

**Commonwealth of Kentucky
Workers' Compensation Board**

OPINION ENTERED: May 8, 2026

CLAIM NO. 202261715

DAKOTA FREESE

PETITIONER

VS. **APPEAL FROM HON. LAURA R. BEASLEY,
ADMINISTRATIVE LAW JUDGE**

STANDS, LLC
UNIVERSITY OF IOWA HOSPITAL AND CLINIC
UNIVERSITY OF IOWA HEALTHCARE MEDICAL CENTER
and HON. LAURA R. BEASLEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
VACATING AND REMANDING**

* * * * *

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

STIVERS, Member. Dakota Freese (“Freese”) seeks review of the November 12, 2025, Opinion, Award, and Order of Hon. Laura R. Beasley, Administrative Law Judge (“ALJ”), finding he sustained a work-related head injury on September 8, 2022, and awarding permanent partial disability (“PPD”) benefits unenhanced by a

multiplier. Medical benefits were awarded. Freese also appeals from the December 12, 2025, Order overruling his Petition for Reconsideration.

On September 8, 2022, Freese sustained a severe injury when he was struck on the right side of his head by a batted line drive baseball while pitching for the Lexington Legends (“Legends”), a minor league baseball team, owned by Stands, LLC. The ALJ determined Freese was a seasonal employee and temporarily totally disabled from September 8, 2022, the date of injury through August 1, 2024, when he attained maximum medical improvement (“MMI”). The ALJ found the injury generated a 12% impairment rating in accordance with the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. and Freese also had a “10% prior active whole person impairment rating for major depression,” and a prior active whole person 5% impairment rating for ADHD.” She also found Freese is not totally disabled, not entitled to enhanced benefits via the three-multiplier, and not entitled to vocational rehabilitation benefits.

On appeal, Freese contends Dr. Timothy Allen’s opinion, upon which the ALJ partially relied, contains an “illogical fallacy,” and the ALJ erred in finding Freese had a pre-existing active impairment which prevented him from playing baseball after September 8, 2022. Freese complains the ALJ erroneously concluded his inability to return to work is unrelated to his work injury and solely due to various pre-existing conditions. Freese seeks the following relief:

Mr. Freese asks the Board to remand the matter for additional fact finding regarding the 3 multiplier and whether Mr. Freese’s shoulder was preventing him from pitching were preserved and how Mr. Freese’s pre-existing active impairment ratable conditions did not prevent him from playing baseball before September 8,

2022, but do now prevent him from playing baseball after September 8, 2022, with instructions to reverse the finding that the work injury had nothing to do with his current inability to play professional baseball. (emphasis in original).

BACKGROUND

Freese testified at a March 2, 2025, deposition and at the September 17, 2025, hearing. Freese's March 2, 2025, deposition reveals he was injured on September 8, 2022, while pitching for the Legends in Charleston, West Virginia, when a batter hit a line drive striking him on the right side of his head. Freese testified someone with the Legends informed him the baseball that struck him was traveling at 103 miles per hour. Freese was born May 9, 1992, and currently lives with his mother in Iowa. He completed two years of college with no special certifications. Before September 8, 2022, Freese had been a professional baseball player for ten years. Freese was first drafted by the Chicago White Sox in 2011 when he was playing for Washington High School in Cedar Rapids, Iowa. Freese did not sign with a professional baseball team in 2011, but spent two years in junior college during which he played baseball. In 2013, he was drafted by the Oakland Athletics ("Athletics") while playing for Des Moines Area Community College. Freese signed a contract with the Athletics in 2013 and was injured shortly thereafter. He elaborated:

Q: All right. What kind of injury did you suffer?

A: I tore my rotator and had a lesion in my – the back of my shoulder and a cyst on my bone.

Q: Okay. Did you have your torn right rotator cuff surgically repaired?

A: Yes.

Q: When did you have that surgery?

A: 2014, February 5th.

Between November 10, 2016, and June 26, 2020, Freese worked intermittently in the off season for Rick Freese Well Drilling.¹ He testified that job involved lifting, moving items, and helping with the rig. Freese considered this full-time work which he performed before and after baseball season, working approximately from October to March. While involved in well drilling in the off season, Freese was injured twice when he strained his back and smashed his right hand. He underwent physical therapy for the back injury but received no treatment for his hand injury because it was “not really injured.”

Before signing with the Athletics, Freese also previously worked as a delivery driver for Paul Revere’s Pizza in Cedar Rapids, Iowa. He held two other off-season jobs which entailed working at a gutter company and a refrigerator company. Freese has not worked since the September 8, 2022, injury.

Freese was with the Athletics until March 2015 but did not play in the minor leagues due to a rotator cuff tear. In 2016, he played in an independent league. He played for the Legends in the Atlantic League at the Double-A level of professional baseball.

In 2018, he also worked in the off season as a salesman with Midwest Shooting Supplies for a few months and two weeks in a factory owned by Raining Rose. From the fall of 2020 until January or February 2021, Freese had a severe case of COVID and was incapacitated.

¹ Rick Freese is Freese’s uncle.

From May 8, 2022, until August 10, 2022, Freese played for the Staten Island FerryHawks. When he was released on August 20, 2022, he signed with the Legends. He was activated on August 27, 2022, and was the starting pitcher for the Legends on four different occasions, the last one being the date he was injured. Freese was injured in the first inning of the September 8, 2022, game. He testified his last good season was in 2019 when his ERA (Earned Run Average) was under 3 with 7 wins and 6 losses. He explained what occurred after the 2019 season:

Q: -- and your record was seven and six. What happened after 2019? If that's an accurate statement, what happened after 2019 that did not allow you to have the seasons you had before 2019?

A: It's a hard question to answer. I'd say going into 2020, as I was going into the American League, I went from being a starter to a reliever, which is somebody that is like me that has grown up being a starter, I am not trained to be a reliever. So going in as a reliever from a starting position, it's very mentally taxing because you [sic] got to change how you mentally prepare, how you do everything.

And then as a starter, I'm used to coming in on a fresh mound. I slowly, gradually get used to the mound being tore [sic] up by me and the other pitcher. And as a reliever, you got to come in prepared to go on a crap mound that's got a canyon in it. And that threw me off. And that's how I got released because I couldn't get myself ready to go in a game properly.

And it just kind of correlated to me going downhill a little bit. And then when I got to the Atlantic League, I was fine for the first year or two. And that was that.

Q: And, again, the Atlantic League would've started with the Charleston Dirty Birds in 2021?

A: Yes.

Q: And as I go back over the teams you were playing with, you were in the Canadian league in 2019?

A: 2019, I was – I went to the Canadian League. 2020, I went straight to the American League. And then I went to the New Jersey Jackals after that. Oh, wait. No, I didn't. I'm trying to think. And I – I'm pretty sure two – two full seasons or three seasons. Yeah. 2020, I went to American League, came home for a while.

And then about a week or so, a week-and-a-half after I got home, I got a call from an old friend, or I should say old coach, manager, whatever, and he was with the New Jersey Jackals. And they called me up and I went and played for them to close to the end of their season. And then got a call a week after coming back home, again, to go play in the Atlantic League –

Q: For –

A: -- for the Dirty Birds, which wasn't the Dirty Birds at the time.

Q: In 2020, you've already – you've testified that you were diagnosed with COVID. Did that end your baseball season that summer?

A: The 2020 season? No. I went into the season, I think, I came in late because of it, because I wasn't fully strong enough to get into it. So I think I came into the season a month late, like, honestly. Oh, wait. Yeah. Most – the American League started late and everything because of COVID, so I think it was a month, month-and-a-half late.

Q: Yeah.

A: So it gave me time to get physically prepared. I – I wasn't fully, but I was good enough.

Freese elaborated about the severity of his COVID illness:

Q: And so then as we go back and I – if I look at my notes and I see that you mentioned COVID, you were diagnosed with COVID in the fall of 2020 and suffered with it until 2021. So would you have had the diagnosis of COVID after the baseball season with the Canaries?

A: I'm trying to think. No. I think COVID started in '19, 2019. And going into 2020, I had COVID.

Q: I think, and again, this is just going back to a bad memory, but I believe COVID was prevalent starting in March of 2020, April 2020, and then going forward from that point?

A: I can't remember. I thought it – for some reason, I – I feel like it was 2019, going into 2020 when it started.

Q: Were you having any physical concerns or other concerns that kept you from playing baseball in 2020 and 2021 besides COVID?

A: No.

Freese recounted his health problems in 2021.

Q: In a record from Piper Family Medicine from March of 2021, it looks like you were being seen for your low back and there was a reference to a motorcycle accident that you had had four years prior, which I guess would be sometime around 2017. Do you recall a motorcycle accident that required you to seek medical treatment?

A: I do remember having an accident. I didn't get too hurt if I remember right, but I think I threw my back out, so they had to go in and readjust me and give me, maybe, a shot or two to numb me up. But other than that, I can't really recall.

Q: Also, in March of 2021, the Piper Family Medicine medical provider indicated that you were a free agent as of that time, not playing due to pain and GI issues, GI being gastrointestinal. Were those the GI issues that you mentioned from COVID or were those other – something different than what you experienced with COVID?

A: I've had GI issues since 2013, going into '14. But once I had COVID, it – it's why, like, from 2020 on, I did not really work at all with anybody else, just trained when I could. And so yeah, that would be because of COVID.

Q: The pain that was described by Piper Family Medical, March 31 of 2021, looks to have been the result of low-back pain, but I wanted to ask you about that. Do you recall any other kinds of pains that were keeping you from playing baseball in 2021 besides low-back pain?

A: I can't recall.

Freese has not worked nor has he sought work since the injury. He was paid temporary total disability ("TTD") benefits from September 19, 2022, through March 4, 2024. He explained why he believes he is unable to work.

Q: And why can't you work right now?

A: Man, I'm – I'm sick five days out of the week. Nobody is going to hire somebody that can only work a – a day or two and somebody that would come in for an hour or two, and then have to leave because the migraines kick in or the nauseousness kicks in.

Q: When you say you're sick for five days out of a week, what do you mean by sick? Help me understand what sick means.

A: I'm bedridden with nauseousness and dizziness because of the headaches and – or I should say migraines. I can't – I just can't do anything. I'm basically physically bedridden.

His mother drove him to all the medical evaluations related to this litigation. He has not experienced motorcycle or car accidents.

After returning to Iowa following the work injury, Freese was treated by Dr. Andrew Peterson at the University of Iowa's Concussion Clinic. He denied undergoing diagnostic studies of the brain prior to the injury. At the time of the deposition, he was taking Trazodone, Tizanidine, Qulipta, and Ubrelvy. He also takes Nortriptyline at bedtime with Trazodone for his stomach problems and Diclofenac, a muscle relaxer. Prior to September 8, 2022, Freese had not seen a

neurological specialist. He acknowledged seeing a psychiatrist before he was 18 years old but could not recall the doctor's name. He could not recall an evaluation examination by Dr. David Changaris on August 1, 2024, nor any other doctor appointments. He is currently treated by the Mayo Clinic.

Freese took muscle relaxers and pain medication prior to September 8, 2022, for a lower back condition which was prescribed by Dr. Scott Piper, his family physician in Iowa. He characterized the muscle relaxers as "high-end Ibuprofen." Freese agreed with the notations in Dr. Piper's records that after June 2021, when he was held up at gunpoint, his irritable bowel syndrome ("IBS") symptoms worsened. The IBS causes nausea, vomiting, and stomach pain. Prior to his work injury, the nausea only occasionally resulted in vomiting.

Freese has taken Trazodone for insomnia daily since he was in elementary or middle school. He explained why he currently does not take Trazodone as frequently.

A: I hardly take it now because I don't sleep much. And if I do take it with my migraines, it – it's basically ineffective. Like, the past couple of days I've – it's just wore off after an hour or two of me actually getting any kind of sleep. And I was up all – all night in pain.

