Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 17, 2024

CLAIM NO. 201387011

FATHER MALONEY'S BOYS HAVEN, INC. PETITIONER

VS. **APPEAL FROM HON. STEPHANIE L. KINNEY, ADMINISTRATIVE LAW JUDGE**

FRED STONER, JR;
NORTON AUDOBON HOSPITAL;
OHIO VALLEY PAIN INSTITUTE;
KATHERINE HARRELL, NP & AARON COMPTON, MD &
LOUISVILLE ORTHOPAEDIC CLINIC AND SPORTS REHAB;
BLUEGRASS HEALTH PSYCHOLOGY, INC.;
KORT PHYSICAL THERAPY-SIX MILE;
DR. MICHAEL CASNELLIE, and
HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

MILLER, Member. Father Maloney's Boys Haven, Inc. ("Boys Haven") appeals from the November 20, 2023 Opinion, Award, and Order; the December 19, 2023 Order on Petition for Reconsideration; and the January 18, 2024 Order rendered by Hon. Stephanie L. Kinney, Administrative Law Judge ("ALJ"). The ALJ awarded temporary total disability ("TTD") benefits and found Boys Haven is entitled to a credit for previously paid TTD benefits. The ALJ did not permit an offset for light duty wages pursuant to KRS 342.730(7), finding Boys Haven failed to offer evidence of net wages as required by the statute. The ALJ also awarded medical expenses. Permanent indemnity benefits were not at issue as the claimant reached his 70th birthday during the time frame in which TTD benefits were awarded.

Boys Haven appeals on two issues. It maintains that Fred Stoner, Jr's ("Stoner") return to subsequent employment should have terminated his entitlement to TTD benefits. It also argues if TTD benefits are permitted, the ALJ erred in not applying an offset/credit for Stoner's wages during the overlapping benefits period he received TTD. For reasons set forth below, we affirm.

BACKGROUND

Stoner was born on February 2, 1953. Stoner filed a Form 101 on June 16, 2014, alleging back left hip and knee injuries occurring on January 23, 2013 and a back and left hip injury occurring on March 27, 2013 while employed by Boys Haven. On October 22, 2014, Stoner filed a motion to cancel the final hearing and continue the claim because he was still undergoing treatment with Dr. Michael Casnellie for his lumbar condition. The ALJ sustained his motion on November 13, 2014.

On February 28, 2019, Stoner moved to remove his claim from abeyance and bifurcate the claim on the issue of reasonableness and necessity of an L4-S1 decompression and fusion surgery recommended by Dr. Casnellie. The ALJ sustained the motion on March 14, 2019.

Boys Haven filed a Form 112 medical dispute on April 19, 2019, contesting its responsibility for treatment rendered at Norton Audubon Hospital. The Form 112 listed the contested treatment as "Bill and records for foot and ankle fusion" received on March 20, 2019. Stoner filed a response to Boys Haven's medical dispute stating his ankle/foot injury was unrelated to his work there and requested the issue be dismissed.

The December 2, 2019 Benefit Review Conference Order indicates TTD benefits and "Injury as defined by the Act, work-relatedness/causation & preexisting" were at issue in the claim.

Regarding Boys Haven's medical dispute, the ALJ stated in her February 13, 2020 Interlocutory Opinion that because Plaintiff agreed the foot/ankle surgery is unrelated to the work injury, the issue appears moot. On the threshold issues and compensability of the lumbar fusion surgery, the ALJ found Stoner suffered an acute work injury to the lumbar spine on January 23, 2013 and the L4-S1 fusion surgery is compensable.

Regarding entitlement to TTD benefits, the ALJ reviewed Livingood v. Transfreight, LLC, et, al., 467 S.W.3d 249 (Ky. 2015) and also cited Trane Commercial Systems v. Tipton, 481 S.W.3d 800 (Ky. 2016). The ALJ quoted directly from Trane stating in relevant part, *verbatim*:

> Therefore, absent extraordinary circumstances, an award of TTD benefits is inappropriate if an injured employee has been released to return to customary employment, i.e. work within her physical restrictions and for which she has the experience, training, and education; and the employee has actually returned to employment. *Id*.

