the Plaintiff is not bringing a new cause of action that is now waived because it was not brought along with the initial filing. This claim has been reopened because of an alleged worsening of the same injury and thus the reopening refers to the same

> cause of action... and as such the Motion to Reopen was timely filed.
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> 18. The ALJ therefore finds that notice is proper and that the Motion to Reopen was properly and timely filed.

ALJ Weatherby found that Whitworth had a 25% impairment relative to the cervical spine and a previous 11% for the shoulder, and noted she had undergone two work-related surgeries including a cervical fusion. ALJ Weatherby concluded that Whitworth was permanently and totally disabled on reopening.

C. The Appeals on Reopening

Big Lots appealed. By Opinion rendered September 16, 2013, the Board vacated ALJ Weatherby's Opinion and Award and remanded. The Board concluded that ALJ Gott determined that Whitworth sustained only a left shoulder injury which is the law of the case, and that "[c]onsequently, the sole body part injured on April 25, 2008, is Whitworth's left shoulder."

On October 9, 2013, Whitworth filed a Petition for Review in the Court of Appeals. By Opinion rendered May 23, 2014, the Court of Appeals affirmed the Board. The Court of Appeals stated that ALJ Gott "found that Whitworth suffered a work-related 'left shoulder injury,' and assessed an eleven percent impairment rating and awarded permanent partial disability benefits." The Court of Appeals concluded that:

> Whitworth's original work-related injury was clearly identified as a 'left shoulder injury' by the ALJ in the March 24, 2010, opinion and order. Consequently, we agree with the Board that [on reopening] the ALJ cannot expand the definition of 'left shoulder injury' to reasonably include a cervical spine injury. Accordingly,

> we cannot say that the Board misconstrued the law or erred in assessing the evidence.

On May 30, 2014, Whitworth filed a Notice of Appeal to this Court.

II. ANALYSIS

"Reopening is the remedy for addressing certain changes that occur or situations that come to light after benefits are awarded." *Dingo Coal Co. v. Tolliver*, 129 S.W.3d 367, 370 (Ky. 2004).

The Board concluded that ALJ Gott found that Whitworth sustained only a left shoulder injury and that his determination was the law of the case. The Court of Appeals affirmed. As the Board noted, ALJ Gott's (original) decision was not appealed. There being no prior ruling by an appellate body with respect to ALJ Gott's decision, the law of the case doctrine does not apply.

> As applied in Kentucky, the law of the case doctrine applies only to rulings by an appellate court and not to rulings by a trial court. ... While some courts take a more liberal view of the doctrine and have applied it to trial court rulings, ... we decline to join them.

Dickerson v. Com., 174 S.W.3d 451, 466-67 (Ky. 2005) (citations omitted).

The proper inquiry is whether ALJ's Gott's decision -- if, in fact, he did determine that Whitworth sustained only a left shoulder injury -- is *res judicata* or whether, as ALJ Weatherby concluded, Whitworth's injury encompassed her cervical complaints and her claim was properly reopened. "[R]es judicata ... precludes further litigation of issues ... decided on the merits in a final judgment. ... KRS 342.125 grants some relief from ... the finality of judgments by permitting a reopening in instances of fraud, mistake, newly-discovered

evidence, or a change of condition that causes a change of occupational disability." *Slone v. R & S Mining, Inc.*, 74 S.W.3d 259, 261 (Ky. 2002).

Whitworth contends that the Court of Appeals "missed the point," in concluding that ALJ Gott clearly identified her original injury as a left shoulder injury which could not be expanded on reopening to include the cervical spine. We agree. ALJ Gott did not determine that Whitworth had sustained only a left shoulder injury. Nor did he determine that the neck was not work-related. ALJ Gott determined that Whitworth had sustained her burden of proving a work-related injury. "[T]he term 'injury' refers to the traumatic event or series of events that causes a harmful change rather than to the harmful change, itself." *Coleman v. Emily Enterprises, Inc.*, 58 S.W.3d 459, 462 (Ky. 2001). "[KRS] 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." *Arnold v. Toyota Motor Mfg.*, 375 S.W.3d 56, 61 (Ky. 2012) (citation omitted).