Freese took Tizanidine, a muscle relaxer, before the subject injury and continues to take it. He was diagnosed with dyslexia in elementary school.

He recounted the events of September 8, 2022:

Q: What happened next? What – you know, tell me about the pitch, and then what happened after the pitch that led to the injury?

A: Well, it was a 2-2 count. I – I think I threw a – tried to throw a fastball, and I missed and --- or – or he

followed off. I – I can't recollect everything that happened in the – the bat, but I knew I – I either threw a cutter, or a slider, and he just flicked it and smacked it right back at me.

Q: Where did the baseball strike you?

A: Right side around my ear (indicating). Just a little bit away from my temple and lower. It kind of broke the back part of my skull.

Q: So as you were pointing just now, I want to make sure – I obviously you were pointing to the right ear?

A: Yes.

Q: But you also mentioned something just behind your ear; is that correct?

A: Yeah, it fractured the back part of my skull going up into my ear lobe. This kind of ear. I can't remember if it was right here or up in the ear.

Q: Okay. What do you remember next after being struck in that area you just described?

A: Pain. I fell down and caught myself with my arms and hurt my shoulder a little bit. That's kind of another reason why I needed to have my shoulder cleaned up the next year after the injury.

Let's see. Everybody was surrounding me and trying to make sure I was okay. And I found out I was bleeding from my ear lobe and ruptured my ear and I couldn't hear out of my right ear. And I found out that my ear was basically hanging off because the ball ripped my ear apart.

And shortly after, the doctor – or not doctors – but the – oh, yeah, field doctors, whatever, came out and made sure I was able to do anything, get up or whatever. And then they called the ambulance and took me to the hospital.

Freese was taken to the Charleston Area Medical Center where he stayed for a couple of days. When he was released from the hospital, he went to

Lexington and later his mother, aunt, and he traveled to Iowa. He was first treated in Iowa by Piper Family Medicine. He recounted the following post-injury symptoms:

Q: Okay. I do see where you had a visit in September 2022 with Rock Valley Physical Therapy. Do you recall having physical therapy within three weeks of the injury?

A: That might have been my treatment to help me relearn how to walk properly.

Q: Would you describe that, please? What kind of symptoms were you having in the couple of weeks after the injury.

A: Loss of balance and everything. So I had to be supported at all times so I couldn't fall over. Loss of speech, basically – not – not full loss of speech – but the knowledge of how to speak full sentences – what the hell – speak full sentences at a time.

Freese experienced post-injury loss of balance for almost one year. He still has memory loss which he described as follows:

Q: And you've already described the – you testified that you can compose perhaps a sentence in your head, but it comes out differently. Is that what you mean by memory loss or are you still having other issues remembering what you did either in the recent past or in the distant past?

A: No, that's not what I meant. I meant when – when I say memory loss, I mean, literally, I – I forget everything. I mean, I don't even remember the first half hour of our conversation here.

Freese takes Qulipta 60 mg. and Ubrelvy 100 mg. prescribed in September 2024 for migraine headaches. He also takes Advil Migraine, an over-the-counter medication as needed.

He drives his truck once or twice a week only to go to the gas station or the grocery store. He recounted his daily activities:

A: On a good day, I'm doing chores around the house, cleaning. And on – on a regular basis, I'm usually laying in bed, reading novels and staying in the dark, trying to keep my migraines to a minimum, or taking hot baths to help relieve it.

Freese elaborated about his migraine and sleeping problems.

Q: In a – in the course of a week, how often do you experience a migraine headache?

A: About five to six days a week.

Q: How long have you experienced that frequency of migraines in a week? In other words, when did that start?

A: It started six – six-and-a-half months after the injury. After I finally got able to balance on a – on a regular basis where I could walk properly, it all of a sudden started flaring up to where I had migraines every day. And then the stomach issues came in, too. But the migraines, it – after six months of the injury, I – I could not sleep for basically three months. On – I probably got maybe one day a week of sleep.

Q: You've used the six months after the injury as a period of time where it sounds like you were sleeping, a then six months after the injury, you began to have difficulty with sleeping?

A: Before or right after the injury, I had no – no immediate issues with sleeping because I didn't have the migraines. But after six – six-and-a-half months, all the migraines kicked in, and I just – I – there's no way I was able to fall asleep with the amount of pain I was in.

He provided the following regarding his off-season social activities prior to the injury:

A: Before the injury, I would work all the time and train, so I didn't really have much of a time to go out and, (coughs) excuse me, do things. But I do have a bunch of ex-military friends that, with their wives and girlfriends, we would go out and go dancing or play pool or something every once in a blue moon. Other than that,

not very often, would I go out and do anything, other than maybe fishing or hunting.

Q: Was that once in a blue moon social activity before September 8, 2022?

A: Yes. Before the – the injury and everything, the – it was just once in a while kind of thing.

Freese believed he has hunted on three occasions after the injury but is now unable because of his condition. He described the anger outbursts which Dr. Changaris referred to in his report as follows:

Q: One of Dr. Changaris' statements was that you maintain a small social circle and has, this is his word or words – these are his words, "frequent anger, outbursts." Is that an accurate statement?

A: Frequent anger outbursts? At that time, yes. After – shortly after the injury, my personality changed quite a bit. I was very aggressive. I am still aggressive, but at that time I had a lot of outbursts where I would argue and fight with my mother and a lot of yelling and screaming because I just – I was angry all the time and it was very easy to irritate me. I was dealing with migraines and not sleeping. And so yeah, that – that is a true statement.

Q: What was the period of time when you were having the issues with your mom and shouting? Was that – was that a limited period of time, or is still continuing?

A: It doesn't happen very often now. Well, I do still have times where my mood will flip and I'll – it's very easy to irritate me and get me to go off, but it was a very, I'd say short, six, seven months.

Q: And would that have been immediately after September 8, 2022, or was that sometime after?

A: That was – I would say it started within four months after the injury, five months after the injury, something like that.

Q: Okay.

A: Just before the migraines hit, I would say.

Freese listed the problems he experienced during Dr. Allen's examination. Although he had been diagnosed with ADHD, he was not being treated for it and has been off medication for that condition since his sophomore year in high school. He has not sought vocational rehabilitation because he believes is unable to work.

At the hearing, Freese provided his baseball background. He again explained he injured his shoulder a week after he signed with the Athletics in 2013. As a result, he underwent right shoulder surgery on March 5, 2014, and was released by the Athletics on March 30, 2015. He played baseball for a small portion of 2016 in the California league and then consistently in 2017, 2018, and 2019. Freese explained why he only pitched five innings in 2020.

A: Well, that was the year COVID started and everybody started their season late, and I showed up. I'm normally a starting pitcher and they turned me into a reliever, which I am not. At that time I was not used to being reliever. It's a completely different role as a pitcher, and mentally and physically I have to be prepared to go on the mound. Otherwise – I'm a pitcher, I'm crazy, we have to be adjusted. Otherwise, it'll screw us up. And it took me a while to get adjusted and, by the time I did, I got released.

Freese testified he pitched full seasons in 2021 and 2022, and before the injury he was in discussions to play winter baseball. He provided the following regarding his proposed participation in winter baseball.

A: Winter league ball is – it's hard to describe. It's a seasonal thing for professional baseball players to get together and play a season, basically; to keep – keep the athletes in shape and keep them dialed in for Major League coaches and scouts and everything to see the

players and take notes on them; and for the players to also make money during the off-season but also to keep our skills top notch; and also, players like me that got released from a Major League affiliated team to get another chance at getting back onto an affiliated team.

Q: Okay. In 2024, the winter league ball season started before the World Series started in the United States and then concluded with a championship in Mexico in February of 2025. Is that, to your understanding, a typical schedule for winter league ball?

A: It might be now. When I was playing it wasn't. I think I started right around October, middle to end of October.

Q: Where is winter league ball played?

A: Venezuela, Dominican Republic, there's supposedly one team or so in Arizona, and Puerto Rico I think.

Q: Mexico as well, right?

A: Yeah, and Mexico as well.

Q: Okay.

A: There might be one overseas in China or something. I can't remember. There's too many to count.

Q: In those discussions, where were you going to play?

A: Venezuela.

Q: How much were you going to be paid?

A: Anywhere from \$8,000 to \$15,000 a month.

Q: Did you see this as an opportunity to showcase your talents to Major League teams?

A: Yes. I had two teams, as far as I know, that were looking forward to seeing me come.

Freese denied his inability to play baseball is due to a right shoulder condition, as he recovered from the 2023 shoulder surgery. Further, a physician has

not imposed restrictions on the use of his right shoulder, nor informed him his shoulder condition prevents him from playing baseball. Freese believed that but for the symptoms attributable to his injury, he could be pitching professionally if a team offered him a contract. He described his current symptoms.

A: Current symptoms are loss of vision, loss of memory, migraines and headaches all the time, stomach nausea, lack of sleep, sometimes I – a lack of ability to coherently speak sometimes, and loss of hearing. That's about it.

Q: Do you sometimes have trouble with word finding, trying to find the right word to use?

A: Yes.

Q: And you may have already said this, but do you have problems with both your short- and long-term memory?

A: Yes, I do.

Q: Do you have trouble with your auditory memory, meaning that if somebody says something to you, you have a hard time remembering it later?

A: Yes.

Q: Do you have a hard time with – with staying focused or staying on task?

A: Yeah, most of the time.

Q: Okay. Do you find yourself to be irritable?

A: Yes.

Q: Do you have anger outbursts?

A: Sometimes, yes.

Q: Okay. Have you essentially become a recluse, a hermit, because you don't want to have those angry outbursts at friends.

A: Yes and no.

Q: Okay. Now, you're a professional athlete, and I think – would you agree that that requires good hand-eye coordination?

A: Yes.

Q: Is your hand-eye coordination worse now?

A: Well, also my vision is going bad, so, yeah.

Freese provided the following as to why he believes he is unable to perform any of his past jobs.

A: Well, I can't get a job because who's going to hire somebody that can work two days a week and never know if I have to leave because of a migraine, let alone if I'm going to get there in time because of migraines.

Freese expressed a willingness to attempt vocational rehabilitation. Because he is unable to remember his future medical appointments and treatment, his mother has to remind him. If his symptoms improve, he will try to return to playing baseball. On cross-examination, he provided a further explanation about his assignment to play winter league baseball:

Q: Have you ever played winter league baseball?

A: No. I was assigned the year I got injured, though.

Q: Now say that again. When you're referring to injury, what are you talking about?

A: My July of '22 head injury.

Q: Did you just say that you were signed to play winter league baseball?

A: I was assigned. I didn't have a contract fully prepared yet, but it was basically ready. We just didn't get to talk about the price on how much I was getting paid.

Q: This is a case in which I've made requests for documents that connected to your claims for benefits. To date, I have not seen any documentation of any

agreement that you were going to be playing winter league baseball in 2022 – 2023. Do you have any such written document?

A: No. It was all over-phone talk. No contracts were ever made up in person yet.

...

Q: You're discussing winter league baseball and you've named several different locations. But again, you've never been to those locations, have you? You've never been to Venezuela, Dominican Republic, Puerto Rico, or Mexico?

A: No.

Q: So today, you're asking us to accept the idea that for the first time, in 2022, you were looking at winter league baseball, although you had never played there in the past seven years; is that correct?

A: Yes.

Q: Today you've also testified – and correct me if I'm wrong, but you've testified that there were discussion about \$8,000 to \$15,000 in Venezuela. Is that per month?

A: Yes.

Freese was unable to recall when he left Iowa to play professional baseball in 2021.

Freese experienced abdominal problems prior to his injury which he described as follows:

Q: As of December 22 of 2021, Amy Freeman documented that you had not been able to work much due to your symptoms. What symptoms kept you from working in December of 2021?

A: In '21? If it was anything it'd been my stomach issues that were keeping me from working.