At that point Stoner had not reached maximum medical improvement ("MMI") because he had yet to undergo the recommended L4-S1 fusion and did not retain the capacity to perform his pre-injury work based on his neurosurgeon's work restrictions. The ALJ awarded TTD benefits in the sum of $485.01/week beginning on April 3, 2013 until Stoner reached MMI or was released to return to work consistent with his training, experience and education. She stated Boys Haven is "entitled to a credit for post-injury wages under KRS 342.730(7)." The ALJ placed the claim in abeyance until Stoner reached MMI.

Boys Haven filed numerous medical disputes after the February 13, 2020 Interlocutory Opinion. Stoner also reached his 70th birthday and the parties agree he is not entitled to any indemnity benefits following February 3, 2023. The parties stipulated TTD benefits were paid from April 2, 2013 through March 31, 2018 at the rate of $485.01 per week; from April 1, 2018 through December 31, 2018 at the weekly rate of $197.01; and from January 1, 2019 through February 3, 2023 at the rate of $485.01 per week.

At the time of the ALJ's November 20, 2023 Opinion, Award, and Order, the only remaining issues were the medical disputes filed by Boys Haven; TTD benefits during a period in which Stoner worked part-time for a different

employer, Centerstone; and whether Boys Haven is entitled to an offset against wages received pursuant to KRS 342.730(7).

Stoner testified by deposition on September 23, 2014 and at the Final Hearing on September 28, 2023. Stoner described his job at Boys Haven as a senior youth counselor, requiring him to take residents to activities, do groups with residents, cook, distribute medication, and teach residents social skills. The job also necessitated performing safe crisis management and restraint techniques on youth. Stoner testified these holds require bending, twisting, squatting, kneeling, and sometimes taking youth to the floor. He described this as an essential part of the job on a weekly basis.

Stoner also described his job at Centerstone, which he began after his employment with Boys Haven. He worked at Centerstone from April 30, 2018 until December 29, 2018, 24 hours per week earning $12.50 per hour. It required him to wait for an intake, go downstairs and pick them up, escort them upstairs on the elevator, do a search, turn them over to the nurse, do groups, and take them to lunch and breakfast. Stoner stated Dr. Casnellie placed him on light duty work restrictions. He was unable to do the physical work at Centerstone and had a lot of help from co-workers.

When asked if he thought he could work anywhere on a regular, sustained basis, Stoner replied, "No." He stated he struggled with physical movement. He said the job required him to be, "Basically on my feet over a period of time, eight hours a day, five days a week, dealing with the spasms, muscle cramps,

low back, the anxiety." When asked if he had experienced improvement regarding his back, hip, or leg pain, Stoner replied, "No."

Regarding the issues now on appeal, the ALJ stated in her November 20, 2023 Opinion Award and Order, *verbatim*:

> KRS 342.730 (7) allows the employer an offset for light duty wages against temporary total disability benefits during periods wherein the employee returned to an alternative job position. The offset amount includes the employee's gross income minus applicable taxes during the period of light duty work. The ALJ reviewed the limited evidence presented on this issue. The ALJ concludes the evidentiary record does not contain evidence of Stoner's net earnings while working for Centerstone. The ALJ fully acknowledges Father Maloney's filing of Centerstone's personnel records. However, Father Maloney's did not establish the net wages. The statute is clear and the ALJ is unable to determine the appropriate offset without evidence addressing Stoner's net wages while working for Centerstone.

The ALJ found Stoner is entitled to TTD benefits at the weekly rate of $485.01 from April 2, 2013 through February 3, 2023, without any offset, but granted Boys Haven credit for previously paid TTD benefits during this period.

Boys Haven filed a Petition for Reconsideration, arguing the ALJ failed to make necessary findings of fact regarding whether Stoner is entitled to TTD benefits from April 30, 2018 to December 29, 2018, when he returned to part-time work at Centerstone, and requested additional findings on this issue. It also argued the ALJ erred in finding Boys Haven is not entitled to an offset for wages paid during the period of TTD when Stoner was working part-time. Boys Haven requested the ALJ reconsider the decision, or alternatively explain as to whether Stoner bears the burden of proof under 342.730(7).