Big Lots argues that *Slone v. Jason Coal*, 902 S.W.2d 820 (Ky. 1995) and KRS 342.270(1)[8] preclude Whitworth from reopening based upon a cervical

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[8] KRS 342.270(1) provides in relevant part:

> When the application is filed by the employee or during the pendency of that claim, he or she shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him or her. Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.

condition. We disagree. *Slone* is readily distinguishable on its facts. There, the claimant sought to reopen pursuant to KRS 342.125(1) based upon a mental condition. Although the condition was known when the claimant litigated his original claim, he failed to introduce any evidence about it. This Court held that "a motion to reopen pursuant to KRS 342.125 may not be based on a condition known to the claimant during the pendency of his original claim but which he did not present." *Id.* at 822. The holding in *Slone* was subsequently codified in KRS 342.270(1), which "requires all known causes of action to be joined to the claim or waived." *Ramsey v. Sayre Christian Village Nursing Home,* 239 S.W.3d 56, 59 (Ky. 2007). The purpose of the KRS 342.270(1) is to prevent piecemeal litigation.[9]

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[9] As explained in *Ridge v. VMV Enterprises, Inc.*, 114 S.W.3d 845, 847 (Ky. 2003):

> The portion of KRS 342.270(1) that is presently at issue was adopted effective December 12, 1996, as part of a comprehensive revision of Chapter 342. Until the adoption of KRS 342.270(1), workers were permitted to file multiple claims and were not required to join them, even when the claims resulted from the same accident. *Woodbridge INOAC, Inc. v. Downs,* Ky.App., 864 S.W.2d 306 (1993). In *Jeep Trucking, Inc. v. Howard,* Ky., 891 S.W.2d 78 (1995), we were faced with a problem that resulted from the separate litigation of overlapping injury and occupational disease claims that resulted in awards in excess of the maximum for total disability. After noting considerations such as judicial economy, minimizing litigation costs, and the fact that a proper resolution of issues such as apportionment, offset, credit, excess disability, and overlapping disability require the consideration of all relevant claims together, we urged the enactment of legislation to address the problems created by the piecemeal litigation of workers' compensation claims. *Id.* at 79–80. The amendment's apparent purpose was to do so.

Such is not the case here. Although Whitworth did not specifically list the neck on the Form 101, she filed the cervical MRI report as an attachment, and introduced medical evidence documenting her ongoing neck pain. Big Lots did not object. In fact, Big Lots questioned Whitworth about her neck in her deposition and filed the IME report of Dr. Moskal who reviewed the medical records, as well as the cervical MRIs which he opined were not "vocationally related."

In *Kroger v. Jones*, 125 S.W.3d 241 (Ky. 2004), the defendant argued that KRS 342.270(1) barred a claim for a left arm injury which the claimant failed to plead on the Form 101; however, the attached medical history clearly referred to it, as did treatment notes which were introduced into evidence. The defendant's IME physician was aware of the medical records and addressed the left arm in his report. This Court concluded that the claimant's right to claim an injury to her left arm was not barred by KRS 342.270(1).

> In *Nucor Corp. v. General Electric Co.*, Ky., 812 S.W.2d 136, 145–46 (1991), the Court determined that CR 15.02[10] is a tool for deciding cases on their merits rather than on the basis of gamesmanship. ... [I]f issues that are not raised in the pleadings are tried with the express or implied consent of the parties, they are treated as if they had been raised. A party's failure to object to the introduction of evidence on an unpleaded issue implies consent to the trial of the issue. ... We are convinced that the principles that

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[10] CR 15.02 provides in relevant part:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

> were expressed in *Nucor* apply equally to workers' compensation proceedings.

Id. at 246.