Q: And how did the stomach issues present in December of 2021 keep you from working?

A: I can't recall, but most likely it would've been throwing up or having severe diarrhea.

Q: Mr. Freese, as of December 22 of 2021, because of your stomach issues to include throwing up and diarrhea, would you have considered yourself an unreliable employee who would not show up for work on a consistent basis?

A: No.

Even though Dr. Peterson stated Freese had significant mental health problems which should be addressed by a psychologist, he did not seek treatment. At the time of the hearing, Freese was living with his mother. Freese denied the gastrointestinal symptoms he experienced prior to September 8, 2022, prevented him from pitching professionally.

Q: You've essentially played baseball year-round at different stages of your career, correct?

A: Yes.

Q: Mr. Hutson was asking you about your only starting playing [sic] baseball in 2021 on September 1st, but Mr. Hutson's Notice of Filing dated 3/19/25 shows you played both for a team in New Jersey and for the team that Mr. Hutson referenced in West Virginia or Charleston. So, did you play for two teams in 2021?

A: Yes, I did. The New Jersey Jackals and the West Virginia Power.

Q: Okay. And you threw more than 47 innings combined for those two teams?

A: Yes. I was a starter for the Jackals and a reliever for the Power.

Q: Okay. And despite the gastrointestinal issues that you've had that are referenced in your medical records

and referenced today, you've had a long career playing professional baseball and you've been dependable enough to take the mound as a starting pitcher every five days?

A: Yes.

Q: Okay. Have you ever had to tell your manager, Skip, I can't take the ball today, you know, I'm sick to my stomach?

A: Never. My stomach issues have – it seems baseball erases my stomach issues. It's the weirdest thing. We could never figure out why, but every time baseball season starts, my stomach issues go down to a minimal [sic]. As soon as I'm on the ball field I don't have issues.

The parties introduced numerous treatment records. Freese relied upon the independent medical evaluation ("IME") reports from Drs. Changaris and Ronald Sims and their reports submitted in response to Dr. Allen's report who conducted an IME and submitted an independent brain injury and psychiatric evaluation report on behalf of Stands.

Stands and Freese introduced the September 8, 2022, emergency services record generated by the Charleston Fire Department which reads, in relevant part, as follows:

Pt. was playing baseball and pitching when he took a line drive to the right ear. Neg LOC. Neg blood thinners. Pt. aaox4 and talking normally. Neuro assessment was normal and without deficits. Bleeding controlled from LAC on right ear. No blood or fluid weeping from ear canal at this time.

Ear and LAC and was bandaged upon arrival with bleeding controlled. O blood or CSF noted weeping from ear canal during initial assessment. After pt. was triaged EMS noticed there was small amount of blood weeping from ear canal. Halo test neg at this time. Dr. made aware of findings immediately after. Pt. placed in room and care transferred over to staff.

Freese filed the medical records generated by the Charleston Area Medical Center emergency department and General Hospital. The September 8, 2022, record reveals Freese was diagnosed with “[h]ead injury, concussion, right ear laceration, blood in the right external auditory canal.” Head/brain, maxillofacial, and cervical spine CT scans were ordered. The CT scan of the head/brain showed “[n]o evidence of acute intracranial disease or calvarial fracture.” The CT scan of the cervical spine showed “[n]o acute fracture or malalignment. Small right mastoid effusion.” The CT scan of the maxillofacial area revealed “[n]o acute facial fracture. Small right mastoid effusion.” Upon re-examination and re-evaluation, the doctor noted:

Assessment/Plan

Ordered:

CT Head or Brain w/o Contrast

CT Maxillofacial w/o Contrast

CT Spine Cervical w/o Contrast

Head injury, concussion, right ear laceration, blood in the right external auditory canal. For reasons as above and a put [sic] the patient CDU. Consult to ENT, maxillofacial surgery, manage the patient’s nausea, watch for any changes in neurologic function. I have started IV fluids since patient appears to be a little dehydrated and I ordered Ciprodex otic drops per recommendations from ENT.

On September 9, 2022, Freese’s lacerated right ear was repaired, and he was discharged on the same day. The results of an MRI of the brain, available September 10, 2022, revealed as follows: “Developing right mastoid effusion. Suspect right temporal lobe contusion.” The recommendation was for Freese to follow-up with a head CT.

The Final Report notes, in part, as follows:

Cartilage was noted to be fractured but still in good alignment so no cartilage repair was indicated. Laceration was measured to be 5 cm. Skin was undermined with iris scissors to aid in advancing the tissues for primary closure. Skin was reapproximated with 5-0 prolene suture in simple interrupted and continuous running manner. The wound was hemostatic upon completion of the procedure and all cartilage was covered. Patient was given postoperative care instructions.

Freese introduced the September 10, 2022, brain MRI report which set forth the following findings:

Developing right mastoid effusion

Suspect right temporal lobe contusion

Short-terms follow-up head CT is suggested

Also filed in the record by Freese is the October 31, 2022, CT scan of the temporal bones. The findings regarding the right temporal bone are as follows:

Right temporal bone: There is opacification of multiple lateral and inferior right mastoid air cells with fluid, some containing air-fluid

1s. There is a subtle nondisplaced fracture through the inferior aspect of the right temporal bone extending through the anterior wall of the bony right external auditory canal to the posterior aspect of the right temporal mandibular joint, and extending into the inferior aspect of the hypotympanum on the right, best appreciated on sagittal reformatted images. No middle ear opacification or fluid is seen. No CT evidence of ossicular chain disruption. Unremarkable CT appearance of the inner ear structures and bony internal auditory canal.

Freese introduced the medical records of Amy Freeman, APRN (“Freeman”) spanning the period from September 13, 2022, through September 16, 2024. On September 13, 2022, Freese presented with the following symptoms:

Dakota reports some symptoms are improving. Nausea is still present, just not as bad or as often. Dizziness is pretty constant but slightly improved. Has intermittent blurry vision. Has to lay down intermittently d/t symptoms. Right side of head hurts. Taking meclizine q6-7 hours, which helps. Appetite is better, feels more coherent in general. Overall feels he is improving.

Under the heading of “PSYCH” is the following: “Alert and oriented to time/place/ person with memory grossly intact. Cooperative. Mood is good, affect full and appropriate.” The diagnosis was:

Head injury, subsequent encounter

Traumatic rupture of ear drum, sequela

Concussion, unspecified

On September 16, 2022, Freese reported his symptoms were improving; however, his headaches were worsening. “Feels like he can hear better out of his right ear. Still some dizziness so continues to take meclizine and requests a refill. is now noticing more neck/shoulder stiffness from dropping on the ground after being hit in the head.” Dr. Freeman removed the sutures in Freese’s right ear. The diagnosis remained the same.

On October 7, 2022, Freese experienced balance issues, bilateral hip pain, and cervical pain. The diagnosis was:

Concussion, unspecified

Traumatic rupture of ear drum, sequela

Head injury, subsequent encounter

Bilateral hip joint pain

Pain in left hip

Loss of balance

Cervicalgia

On October 28, 2022, Freeman noted Freese was still experiencing balance issues “with certain activities” and “some hearing loss with memory and work finding. No more dizziness.” The diagnosis was:

Concussion, unspecified

Loss of balance

Pain in right shoulder

On December 21, 2022, Freese presented with a flare-up of IBS. Freeman noted as follows: “States that whenever he exerts himself lately his stomach acts up more. This is a problem as he is trying to work out again to get back into shape for baseball.”

In the January 24, 2023, medical record, the following, in relevant part, is noted:

Concussion – things improved. Memory not fully back. Hearing is almost back. is going to be getting neuropsych testing at the University. Still headaches if he strains himself enough. Season and training will start to ramp up in April.

Lower back – on diclofenac and muscle relaxer. Taking diclofenac once a day on average now.

Chronic GI issues – amitriptyline has helped more with pain, not as much diarrhea and bloating.

Anxiety – seems to be doing ok. On the trazodone for sleep and to help with it. No SI.

SH – waiting to see if he can start training for baseball season soon.

The diagnosis was:

IBS with diarrhea

Lumbar spondylolisthesis

Anxiety state, unspecified

Depressive disorder, not elsewhere classified

Insomnia

Concussion, unspecified

The February 24, 2023, record reveals Freese presented with continued right shoulder pain. The following is noted:

Dakota is here today for follow up of right shoulder pain. He had right shoulder trigger point injections performed in January, 2022 and again in April which had helped significantly. However, he then went and played semi-pro baseball as a pitcher and aggravated his shoulder again. He states he was told he has an anterior impingement. He states he doesn't have decreased ROM, but his shoulder pops often and he has a constant burning sensation in his anterior and posterior shoulder and his deltoid. He was recently cleared to resume baseball after a head injury and concussion (following being hit in the head by a baseball), and when he pitches it aggravates his pain. He presents today for further treatment options.

Freeman administered a corticosteroid injection into Freese's right shoulder.

On March 31, 2023, Freese received trigger point injections in his right shoulder and was referred to an orthopedic physician.

On April 21, 2023, Freese presented to Freeman for follow-up of his right shoulder pain and evaluation of migraines. The record notes Freese's migraines/headaches have worsened over the past two months. "Has a headache every other day or so. Sometimes has sensitivity to light and sound and nausea, and

sometimes not. States his whole head hurts when he has a headache; unable to tell where exactly it hurts.” He sometimes had blurry vision with headaches. Concerning right shoulder pain, the record notes Freese “went back to trying to pitch and his pain returned as before.”

On August 22, 2023, Freeman noted the following:

Migraines – States that in the last few weeks he is starting to improve slightly. States his migraines are very much dependent on the weather changes. In the last two weeks he has had 3 migraines. They last a day each. Prior to that he had one almost every day. Getting more sleep is helping. Currently he uses hot baths and rest to help. Has nausea, sensitivity to light and sound, and vision changes with migraines. In April 1 prescribed propranolol and sumatriptan for migraines and he didn’t take either. His mom was concerned about the propranolol since it is a BP med. She thought it would drop his BP too much. He doesn’t want to take anything for his migraines at this time.

Diclofenic especially helps with low back pain. Typically takes it once every day. Denies negative side effects at that dose. When taking it twice daily it upsets his stomach. Takes it with food. Requests a refill.

IBS – Takes nortriptyline 20mg qHS for this. It helps him sleep well, heavier and longer. States that it definitely helps his IBS, but not as much as it did at first. Feels like he has had a flare of IBS-D for the past 2 months.

He reports that September 18th he is having shoulder surgery. Will have a tear fixed laparoscopically and will also explore to make sure there is nothing else wrong. After surgery he will be going to therapy and wants to get back to training and playing baseball.

Anx/Dep – States he has been a bit anxious lately as he isn’t working and is concerned about money. Did get some money from the lawsuit with MLB r/t his head injury, but that has already run out. PHQ 11 and GAD 7

today. He denies the need for treatment for depression/anxiety with meds.

Freeman prescribed Xifaxan for his IBS.

The diagnosis was:

Anxiety state, unspecified

Depressive disorder, not elsewhere classified

IBS with diarrhea

Insomnia

Pain in left shoulder

Chronic migraine

Records generated by Freeman on September 13, 2023, indicate she saw Freese for a pre-op examination and he was scheduled for a right shoulder arthroscopic procedure with rotator cuff repair on September 19, 2023. The diagnosis was:

Pre-op evaluation

Tear of right rotator cuff

Pain in right shoulder

Anxiety state, unspecified

Depressive disorder, not elsewhere classified

IBS with diarrhea

Insomnia

Chronic migraine

Left shoulder pain

Other low back pain

On November 28, 2023, Freese was referred to the Mayo Clinic for his continued symptoms. Freeman noted he was still experiencing problems with sleep, migraines, IBS, and acid reflux. The diagnosis was:

Postconcussion syndrome

Chronic migraine

IBS with diarrhea

The May 22, 2024, record reads, in part, as follows:

Migraines – States he has frequent migraines. He is getting a migraine most nights around 11 pm and has vision changes, nausea, and/or light sensitivity. As a result, he hasn't been sleeping well and has been sleeping during the day mostly. Takes sumatriptan when he has a migraine. Sometimes that helps, but not always, and migraines often come back. Nurtec didn't help.

IBS – Hasn't been taking nortriptyline lately for IBS as he has been laying down with migraines. But IBS really hasn't acted up much lately. Mood is improving overall, but with the migraines he is having trouble with his sleep. He feels if that were worked out he would be doing very well.

Takes diclofenac for low back and other pains 1x daily and requests refills. Tizanidine PRN.

The diagnosis was:

Anxiety state, unspecified

Depressive disorder, not elsewhere classified

Nonorganic sleep disorder, unspecified

IBS with diarrhea

Insomnia

Migraine

Postconcussion syndrome

The September 16, 2024, record reveals, in part, as follows:

Medications – The patient is currently taking nortriptyline and trazadone at bedtime, as well as tizanidine for muscle relaxation. He has a history of low back pain and multiple shoulder injuries and surgeries related to playing baseball for years and pitching. Tizanidine and diclofenac help with those symptoms. They report not sleeping well and experiencing migraines at night. He has a history of IBS for many years now and reports newer issues with tolerating chicken, causing nausea and diarrhea, except for roasted chicken.

Migraines – The patient reports a decrease in migraine frequency, now experiencing approximately three migraines per week. Their migraines cause vision changes, nausea, and light sensitivity, affecting their sleep. Qulipta and Ubrelvy were helpful for migraines, but insurance would not cover Qulipta. Sumatriptan caused nausea and was not very effective.

Medical History – The patient has a history of post-concussive syndrome and has been referred to Mayo Clinic in the past. However, workman's comp would only cover preventive measures, and the patient is currently involved in a lawsuit for workman's comp in Kentucky. He initially sustained a head injury while pitching in Minor League baseball; the batter had hit the ball straight into his temple. He has had migraines ever since then.

Referral Request – The patient is seeking a referral to Mayo for post-concussive syndrome, gastroenterology, and sleep issues, aiming to find a balance between managing their stomach issues and migraines.

Freese filed the records of the Physicians' Clinic of Iowa Physical Therapy Department spanning the period from September 30, 2022, through October 11, 2022. In the October 11, 2022, "Discharge Summary," under "Medical Diagnoses" is: "1. R42: Dizziness and giddiness 2. R26.81: Unsteadiness on feet"

and under “Treating Diagnoses” is: “1. R42: Dizziness and giddiness 2. R26.81: Unsteadiness on feet.” The assessment was:

Summary: Pt demonstrating significant improvement subjectively noted with ABC scale score of 91% confidence. Pt also reports he is near back to normal and does not feel like continued therapy is needed. Pt demonstrates WNL vestibular assessments including head thrust and DVA assessments; also demonstrates improvements in static and dynamic balance today. No s/s throughout session with exception of minor dizziness during first VOR horizontal exercises with ambulation in skywalk today. Pt educated to continue with balance and vestibular HEP for further improvement in s/s and to return to PLOF as professional athlete. Pt also educated to contact PT if s/s re-occur or balance deficits begin to cause decreased function. Pt reports understanding and no other questions or concerns at this time.

Freese also filed the records from Kepros Physical Therapy spanning October 13, 2022, through December 7, 2023, to address decreased core stability, decreased shoulder and hip strength on the right, and impaired balance. The October 13, 2022, patient intake reads as follows:

Pt is a 30 year old male who presents to therapy s/p concussion 1 month ago after a line drive to the head. Pt states “he is here to get his balance better and get his body working together again.” Pt states he was hospitalized for 3 days after injury. He thinks he may have a skull fracture still and wants to get more imaging of his head. Pt states he had previous PT for balance and concussion at PCI in town. Pt reiterated he was here to get his body going again. Pt says lights sometimes still bother him and his eyes take longer to adjust. Pt states he is trying to rehab until season starts again in April. Pt feels word finding, memory, and speech are harder since injury.

The September 19, 2023, patient intake form states Freese is “ready to get his shoulder moving again so he is able in order to work back towards baseball and throwing again.”

The November 30, 2023, record reveals the following assessment:

Pt overall continues to be very limited in his return to the gym and HEP compliance at this time despite being cleared by MD and PT. Pt is quick to fatigue cardiovascularly needing frequent rest breaks.

Freese also introduced the September 30, 2022, and November 4, 2022, medical records of Dr. Melanie L. Giesler-Spellman, D.O. from the Physicians’ Clinic of Iowa ENT Department. The September 30, 2022, record reveals a diagnosis of “sensorineural hearing loss of right ear” after performing comprehensive audiometric testing performed on the same date. Dr. Giesler-Spellman also ordered an MRI of the brain and a CT scan of the temporal bone.² She referred Freese to Rock Valley Physical Therapy for “imbalance.”

The November 4, 2022, record of Dr. Giesler-Spellman generated after she reviewed the results of Freese’s October 31, 2022, temporal bones CT scan and MRI of the brain demonstrated the following on the right side:

Right temporal bone: There is opacification of multiple lateral and inferior right mastoid air cells with fluid, some containing air-fluid levels. There is a subtle nondisplaced fracture through the inferior aspect of the right temporal bone extending through the anterior wall of the bony right external auditory canal to the posterior aspect of the right temporal mandibular joint, and extending into the inferior aspect of the hypotympanum on the right, best appreciated on sagittal reformatted images. No middle ear opacification or fluid is seen. No CT evidence of ossicular chain disruption.

² Dr. Giesler-Spellman also noted a closed fracture of the temporal lobe.

Unremarkable CT appearance of the inner ear structures and bony internal auditory canal.

The MRI of the brain also demonstrated “unremarkable internal auditory canals” and “no acute intracranial process.”

Freese introduced Dr. Robert Jones’ June 19, 2023, and December 11, 2023, medical reports.³ The June 19, 2023, report reveals that after performing a physical examination, Dr. Jones’ impressions were:

Our impression is that Mr. Freese likely has a very mild postconcussion syndrome, which is significantly exacerbated by emotional factors such as depression and anxiety, and which is complicated by his pre-existing attention deficit disorder.

Taking our data at face value, he has test variability that is somewhat unusual within domains assessed, including verbal memory and aspects of language, in the context of significant emotional disruption, due to at least in part to his current inability to return to baseball. Given the fact of the accident, and in particular his report that there is virtually no change in his cognition at the time of the head trauma, our suspicion is that any direct brain related deficits in cognition are likely to be minimal.

Dr. Jones set forth the following recommendations:

1. Assertive treatment of his depression and anxiety is recommended.
2. He may benefit from consultation with a sleep specialist in an effort to establish a regular sleep routine or ‘sleep hygiene.’
3. The typical course of recovery for traumatic brain injury is approximately 1 year. If felt to be clinically appropriate, we would be glad to see this patient following the 1 year anniversary of the trauma

³ Dr. Jones is with the University of Iowa Hospitals and Clinics.

(September 2023), and an effort to establish a chronic/permanent cognitive baseline.

Dr. Jones' December 11, 2023, medical record reflects Freese returned for a neuropsychological re-evaluation. Under "background information" is, in part, the following:

During the interview, Mr. Freese continues reporting cognitive problems, including short-term memory difficulties, getting easily distracted, word-finding difficulties, difficulties during more complex tasks (i.e., making important decisions, planning, and organization), and mood changes, feeling more anxious and irritable than before. Other symptoms reported include migraine 3-4 times a week, phonophobia, photophobia, and occasionally blurry vision. He has a history of attention deficit hyperactivity disorder and dyslexia and has a remote history of head trauma at age 5. There is no history of seizures. As reported, he has been treated for depression and anxiety. His sleeping continues to be irregular; on some days, he sleeps 12-13 hours and then subsequently not at all. History of chewing tobacco was report; 'I can get violent if I don't do it.'

Freese reported to Dr. Jones he was "extremely exhausted" due to a lack of sleep the night before because of a migraine. Due to Freese's sleep deprivation, Dr. Jones was unable to complete the examination. The following results and impressions are noted:

Results of Assessment:

Near visual acuity with correction was 20/20 on testing to Rosenbaum screening. Simple attention and working memory were low average. Acquisition of verbal information (an extensive word list) over repeated presentations was exceptionally low for his age and level of education. Recall of the word list after a short delay interval remained exceptionally low. Constructional praxis was exceptionally low and notable for poor planning, organization, and attention to detail.

...

Impressions:

Mr. Freese's neuropsychological evaluation was not completed due to sleep deprivation that was reported and observed during his performances. The very limited obtained results, clinical interview, and behavioral observations raise possible concerns about emotional distress.

Dr. Jones recommended Freese remain physically, mentally, and socially active and a "referral to University of Iowa Neuropsychological rehab."

Freese introduced the May 4, 2023, IME report of Dr. Ronald Sims. After performing a physical examination and a medical records review, Dr. Sims diagnosed the following "as a result of the work incident:" post-concussional syndrome, sensorineural hearing loss in right ear, closed traumatic brain injury, and mood disorder due to a known physiological condition with depressive features. Concerning a change in Freese's condition due to the injury of September 8, 2022, Dr. Sims opined as follows:

Yes, since the injury of 09/08/22 the claimant has had new and persisting symptoms consistent with right sensorineural hearing loss, closed traumatic brain injury, post-concussional syndrome; and possibly consistent with mood disorder due to a known physiological condition with depressive features; in combination these conditions have interfered very much with his ability to perform activities of daily living and of work. The information supporting the possible diagnosis of mood disorder is that the claimant at times appeared to be engaging in rehabilitation treatment at a lower degree than he seemed capable of doing physically as well as his report on several dates of symptoms including difficulty concentrating, difficulty remembering, confusion, more emotional irritability, sadness, difficulty falling asleep. However, additional information is needed with respect to the claimant's current

neuropsychological status: a neuropsychological evaluation is needed.

Dr. Sims listed the objective findings relied upon in formulating a diagnosis:

The total information available supports that the claimant sustained a traumatic brain injury and sensorineural hearing loss on the right side on 09/08/22, since which he developed new and persisting symptoms, as detailed in the medical records above. The initial assessment on 09/08/22 documented findings of right pupil dilated and unreactive, laceration of the right ear, bleeding from the right otic canal. The brain MRI 09/10/22 showed an abnormality of the right temporal lobe consistent with acute traumatic brain injury, which would be likely to cause problems with cognitive, emotional, sleep, visual, and balance functions. The symptom inventories (Post-Concussion Symptoms Scale) support these diagnoses. Essentially all treating providers concur with these diagnoses.

Dr. Sims believed Freese had not reached MMI as of the May 4, 2023, report.

Attached to the filing of Dr. Sims' May 4, 2023, report is an addendum dated June 5, 2024. The addendum indicates Dr. Sims believed Freese had not achieved MMI and he needed a second neuropsychological evaluation.

Attached to the Form 101 is the August 1, 2024, IME report of Dr. Changaris. After performing a physical examination and a medical records review, he set forth the following diagnoses "resulting from or worsened by this accident:" "restrictive contusion with restrictive painful bilateral shoulders and contusion s/p Hard ball injury; traumatic headaches, constant, migraine with a concussion w/o specified duration of loss of consciousness s/p Hard ball injury, current dizziness/vertigo s/p Hard ball injury, anxiety due to trauma/situational s/p Hard ball injury,

emotional disturbances per AMA Guides 5th edition.” Dr. Changaris further opined as follows:

Anxiety, poor balance, and stress caused or increased by this accident has made his transition to a path to surviving more difficult. And these still impact his ability to endure the necessary treatment for partial recovery. He is not able to hold gainful employment more likely than not.

He is not sleeping well. Broken discontinuous sleep is common. He achieves a few hours of sleep 2 nights per week.