The case is similar to *Kuhlman Elec. Corp. v. Cunigan*, No. 2014-SC-000189-WC, 2014 WL 7238612 (Ky. Dec. 18, 2014). There, the claimant filed a Form 101 for a leg injury; he attached a statement from his treating physician recommending a lumbar MRI. The medical evidence indicated a torn hamstring. The claimant testified that he had pain "right below my belt, my butt." The MRI was contested. ALJ Justice denied the MRI, because there was no evidence of radiculopathy and an EMG was normal. ALJ Justice concluded that the claimant had a healed hamstring injury, awarded TTD benefits, dismissed the claim for PPD benefits and determined that the claimant was not entitled to an award of future medicals.

The claimant subsequently obtained the lumbar MRI which showed a herniated disc at L5-S1, and filed a motion to reopen.[11] On reopening, the claim was assigned to ALJ Davis who determined that *res judicata* precluded the claimant from arguing that he had a work-related low back injury.

[11] The Board's decision further reflects that the claimant sought to reopen based upon grounds of change of disability/worsening of impairment and newly-discovered evidence. KRS 342.125(1)(b) and (d). The employer objected, asserting that ALJ Justice's decision was *res judicata*, and that the claimant could not reopen for a change of condition on a claim that was dismissed on its merits; further, that the claimant did not preserve the low back issue. (*Cunigan v. Kuhlman Electric Corp.*, No. 2008-79685, rendered July 30, 2013).

The claimant appealed. The Board held that the claimant had made a *prima facie* showing under KRS 342.125 on grounds of newly-discovered evidence and mistake, and reversed. The Court of Appeals affirmed the Board.

Citing *Messer v. Drees*, 382 S.W.2d 209 (Ky. 1964), this Court concluded that the claimant had presented sufficient evidence to reopen on ground of mistake[12] and explained:

> If an expert witness or physician makes an erroneous diagnosis, which causes the claimant to not receive proper relief, there must be a mechanism for the claimant to be able to reopen his claim so he may receive redress. ... It would be patently unfair ... to be unable to reopen ... because of a potential misdiagnosis. ... The purpose of workers' compensation is to compensate a worker who was injured on the job ....

Kuhlman, at *4.

As Judge Palmore observed in *Messer*:

> Time often tells more about medical cases than the greatest of experts are able to judge in advance. ... [E]ven the permanence of a disability theretofore thought to be temporary 'is of itself in the nature of a change.' When subsequent events indicate that an award was substantially induced by a misconception as to the cause, nature or extent of disability at the time of the hearing, justice requires further inquiry. Whether it be called a 'mistake' or a 'change in conditions' is a matter of mere semantic taste. The important question is whether the man got the relief to which the law entitled him, based upon the truth as we are now able to ascertain it.

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[12] The Court held that the MRI did not constitute newly-discovered evidence, because it did not exist when ALJ Justice originally decided the case.

Id. at 212-13 (citation omitted).

Res judicata does not bar Whitworth's claim. Whether her physicians initially misconceived the cause of her complaints or whether she had a worsening of impairment due to a condition caused by the injury -- a condition which perhaps became more apparent as it progressed -- matters not. The "important question" remains the same. Did Whitworth get the relief to which the law entitles her?

Unquestionably, at the time of ALJ Gott's decision, Whitworth's injury included her complaints of neck pain. Dr. Bilkey testified that Whitworth underwent surgical repair for impingement syndrome, and had significant residual shoulder and neck pain. Whitworth testified by deposition that she injured her neck and shoulder on April 25, 2008. At hearing, she testified that her pain starts at the upper part of her neck.

"[T]he ALJ, as fact-finder, has the sole authority to judge the weight, credibility and inferences to be drawn from the record." *Miller v. E. Kentucky Beverage/Pepsico, Inc.*, 951 S.W.2d 329, 331 (Ky. 1997) (citation omitted). Given that ALJ Gott relied upon Dr. Bilkey's opinion and Whitworth's "credible testimony" in concluding that her injury was work-related, ALJ Weatherby did not err in concluding that Whitworth's left upper extremity injury encompassed her cervical complaints. We reverse the Court of Appeals' May 23, 2014 Opinion and reinstate ALJ Weatherby's February 11, 2013 Opinion and Award on Reopening.

All sitting. All concur.

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