He has headaches every day; many days he must lie down in a quiet sequestered space.

He has trouble staying on task, remembering names, recalling recent events, and finding places when he travels to familiar places. He has developed uncharacteristic hypervigilance and startle reflexes. He also finds himself responding to simple events as threats of great concern. This adds emotional strife to his immediate family and those who help him with his activities. He finds himself expressing anger in explosive outbursts that follow with hours of intrusive thoughts of unrealistic imagined consequences. It takes him hours to realize this and finds it embarrassing but impossible to reach out to make amends. He is avoiding all but a select few people to minimize the potential consequences of these outbursts.

Dr. Changaris noted that Freese’s videonystagmography shows “tracking impairments,” and his saccades are distorted. “Saccades show latency of 333 milliseconds. These patterns show loss of visual integration capacity and evidence for structural brain injury due to the Hardball Injury.” Video-Posturography testing “displays serious significant impairments of balance capacity with eyes open and closed on both smooth and foam surfaces. The board is equipped with vestibular

balance metering.” Due to its significance, the remainder of Dr. Changaris’ impressions is set forth *verbatim*:

Mr. Freese also shows on CTSIB significant loss of capacity to hold his head normally while standing on a soft surface.

The above tests, and symptom inventory of the structured Headache and Head Injury Interviews identify significant, life altering injuries to his brain.

Mr. Freese was involved in a serious Hardball to head injury documented by video. The impact and forceful projection of his body swung his head. This usually produces a rotational component. This type of rapid acceleration and deceleration has long been associated with more aggressive shearing of brain substance. The presence of blood within his brain indicates he was subjected to substantial power causing his brain to bounce around inside his skull. Additionally, this type of injury often produces generalized shearing injury of the large white matter tracts. The force was likely of such a magnitude that the temporal lobe was further sheared by the sphenoid wing of the temporal bone, an injury that disorders lobe functioning.

Specifically, Mr. Freese demonstrates several signs of early dementia currently. First, his language has become less precise. He reports not remembering specific terms and losing focus. The severity of the accident is such that he will suffer other clinical symptoms of the dementias known as Alzheimer’s type and Parkinsonism/Parkinson’s Disease. This is in part due to the loss of integrity of his allocortex, which lines his mesial temporal lobes. Damage to this area also causes disruption of limbic functioning leading to unresolved anxiety and stress hormonal discharges. This uninterrupted anxious state accelerates the loss of cognitive capacity.

He remains at risk within reasonable medical probability for permanent disability to return to employment due to his trouble staying on task, remembering names, recalling recent events, finding places when he travels to familiar places and his hypervigilance. He is more likely

than not to maintain his total disability. He is likely to need support for some activities of daily living in 5 years. At age 40 he will need some oversight to be sure he eats, dresses well, and avoids driving. At age 50 he will require full-time supervision.

The utility of the Videonystagmography and Posturography is accepted within the AMA Guides 5th edition page 252. With these validated tests these define objective evidence for disordered visual pathways especially tracking. The specificity of these findings surrounding the objective evidence for structural brain injury has led two states to define 'white papers' incorporating these tests for defining traumatic brain injury. The Department of Defense uses the VNG routinely in defining blast injuries. Also the VNG has found growing acceptance within sports related traumatic injury.

Dr. Changaris assessed a 30% whole person impairment rating "solely due to hardball to head injury described herein." He opined that the "functional severity indicates he will not return to his previous occupation. And it is more likely than not he will not be employable for the rest of his life." Dr. Changaris placed Freese at MMI on August 1, 2024. Permanent restrictions include "minimal social contact, monitoring stress, and support for a life of mindfulness."

Dr. Changaris' May 4, 2025, report, written after he reviewed Dr. Timothy Allen's April 15, 2025, report expresses his complete disagreement with Dr. Allen's assessment of no impairment. He elaborated, in part, as follows:

Dr. Allen knows or should know that Mr. Freese sustained persisting dizziness, blurred vision, lightheadedness from his voluminous chart and my report. Dr. Allen knows or should know when he emphasizes that Mr. Freese 'did not lose consciousness,' he is mixing Hollywood with medical science and obscures the fact that someone skilled in the clinical neurosciences would consider that Mr. Freese did indeed lose consciousness in that he experienced the above

symptoms. And rendering a human completely unconscious by head trauma rarely happens in concussions. All this makes it clear that Dr. Allen, despite all his claims to expertise, is speaking from the perspective of a forensic psychiatrist, not the medical scientist that neurologist or neurosurgeons build upon.

Freese introduced the December 12, 2024, report of Dr. Meiyappan Karthik Udayappan with the Mayo Clinic. After performing a physical examination and a medical records review, Dr. Udayappan diagnosed “diarrhea (primary),” “nausea and vomiting,” “chronic migraine without aura not intractable without status migrainosus,” and “injury brain traumatic personal history.” Regarding Freese’s sleep difficulties, Dr. Udayappan concluded as follows: “Lastly, his difficulty sleeping is not due to a primary sleeping disorder per se (insomnia). If we can address his diarrhea, nausea, headaches, he will have an improved opportunity to sleep. Okay to continue trazodone to help initiate sleep.” The treatment plan included a headache neurology consult, fecal calprotectin, C-scope/EGD combine, and NM gastric emptying study.

Standards filed the records from Dr. Andrew R. Peterson with the Iowa Institute for Orthopaedics, Sports Medicine and Rehabilitation spanning from November 1, 2022, through December 11, 2023.

The November 1, 2022, record indicates Freese “took line drive to right ear while pitching” on September 8, 2022. The record establishes that a brain CT and MRI performed at the time of the injury showed “temporal lobe contusion, no acute fracture.” The diagnosis was “mild traumatic brain injury,” and Dr. Peterson wanted Freese to undergo repeat imaging before returning to “full baseball

activity.” He placed an order for a brain MRI. Under “psychiatric history that may modify recovery” is the following:

Anxiety: Takes Trazadone for sleeping

Depression: Yes, not on medication

Sleep disorder: Takes Trazadone

The November 1, 2022, record also indicates Dr. Peterson and Freese discussed “cognitive rest in detail.” Dr. Peterson advised Freese to continue with vision therapy as well as physical therapy for balance, and, if still having trouble in the next couple of months, Dr. Peterson may refer Freese for neuropsychological testing. Under “physical rest” is the following: “Patient is encouraged to begin aerobic exercise and resistance training as tolerated. He may also do some light throwing or baseball activity such as batting practice if desired. He is still encouraged to avoid activity that puts him at risk for getting hit in the head, including full return to baseball.”

Dr. Peterson’s January 5, 2023, record indicates he discussed with Freese the importance of light aerobic exercise for concussion healing. Dr. Peterson also referred Freese for neuropsychological testing and GI workup for “IBS given this is also a limiting factor for return to exercise.”

The February 13, 2023, record reflects Freese underwent a brain MRI on the same date which was “unremarkable.” Dr. Peterson expressed the following:

Good news here. Totally normal brain MRI.

There was question of a temporal lobe contusion on her [sic] previous imaging, but that was likely not real, or has healed really quickly.

Imaging is not going to limit her [sic] return to sport.

I have not seen her [sic] for a bit. I should probably see her [sic] back in clinic.

On March 30, 2023, Freese presented with “poor sleep, shivering/temperature instability, nausea.” Dr. Peterson observed as follows:

Patient continues to experience symptoms following head injury 9/8/2022, see ROS section and SCAT Symptom Score above. Neuropsych testing was denied 2/10/23 by WC. Neuropsych testing is medically necessary in order to determine what symptoms are related to head injury, versus other underlying medical conditions including mood. We will attempt to obtain neuropsych testing.

In an addendum, Dr. Peterson stated:

He, has previously been cleared for sport by another physician, despite persistent symptoms. It is reassuring that he is tolerating hard exertion without symptom provocation, but it remains unclear how much of his symptoms are due to mental health and how much are due to TBI. Neuropsych testing was previously denied by his insurance, but I think it is important to clarify the etiology of his symptoms.

MMI statement: He has not reached maximal medical recovery. Although it is unclear if he needs more treatment for mental health or if he needs further treatment/restriction for his TBI. Further directed therapy will be determined by the results of his neuropsych testing.

Dr. Peterson’s June 28, 2023, medical record indicates after reviewing Dr. Jones’ June 19, 2023, report he expressed the following opinions:

This is overall reassuring. The pattern is more consistent with mood problems than it is with concussion/TBI.

So, first of all, I don’t think we need to restrict him. No reason to keep him from playing baseball and training like normal.

BUT, he does have significant mental health problems that should be addressed with a psychologist. I do not know what their team's access to mental health services looks like, but that would be my recommendation.

His impressions and recommendations are as follows:

Impressions

Our impression is that Mr. Freese likely has a mild postconcussion syndrome, which is significantly exacerbated by emotional factors such as depression and anxiety, and which is complicated by his pre-existing attention deficit disorder.

Taking our data at face value, he has test variability that is somewhat unusual within domains assessed, including verbal memory and aspects of language, in the context of significant emotional disruption, due to at least in part to his current inability to return to baseball. Given the fact of the accident, and in particular his report that there is virtually no change in his cognition at the time of the head trauma, our suspicion is that any direct brain related deficits in cognition are likely to be minimal.

Recommendations

Assertive treatment of his depression and anxiety is recommended.

He may benefit from consultation with a sleep specialist in an effort to establish a regular sleep routine or "sleep hygiene."

The typical course of recovery for traumatic brain injury is approximately 1 year. It felt to be clinically appropriate, we would be glad to see this patient following the 1 year anniversary of the trauma (September 2023), and an effort to establish a chronic/permanent cognitive baseline.

Standards introduced Dr. Allen's April 15, 2025, "Independent Brain Injury and Psychiatric Evaluation" report, generated after performing evaluations on March 20 and 21, 2025. The purpose of Dr. Allen's evaluation, as stated in the

report, is as follows: “to evaluate Mr. Freese for psychiatric diagnosis, psychiatric prognosis, evidence of cognitive impairment, causation, and ability to work.” After performing a psychiatric examination and comprehensive medical records review, Dr. Allen set forth the following DSM-5 diagnoses: major depressive disorder and attention deficit hyperactivity disorder. He reached the following conclusions which are set forth *verbatim*:

- Mr. Freese possibly had a mild TBI when struck by the baseball on September 8, 2022, but there was no documentation of any altered consciousness, amnesia, or cognitive deficits in contemporaneous records.
- His cognitive complaints appeared after November 1, 2022 and he was found to have no cognitive deficits by Dr. Jones at that time. If he had suffered any cognitive decline from a TBI they would be worst soon after the accident and improved quickly over 3 months, with completed healing after 2 years. However, Mr. Freese’s cognitive symptoms have displayed a reverse course.
- He provided inadequate effort on the last two psychological test batteries (Jones in December 2023 and Ranseen in March 2025). There is little objective evidence he has cognitive impairment from a TBI. There was evidence of poor attention and working memory which are classic findings in ADHD, which Mr. Freese had since childhood.
- He has repeatedly displayed evidence of depression which affects his overall functioning. His depression is largely associated with his inability to play baseball which seems largely dependent upon his shoulder and is outside the scope of my evaluation.
- Mr. Freese was treated for depression since 2014 and was taking the antidepressant Cymbalta at the time of the baseball injury.
- He is at MMI for any TBI he may have suffered.

- He requires no future cognitive or psychiatric treatment for the September 8, 2022, and even assuming the worst possible outcome from an [sic] no loss of consciousness TBI, there is absolutely no scientific evidence to support Dr. Changaris' dire prediction that he will need total care by age 50.
- The World Health Organization performed a meta-analysis to investigate the risk of dementia development following mild TBI. They found no such link. [citations omitted].

Regarding an impairment rating, Dr. Allen opined as follows:

Mr. Freese currently has a Class I impairment of Mental Disorders. The AMA Guides to the Evaluation of Permanent Impairment 5th Ed, Chapter 14, Table 14-1, p.363 does not provide percentages to apply to mental disorders. If we apply the AMA Guides 2nd edition, Chapter 12, Table 1, p.220 criteria then he has a 10% whole body impairment due to Major Depression ½ of which his [sic] pre-existing Major Depression and ½ is due to his inability to play baseball. **The cause of his inability to play is beyond my expertise.** (emphasis added).

He has a Class I impairment of the Central Nervous System. According to AMA Guides, 5th edition Chapter 13, Tables 13-5 and 13-6, p. 320, he has a 5% impairment due to mental status changes related to pre-existing ADHD, and has no impairment due to the injury on September 8, 2022.

The September 11, 2025, Benefit Review Conference Order & Memorandum reveals the parties stipulated Freese sustained a work-related injury, had given due and timely notice, and was paid TTD benefits of \$195.29 per week for a total of \$14,869.94 from September 19, 2022, to March 4, 2024. The following contested issues were listed: "Injury Under the Act; temp v. perm, Work related injury/causation, Permanent income benefits per KRS 342.730: impairment & multipliers; PPD v. PTD, Average Weekly Wage, TTD Benefits: underpayment as to

rate and period, Ability to return to work, Exclusion for pre-existing impairment, Vocational Rehabilitation, Unpaid or contested medical expenses, including medical dispute/Form 112, and Proper use of the AMA Guides.”

In the November 12, 2025, Opinion, Award, and Order, the ALJ set forth the following findings of fact and conclusions of law:

B. Impairment/Pre-existing impairment

I rely on the medical opinion of Dr. Changaris to find that Freese has a 12% whole person impairment attributable to his work-related migraines. I found Dr. Changaris’s assessment of Freese’s migraines to be the most credible because it is consistent with the post-injury treatment records which document consistent complaints of headaches since September 2022.

However, I am not convinced by Dr. Changaris’s opinion that Freese sustained an additional 20% whole person impairment for emotional behavior disorders attributable to the work injury. His opinion on this issue is inconsistent with Freese’s prior treatment records which demonstrate a significant, well-documented history of ongoing struggles with anxiety, depression, insomnia, ADHD, IBS and chronic pain which interfered with his daily activities. I did not find Dr. Changaris as persuasive as Dr. Allen in addressing these prior conditions for which Freese was receiving regular, active treatment within months of the 20 injury. Therefore, I rely on Dr. Allen to find that Freese has 10% prior active whole person impairment for major depression, and 5% prior active whole person impairment for ADHD, with no permanent impairment for these conditions attributable to the work injury.

C. Ability to return to work/Multipliers/PPD v. PTD

The next issue to be determined is whether Freese retains the physical capacity to return to work. Freese argues he is permanently and totally disabled as a result of the September 8, 2022, work injury, and relies on his testimony and the opinion of his expert, Dr. Changaris, to support his claim. Stands argues that the effects of the work injury do not preclude Freese from returning to his

pre-injury work as a baseball player and relies on Dr. Allen to support its argument.

After reviewing all evidence, I find that Freese has not met his burden of proving that he is unable to return to work as a result of the work injury. Although Dr. Chagaris recommended permanent restrictions to include “minimal social contact, monitoring stress, and support for a life of mindfulness,” I am not persuaded that those restrictions are indicated for the effects of the work injury rather than Freese’s prior active conditions as noted above. Similarly, although I found Freese’s testimony regarding the extent of his current limitations credible, I am not persuaded that his occupational limitations are due to this work injury.

I am more persuaded by Dr. Allen’s opinion that Freese’s inability to return to work is due to non-work-related reasons, such as his prior active depression and his right shoulder condition which required an additional surgery in 2023. Dr. Allen’s opinion is more consistent with the prior treatment records which indicate that Freese’s prior active conditions interfered with his ability to perform daily activities such getting up for work, handling stress, and managing his chronic symptoms. Dr. Allen’s opinion is also more consistent with the post-injury treatment records which suggest that the only limitation on Freese’s ability to return to work is the result of his prior active mental status including anxiety, depression, and ADHD.

Therefore, I find that Freese has not met his burden of proving that he is unable to return to work as a result of the work injury. Consequently, he is awarded permanent partial disability benefits based upon a straight calculation of 12% whole person impairment, calculated as follows: $\$219.60 \times 66 \frac{2}{3}\% = \$146.40 \times .12 \times 1.0 = \17.57 per week for 425 weeks.

V. Vocational Rehabilitation benefits

An award of vocational rehabilitation benefits under KRS 342.710 is appropriate “if the employee ‘is unable to perform work for which he has previous training or experience’ as a result of a work-related accident.” *Edwards v Bluegrass Containers Division of Dura-Containers Inc.*, 594 S.W.2d 900 (Ky. 1980).

Having found that Freese did not establish that he is unable to return to work as a result of the work injury, he is not entitled to vocational rehabilitation benefits.

In his Petition for Reconsideration, Freese made the same arguments that he makes on appeal. In the December 12, 2025, Order, the ALJ failed to put forth additional findings stating as follows:

...

First, Freese takes issue with the undersigned's use of the present tense in the statements, "He has chronic right shoulder pain from a baseball injury in 2013 which required a right rotator cuff repair in 2014," on page 2 of the Opinion, and, "He continues to receive treatment for his gastrointestinal issues, back pain, insomnia, and right shoulder, which included a second rotator cuff repair in 2023," on page 3. Freese asserts that these statements are patently erroneous because they are not supported by the medical treatment records or his testimony.

It is well-established the ALJ has the authority to determine the weight, credibility, and substance of the evidence; to determine all reasonable inferences; and to choose whom or what to believe among conflicting evidence. *Square D Co. v. Tipton*, 862 S.W.2d 308 (Ky. 1993); *Pruitt v. Bugg Brothers*, 547 S.W.2d 123 (Ky. 1977); *Magic Coal Co. v. Fox*, 19 S.W.3d 88 (Ky. 2000).

Having reviewed the petition, I do not believe that Freese points to any patent errors. The term "chronic" is defined in the *Merriam-Webster* dictionary as "continuing or occurring again and again for a long time." Freese acknowledged a history of right shoulder pain and treatment including surgeries in 2014 and 2023. Medical treatment records of Amy Freeman, APRN, document a history of right shoulder complaints spanning over several years with intermittent flare ups that require periodic treatment. Although Freese attempts to minimize his right shoulder condition, his own medical expert, Dr. David Changaris, noted that Freese presented with "restrictive painful bilateral shoulders" on August 1, 2024, suggesting an ongoing condition at the time of his examination. Having drawn all

reasonable inferences from this evidence, which describes a condition that is continuing or occurring again and again for a long time, I used the present tense to describe the nature of Freese's right shoulder condition consistent with the evidence. Therefore, I find no patent error in either statement.

Secondly, Freese requests additional findings of fact on the issue of his ability to return to work and the ALJ's reliance on Dr. Allen on this issue.

The ALJ's findings of fact must be sufficient to apprise the parties of the basis for her decision and to allow for a meaningful review on appeal. *Shields v. Pittsburgh and Midway Coal Mining Co.*, 634 S.W.2d 440 (Ky. App. 1982). An ALJ is not required, however, to engage in a detailed discussion of the facts or set forth the minute details of her reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. *Big Sandy Community Action Program v. Chafins*, 502 S.W.2d 308 (Ky. 1973).

The undersigned's opinion reflects that all evidence was fully considered in rendering a decision on Freese's ability to return to work. This claim contained conflicting evidence on this issue. I weighed the differing medical opinions in this claim, applied the appropriate legal standard, noted my findings, and provided the basis for my reasoning. As such, I find that Freese's petition on this issue is an impermissible re-argument of the merits of the claim and additional findings are not required.

ANALYSIS

On appeal, Freese requests remand for additional findings regarding his entitlement to the three-multiplier. Freese also seeks additional findings regarding "how Mr. Freese's pre-existing active impairment ratable conditions did not prevent him from playing baseball before September 8, 2022, but do now prevent him from playing baseball after September 8, 2022." Freese argues the Board should reverse

the ALJ's finding that Freese's current inability to play professional baseball is unrelated to his injury occurring on September 8, 2022.

We vacate the November 12, 2025, Opinion, Award, and Order and the December 12, 2025, Order overruling the Petition for Reconsideration, including but not limited to the ALJ's findings concerning the work injury, applicable impairment rating, Freese's entitlement to permanent total disability ("PTD") benefits, PPD benefits, and vocational rehabilitation benefits.

As an initial matter, as we are vacating the November 12, 2025, Opinion, Award, and Order and the December 12, 2025, Order overruling his Petition for Reconsideration, the ALJ must conduct a new analysis of Freese's entitlement to PTD benefits since the ALJ's analysis of permanent total disability in the November 12, 2025, Opinion, Award, and Order is incomplete. We set forth the evidentiary standard applicable when analyzing a claimant's entitlement to PTD benefits.

KRS 342.0011(11)(c) defines permanent total disability as "the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury[.]" Further, KRS 342.0011(34) defines "work" as "providing services to another in return for remuneration on a regular and sustained basis in a competitive economy." In Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000), the Kentucky Supreme Court decided that in determining whether a particular worker is partially or totally occupationally disabled as defined by KRS 342.0011, the analysis "requires a weighing of the evidence concerning whether the worker will be able to

earn an income by providing services on a regular and sustained basis in a competitive economy.” The Supreme Court explained as follows:

An analysis of the factors set forth in KRS 342.0011(11)(b),(11)(c), and (34) clearly requires an individualized determination of what the worker is and is not able to do after recovering from the work injury. Consistent with *Osborne v. Johnson*, supra, it necessarily includes a consideration of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work consistently under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be able to work dependably and whether the worker's physical restrictions will interfere with vocational capabilities. The definition of “work” clearly contemplates that a worker is not required to be homebound in order to be found to be totally occupationally disabled. See, *Osborne v. Johnson*, supra, at 803.

Ira A. Watson Dept. Store v. Hamilton at 51.

The Supreme Court emphasized that disability is a question of fact, and the ALJ can rely on lay testimony in reaching his or her determination. The Court reaffirmed this holding in McNutt Construction/First General Services v. Scott, 40 S.W.3d 854 (Ky. 2001), stating as follows:

However, determining whether a particular worker has sustained a partial or total occupational disability as defined by KRS 342.0011(11) clearly requires a weighing of the evidence concerning whether the worker will be able to earn an income by providing services on a regular and sustained basis in a competitive economy.

...

It is among the functions of the ALJ to translate the lay and medical evidence into a finding of occupational disability. Although the ALJ must necessarily consider

the worker's medical condition when determining the extent of his occupational disability at a particular point in time, the ALJ is not required to rely upon the vocational opinions of either the medical experts or the vocational experts. *See Eaton Axle Corp. v. Nally*, 688 S.W.2d 334 (Ky. 1985); *Seventh Street Road Tobacco Warehouse v. Stillwell*, Ky., 550 S.W.2d 469 (1976). A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured. *Hush v. Abrams*, Ky., 584 S.W.2d 48 (1979).

McNutt at 859-860.

Finally, in City of Ashland v. Stumbo, 461 S.W.3d 392 (Ky. 2015), the Supreme Court laid out a five-step analysis which the ALJ must utilize in determining entitlement to permanent total disability benefits. Initially, the ALJ must determine whether the claimant suffered a work-related injury. Second, the ALJ must determine, if any, the applicable impairment rating. Third, an ALJ is required to determine that the claimant is unable to perform any type of work. Fourth, the ALJ must set forth, with some specificity, what factors he or she considered and how those factors led to the conclusion that the claimant is permanently totally disabled. Finally, the ALJ must determine that the total disability is the result of the work injury. Stumbo at 396-97. An ALJ enjoys wide-ranging discretion in granting or denying an award of permanent total disability benefits. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976); Colwell v. Dresser Instrument Div., 217 S.W.3d 213 (Ky. 2006).

On remand, the ALJ must set forth a renewed analysis of Freese's entitlement to PTD benefits consistent with the applicable legal standard and provide findings sufficient to inform all parties, and the Board, of the basis for the ALJ's

decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982).

Similarly, the ALJ's analysis regarding the applicability of the three-multiplier is incomplete and based upon an incorrect legal standard. In her decision, under the heading "Ability to return to work/ Multipliers/PPD v. PTD," the ALJ found based upon the opinions of Dr. Allen, Freese had not met his burden of establishing "he is unable to return to work due to the work injury." However, a claimant's inability to return to work is not the standard for determining the applicability of the three-multiplier. KRS 342.730(1)(c)1 sets forth guidelines for determining the claimant's entitlement to the three-multiplier which reads, in relevant part, as follows:

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

The ALJ failed to analyze whether Freese retains the physical capacity to return to pitching in professional baseball. The ALJ's analysis is devoid of any mention of Freese's ability to specifically return to playing baseball as a pitcher. In fact, there is *no* mention of baseball in her analysis, much less the specific tasks associated with Freese's job as a pitcher.

In determining whether to enhance the award of PPD benefits by the three-multiplier, the statute and relevant case law require the ALJ to analyze the

actual tasks performed prior to the injury and then assess the limitations and restrictions resulting from the physical injury. Voith Industrial Services, Inc. v. Gay, 516 S.W.3d 817 (Ky. App. 2017). A review of all the required job tasks is necessary to determine whether the employee lacks the ability to return to the “type of work” performed at the time of injury. Miller v. Square D Co., 254 S.W.3d 810, 813-814 (Ky. 2008). The Supreme Court, in Ford Motor Co. v. Forman, 142 S.W.3d 141, 145 (Ky. 2004), stated as follows:

When used in the context of an award that is based upon an objectively determined functional impairment, “the type of work that the employee performed at the time of injury” was most likely intended by the legislature to refer to the actual jobs that the individual performed.

...

For that reason, proof of the claimant's present ability to perform some jobs within the classification does not necessarily indicate that she retains the physical capacity to perform the same type of work that she performed at the time of injury. On remand, the ALJ must analyze the evidence to determine what job(s) the claimant performed at the time of injury and to determine from the lay and medical evidence whether she retains the physical capacity to return to those jobs.

While an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his/her reasoning in reaching a particular result, he/she is required to adequately set forth the basic facts upon which the conclusion was drawn so the parties are reasonably informed of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). Further, we point out that Kentucky courts have consistently held that when the issue is the claimant’s ability to labor and the application of the three-multiplier,

the ALJ may rely on the claimant's self-assessment of his ability to perform his prior work. Ira A. Watson Department Store v. Hamilton, *supra*; Carte v. Loretto Motherhouse Infirmary, 19 S.W.3d 122 (Ky. App. 2000).

In the recent decision of the Supreme Court, Kendra Russell v. International Automotive Components, No. 2025-CA-0238 (Ky. April 23, 2026) (Designated to be Published), the Court affirmed the Court of Appeals' decision affirming this Board's Opinion vacating the ALJ's award of the three-multiplier because of a failure to set forth sufficient findings. The Court cited our Opinion in which we held, in part, as follows:

"The ALJ was charged with analyzing the actual tasks the employee performed prior to the injury and then assessing the limitations and restrictions on her physical activities resulting from the work-related injury. *Voith Industrial Services, Inc. v. Gray*, 516 S.W.3d 817 (Ky. App. 2017). *Miller v. Square D. Co.*, 254 S.W.3d 810, 813-14 (Ky. 2008) stands for the proposition that a worker who can no longer perform all his required job tasks lacks the ability to return to the 'type of work performed at the time of injury.'" Additionally, in *Ford Motor Co. v. Forman*, 142 S.W.3d 141 (Ky. 2004), the Supreme Court held that the type of work performed at time of injury refers to the actual jobs the individual performed. Finally, the evidence is reviewed as of the time of the hearing to determine whether a claimant could perform his pre-injury work. See *Apple Valley Sanitation Inc. v. Stambaugh*, 645 S.W.3d 434, 438-39 (Ky. 2022).

Slip Op. at 5

In affirming the Court of Appeals' decision, the Supreme Court held as follows:

KRS 342.730(1)(c)1 requires that, before a claimant be awarded the three-multiplier, he or she must be physically incapable of returning to the type of work that the employee performed at the time of the injury. Here,

the ALJ found that, '[b]ased upon the testimony of Dr. Oteham, the ALJ finds Russell lacks the physical capacity to return to her pre-injury work at IAC, and she is entitled to the 3.2 multiplier contained in KRS 342.730(1)(c)2.' *See* fn. 2. As the Board pointed out in its Opinion Vacating in Part, the flaw with the ALJ's analysis is that

[i]n his report, Dr. Oteham opined Russell could 'continue to perform her work duties in the full-time setting she is currently employed in.' Russell was working in a clerical data entry position for a new employer at the time of Dr. Oteham's examination. Dr. Oteham did not mention any specific physical restrictions or whether she could perform her pre-injury work.

Without more, it is difficult to follow the logical leap the ALJ made from Dr. Oteham's opinion that Russell is able to continue performing her current clerical position to the ALJ's conclusion that Russell cannot perform her prior tasks at IAC. While it is true that the ALJ is the sole fact-finder in proceedings in workers' compensation claims, and the Board may not substitute its own assessment of the weight and credibility of the evidence in the record for that of the ALJ's, the ALJ must still have a reasonable basis for its factual conclusions. As it stands, without greater support from the record, the ALJ's findings here suffer from a dearth of evidence and are therefore clearly erroneous, and the award of the three-multiplier was an abuse of discretion. Because of this, we cannot find that it was error for the Board to remand to the ALJ with instructions to 'simply and adequately detail the evidence relied upon in reaching his decision.'

Slip Op. at 9-10.

Thus, on remand, should the ALJ conclude Freese is not totally disabled, she must determine whether the three-multiplier is applicable by carrying out a thorough analysis consistent with the applicable law as summarized herein.

Notably, the December 12, 2025, Order does not cure the ALJ's failure to address the applicability of the three-multiplier as mandated by KRS 342.730(1)(c)1. The Order overruling Freese's Petition for Reconsideration makes no mention of his ability to return to work as a pitcher in professional baseball. The Order contains no new findings or analysis regarding the applicability of the three-multiplier.

Consequently, the claim must be remanded for a determination of whether the three-multiplier is applicable in this case. Such a determination entails addressing Freese's specific job duties at the time of his injury and then determining, based on his testimony and the medical opinions, whether he is still capable of performing that type of work. We direct no particular result.

Intermixed within Freese's argument on appeal regarding the three-multiplier is his request that this Board remand the claim for additional findings regarding how "Freese's pre-existing active impairment ratable conditions did not prevent him from playing baseball before September 8, 2022, but do now prevent him from playing baseball after September 8 2022." Freese correctly describes the ALJ's conclusion, based on Dr. Allen's April 15, 2025, report, as a "logical fallacy" and asserts, in part, as follows:

Mr. Freese was somehow, despite all these pre-existing active conditions, able to drag himself to the pitching mound, primarily as a starting pitcher, every fifth day for almost a decade while he pursued his perhaps quixotic quest of pitching in the major leagues, despite his 'prior active mental status' and his 'chronic symptoms.' Opinion p.20. **It is undisputed that he had a lengthy minor league pitching career, with both parties filing records regarding his pitching history, and Mr. Freese will concede for purposes of this appeal that he had numerous pre-existing conditions including anxiety, depression, ADHD, insomnia, IBS, and chronic pain,**

And yes, despite these chronic conditions, once again, he took the mound every fifth day, and pitched for close to a decade. After his work injury, he did not pitch again. The ALJ's conclusion that Mr. Freese's inability to return to work is unrelated to the work injury and is solely due to his various pre-existing conditions is illogical and presents the Board with a logical fallacy. Mr. Freese asks the Board to remand the matter for additional fact findings regarding this logical fallacy, with instructions to reverse the finding that the work injury had nothing to do with his current inability to play professional baseball as the evidence does not support this conclusion. (emphasis added).

In the November 12, 2025, Opinion, Award, and Order, the ALJ opined, in relevant part, as follows:

I am not convinced by Dr. Changaris's opinion that Freese sustained an additional 20% whole person impairment for emotional behavior disorders attributable to the work injury. His opinion on this issue is inconsistent with Freese's prior treatment records which demonstrate a significant, well-documented history of ongoing struggles with anxiety, depression, insomnia, ADHD, IBS and chronic pain which interfered with his daily activities. I did not find Dr. Changaris as persuasive as Dr. Allen in addressing these prior conditions for which Freese was receiving regular, active treatment within months of the injury.

In the November 26, 2025, Petition for Reconsideration, Freese made the same argument he makes on appeal, asserting, in part, as follows:

Likewise, if Mr. Freese was able to pitch from 2016 until 2022 with, per Dr. Allen, these pre-existing active impairment ratable conditions of anxiety, depression, and ADHD, Mr. Freese asks for additional findings of fact regarding his current inability to return to work, and how these pre-existing active impairment ratable conditions did not prevent him from playing baseball before September 8, 2022, but do now prevent him from playing baseball after September 8, 2022. Mr. Freese asks for additional findings of fact explaining what appears to be an inference unsupported by substantial

evidence. If Mr. Freese was able to play baseball with the pre-existing active impairment ratable conditions of anxiety, depression, and ADHD that Dr. Allen said he had before he was hit in the head with a baseball, and he is unable to play baseball now, after he was hit in the head with a baseball, Mr. Freese asks for additional findings explaining how it was possible for him to play baseball prior to the work injury but not play baseball after the work injury and there be no connection whatsoever between his inability play baseball now and his work injury. Mr. Freese asks [sic] that relief. (emphasis added).

In the December 12, 2025, Order, the ALJ failed to set forth any additional findings, stating she “weighed the differing medical opinions in this claim, applied the appropriate legal standard, noted [her] findings, and provided the basis for [her] reasoning.”

As fact-finder, the ALJ is vested with the authority to weigh the medical evidence and the discretion to choose which physician's opinion to believe. Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149 (Ky. App., 2006). However, an ALJ is required to provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining, Co., supra. Importantly, the ALJ must also demonstrate an accurate understanding of the evidence when setting forth those findings. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). This is particularly true since Freese requested additional findings in his Petition for Reconsideration which the ALJ declined to provide.

Unquestionably, as Freese observes, the record indicates he suffered from conditions which preceded the September 8, 2022, injury. As noted in Freese's brief, "Mr. Freese will concede for purposes of this appeal that he had numerous pre-existing conditions including anxiety, depression, ADHD, insomnia, IBS, and chronic pain." However, the record also indicates Freese played baseball from 2016 through September 8, 2022, interrupted only in Fall 2020 through early 2021 when Freese became ill with COVID. Moreover, Freeman's records pertaining to her treatment of Freese prior to the September 8, 2022, injury establish Freese had multiple health problems. In spite of his problems, there is no dispute Freese was able to play professional baseball until he was struck by a baseball on September 8, 2022. Stated another way, all of Freese's conditions pre-existing the work injury did not prevent him from playing professional baseball on a regular basis. Consequently, additional findings are necessary to explain how Freese's pre-existing conditions prevent him from playing baseball post-injury when those same conditions did not prevent him from playing baseball prior to the work injury.

Also, as pointed out by Freese in both his Petition for Reconsideration and on appeal, Dr. Allen, the expert upon whom the ALJ relied in concluding Freese's inability to return to baseball is not due to the September 8, 2022, injury, clearly opined the cause of Freese's inability to play baseball is beyond his area of "evaluation" and "expertise":

- He has repeatedly displayed evidence of depression which affects his overall functioning. **His depression is largely associated with his inability to play baseball which seems largely dependent upon his shoulder and is outside the scope of my evaluation.** (emphasis added).

- If we apply the AMA Guides 2nd edition, Chapter 12, Table 1, p.220 criteria then he has a 10% whole body impairment due to Major Depression ½ of which [sic] his pre-existing Major Depression **and ½ is due to his inability to play baseball. The cause of his inability to play is beyond my expertise.** (emphasis added).

A review of the November 12, 2025, Opinion, Award, and Order reveals the ALJ failed to address Dr. Allen's critical admissions. In her summary of Dr. Allen's opinions, the ALJ wholly omitted a reference to both admissions:

Dr. Allen noted Freese has treated for depression since 2014 and was actively taking an antidepressant at the time of the baseball injury. He concluded that Freese's depression affects his overall functioning and is largely associated with his inability to play baseball. **However, Dr. Allen attributed Freese's inability to play baseball to his right shoulder issues rather than to the effects of the TBI.** He assessed 10% whole person impairment for depression, half of which is pre-existing and the other half due to his inability to play baseball, pursuant to the 2nd Edition of the AMA Guides. He assessed 5% whole person impairment for mental status changes related to pre-existing active ADHD pursuant to the 5th Edition of the AMA Guides. (emphasis added).

The ALJ also failed to address these admissions when revisiting Dr. Allen's opinions in her analysis sections subtitled "impairment/pre-existing impairment" and "ability to return to work/multipliers/PPD v. PTD" and, importantly, when adopting Dr. Allen's opinions regarding 10% prior active whole person impairment for Major Depression. In the November 12, 2025, Opinion, Award, and Order, the ALJ failed to acknowledge Dr. Allen's opinion that ½ of the 10% prior active whole person impairment rating for Major Depression is specifically attributed to Freese's inability to play baseball, something Dr. Allen believes is

“largely dependent upon [Freese’s] shoulder” and something he explicitly ruled out of his area of “evaluation” and “expertise.”

In his Petition for Reconsideration, Freese directly referenced Dr. Allen’s admissions and requested additional findings, yet the ALJ failed to provide additional findings in her December 12, 2025, Order addressing this issue.

All parties to a workers’ compensation dispute are entitled to findings of fact based upon a correct understanding of the evidence submitted during adjudication of the claim. Where it is demonstrated the fact-finder may have held an erroneous or incomplete understanding of relevant evidence in reaching a decision, the courts have authorized remand to the ALJ for further findings. *See Cook v. Paducah Recapping Service*, 694 S.W.2d 684 (Ky. 1985); *Whitaker v. Peabody Coal Company*, 788 S.W.2d 269 (Ky. 1990).

On remand, the ALJ must address Freese’s legitimate inquiry – i.e. how “Freese’s pre-existing active impairment ratable conditions did not prevent him from playing baseball before September 8, 2022, but do now prevent him from playing baseball after September 8 2022.” In doing so, the ALJ must set forth additional findings displaying a *complete* understanding of Dr. Allen’s opinions as set forth in his April 15, 2025, report, including his admissions that the cause of Freese’s inability to play baseball is beyond his scope of “evaluation” and “expertise” and, importantly, the fact that 5% of the 10% prior active impairment rating for Major Depression assessed by Dr. Allen was attributed to Freese’s inability to play baseball, something Dr. Allen opined is “largely dependent upon [Freese’s] shoulder” and something Dr. Allen ruled out of his area of “evaluation” and “expertise.”

Although Freese clearly possessed these pre-existing mental and physical conditions, none prevented him from playing baseball prior to the work injury. Consequently, extensive findings are needed in order for the ALJ to accept the 10% impairment rating assessed by Dr. Allen as support for the finding Freese had a 10% pre-existing active impairment. As previously mentioned, the ALJ cannot rely upon Dr. Allen's statement that, 5% (one-half of the 10% impairment rating) is due to Freese's inability to play baseball as the basis for finding the 5% impairment is not work-related since Dr. Allen did not offer an opinion as to the cause of Freese's inability to play baseball.

Further, the ALJ erred in determining whether Freese is entitled to vocational rehabilitation benefits under KRS 342.710(3) which reads as follows:

An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. **When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, he or she shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to suitable employment.** In all such instances, the administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The administrative law judge on his or her own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him or her fit for a remunerative occupation. Upon receipt of such report, the administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the

employee to suitable, gainful employment, be provided at the expense of the employer or its insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods. (emphasis added).

The ALJ's analysis as to Freese's entitlement to vocational rehabilitation is insufficient, and she invoked an incorrect standard in determining Freese is not entitled to those benefits. Further, nothing in the December 12, 2025, Order addresses Freese's entitlement to vocational rehabilitation benefits.

Wilson v. SKW Alloys, Inc., 893 S.W.2d 800, 802 (Ky. App. 1995) sets forth the standard to be applied in determining entitlement to vocational rehabilitation benefits. The Kentucky Court of Appeals explained:

KRS 342.710(1) states that “[o]ne of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment.” Further, KRS 342.710(3) provides that the gainful employment to which the injured employee that is eligible for rehabilitation is to be restored must be suitable employment. Clearly, a purpose of workers' compensation legislation is to restore the injured worker as soon as possible and as near as possible to a condition of self-support as an able-bodied worker.

Workers' Compensation was developed not just to compensate a worker who has been injured on the job, but also to enable the worker to reenter the job market and become employed again in a position as near as possible in pay and status to the one the claimant has been forced by injury to leave.

[citations omitted]

In light of the spirit and purpose of the workers' compensation statutes, we hold that “work for which an [employee] has previous training or experience” must be suitable employment. By “suitable employment” we mean work which bears a reasonable relationship to an individual's experience and background, taking into consideration the type of work the person was doing at the time of injury, his age and education, his income level and earning capacity, his vocational aptitude, his mental and physical abilities and other relevant factors both at the time of the injury and after reaching his post-injury maximum level of medical improvement. It would be unreasonable and unconscionable to force an injured worker who had, by working conscientiously over the years, advanced to a responsible, well-paying, albeit unskilled position to start over at an unskilled job paying the minimum wage by denying him the rehabilitation benefits needed to qualify him for a skilled job with earnings comparable to his prior employment. ...

Here, the ALJ did not, in any fashion, address whether Freese is unable to perform work for which he has previous training or experience. In section V on page 21 of her opinion, the ALJ indicated the correct standard of whether an employee is capable of performing work for which he/she has training or experience as a result of a work-related accident. However, in the next and last sentence of her analysis, the ALJ found Freese did not establish he is unable to return to work as a result of the work injury. That is not the standard. In order to be entitled to vocational rehabilitation benefits, Freese was not required to establish he was unable to return to work as a result of the work injury. Rather, he only must demonstrate an inability to perform work for which he had previous training and experience as a result of the work-related accident.

Citing to Wilson v. SKW Alloys, Inc., *supra*, the Supreme Court in Kindred Healthcare v. Harper, 642 S.W.3d 672 (Ky. 2022), explained:

KRS 342.710 specifically relates to rights, duties, and procedures relating to vocational rehabilitation services. “KRS 342.710(1) makes it clear that one of the primary purposes of Chapter 342 is the physical and vocational rehabilitation of injured workers so they can return to gainful employment.” *Haddock v. Hopkinsville Coating Corp.*, 62 S.W.3d 387, 391 (Ky. 2001). Regarding the latter, KRS 342.710(3) provides:

When as a result of the injury [the injured worker] is unable to perform work for which he or she has previous training or experience, he or she shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to suitable employment.

Thus, “a factual finding concerning whether a worker is unable to perform work for which he [or she] has previous training or experience is mandatory” and prerequisite to adjudicating appropriateness of vocational rehabilitation services. *Haddock*, 62 S.W.3d at 391 (citation omitted).

“Suitable employment” has been defined to mean:

Work which bears a reasonable relationship to an individual's experience and background, taking into consideration the type of work the person was doing at the time of injury, his age and education, his income level and earning capacity, his vocational aptitude, his mental and physical abilities and other relevant factors both at the time of injury and after reaching his post-injury maximum level of medical improvement.

SKW Alloys, Inc., 893 S.W.2d at 802. By effectuating a return to a pre-injury level of self-reliance, the statute not only achieves the primary legislative purpose of diminishing individual financial hardship but also, logically, reduces significant private sector and governmental expenditures incurred from dependence on income, subsistence, medical, and other social programs, and thereby spurs broader economic

prosperity and greater business investment throughout the Commonwealth.

Id. at 680-681.

The holding in Kindred Healthcare v. Harper, supra, is on point.

There, the Supreme Court enunciated the applicable standard.

IV. KRS 342.710 and KRS 342.125

KRS 342.710 specifically relates to rights, duties, and procedures relating to vocational rehabilitation services. “KRS 342.710(1) makes it clear that one of the primary purposes of Chapter 342 is the physical and vocational rehabilitation of injured workers so they can return to gainful employment.” *Haddock v. Hopkinsville Coating Corp.*, 62 S.W.3d 387, 391 (Ky. 2001). Regarding the latter, KRS 342.710(3) provides:

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...

We agree and are convinced the legislature intended no time limitation relative to addressing vocational rehabilitation services under KRS 342.710(3), intended no requirement that such benefits be sought during the pendency of the original claim, and intended no bar to seeking such benefits in a post-award reopening.

...

Further, whether raised during the pendency of an original claim or in a post-award reopening, KRS 342.710(3) mandates “[i]n all such instances” in which the injured worker has been found unable “to perform work for which he or she has previous training or experience” the ALJ “shall inquire” whether such services “have been voluntarily offered and accepted.”

...

On remand, the ALJ must again revisit Freese’s entitlement to vocational rehabilitation benefits regardless of whether she determines he is permanently totally disabled or partially disabled in accordance with the views expressed herein.

Finally, we are compelled to point out that since we have vacated the ALJ’s decision of November 12, 2025, Opinion, Award, and Order and the

December 12, 2025, Order overruling the Petition for Reconsideration, both are nullified and voided. This was enunciated by the Supreme Court in Hampton v. Flav-O-Rich Dairies, 489 S.W.3d 230, 234 (Ky. 2016):

Next, we note that, when the Board vacates an ALJ's opinion, it “nullif[ies] or cancel[s]; make[s] void; invalidate[s]” that opinion. Black's Law Dictionary (10th ed.2014). When the Board vacated the ALJ's opinion, that opinion ceased to exist, and Hammond was divested of his permanent total disability award. Therefore, under what we believe to be the proper test from *Davis*, the Board's opinion was final and appealable.

Thus, the ALJ is free to decide this case without regard to her previous decision, and this is precisely what we are asking her to do on remand. The Supreme Court in Armstrong Coal Company, Inc. v. Piper, 2020-SC-0226-WC, rendered March 25, 2021, Designated Not To Be Published, reiterated this point, explaining as follows:

We find appropriate the ALJ's factual finding on remand because the entire permanent-partial disability award was vacated, and Piper's pre-existing condition was at issue on remand. Armstrong argues that the order “vacating in part” only nullified the specific finding of the 16% impairment rate. But the Board's remand order stated that the ALJ may make “additional findings, a new determination of an impairment rating subject to the directive that the impairment rating had to be one of three from the record from a physician, and a new award for income benefits.” The Board's language is clear that a new determination of benefits was the issue on remand. The Court of Appeals' language similarly made clear that a new determination of benefits would be at issue on remand, and Armstrong did not appeal that statement. [footnote omitted] Therefore, the entire award of permanent-partial disability was vacated to be considered anew on remand to the ALJ.

Slip Op. at 4.

Accordingly, the November 12, 2025, Opinion, Award, and Order and the December 12, 2025, Order overruling the Petition for Reconsideration are **VACATED**. This claim is **REMANDED** to the ALJ for a renewed Analysis, Order, and Award in accordance with the views expressed herein.

ALL CONCUR.

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