Stoner also filed a Petition for Reconsideration to correct typographical errors in the ALJ's Opinion. The ALJ issued an Order on December 19, 2023, sustaining Stoner's Petition on Reconsideration. She issued a second Order addressing Boys Haven's Petition that same day. She sustained the Petition in that she provided the following additional findings of fact, *verbatim*:

> First, the Defendant requests the ALJ to make additional findings addressing whether Plaintiff's work from April 1, 2018, through December 31, 2018, constituted a return to customary work. Defendant paid temporary total disability benefits at a reduced weekly rate of $197.01 from April 1, 2018, through December 31, 2018.
>
> KRS 342.0011(11) provides a two-prong test for entitlement for temporary total disability benefits. Under the statutory definition, a claimant must not have reached maximum medical improvement and not reached a level of improvement permitting a return to employment.
>
> In GE Appliances, A Haier Co. v. Jacobs, (issued by the WCB on July 8, 2022) an ALJ awarded temporary total disability benefits during a period wherein claimant performed light duty work. However, the ALJ awarded a credit for wages under KRS 342.730(7). The WCB vacated the ALJ's decision and remanded the claim for a determination of the claimant's entitlement to temporary total disability benefits under the tenets articulated in Trane Commercial Systems v. Tipton, 481 S.W.3d 800 (Ky. 2016).
>
> Under Trane, the Kentucky Supreme Court held that absent extraordinary circumstances, an award of temporary total disability benefits is inappropriate if an injured employee has been released to return to customary employment, i.e. work within her physical restrictions and for which she has experience, training, and education.
>
> Plaintiff worked for Defendant as a senior youth counselor at the time of the work accident on January

23, 2013. Plaintiff worked as a counselor in Kelly Cottage. He worked with approximately 18 boys that posed a safety risk due to behavior problems. Plaintiff worked 40 to 50 hours per week. Plaintiff performed medication counts, cleaning, and various tasks to ensure the cottage ran smoothly. He also performed safety crisis management to manage disruptive youths.

Plaintiff obtained employment at Centerstone as a technician in 2018. This was part-time work. Plaintiff escorted adult residents in this facility. Plaintiff's past employment history included work as a healthcare worker for Ten Broeck Hospital, case worker/van driver for The Healing Place, a cashier for various liquor stores, a machine operator, a janitor at Presbyterian Community Center, assembly line worker at American Advertising, assembly line worker at Fawcett Printing, taxi driver for Checker Cab, maintenance worker at Metro Parks, and forklift driver/assembly line worker at Promotional Packaging.

This ALJ considered the facts in this case in tandem with the applicable regulation and case law. After doing so, this ALJ finds Plaintiff's work at Centerstone did not constitute a return to his customary employment under Trane. The ALJ notes Plaintiff's prior work as a healthcare worker and case worker. The ALJ concludes Plaintiff's had prior experience and training to work with patients. Thus, the work performed at Centerstone was performed within his restrictions, prior to reaching maximum medical improvement, and consistent with Plaintiff's experience and training. The work at Centerstone was clearly less physically demanding and done only on a part-time basis. This ALJ finds a return to only part-time work is not a return to customary employment and constitutes an extraordinary circumstances under Trane.

Secondly, Defendant petitions the ALJ's finding regarding an offset for light duty work performed from April 1, 2018, through December 31, 2018. KRS 342.730 (7) allows the employer an offset for light duty wages against temporary total disability benefits during periods wherein the employee returned to an alternative job position. The offset amount includes the employee's gross income minus applicable taxes during the period

> of light duty work. Defendant argues the ALJ misinterpreted KRS 342.730(7) and impermissibly shifted the burden of proof to Defendant. Defendant also argues Plaintiff's testimony and personnel records indisputably establish the gross income aspect.
>
> In its brief, Defendant argued:
>
> The evidence, including the Centerstone records and the Plaintiff's testimony, shows that he worked 24 hours per week from April 30, 2018 through December 29, 2018, earning $12.50 per hour. This totals $300 per week for 34.8571 weeks, or $10,457.14. Father Maloney's asserts that it is entitled to this credit against any overlapping award of TTD benefits.
>
> The evidence, as outlined by Defendant, does not provide an amount after a deduction of taxes. Additionally, the party requesting the credit bears the burden. American Standard v. Boyd, 873 S.W.2d 822 (Ky 1994); Millersburg Military Institute v. Puckett, 260 S.W.3d 339 (Ky. 2008); and Cook v. Kroger,(issued by WCB on October 20, 2023).

The ALJ issued a Final Order on January 18, 2024 but this solely corrected a typographical mistake.

Boys Haven now appeals on two issues. It first argues Stoner's return to part-time work does not constitute an "extraordinary circumstance" and therefore did not justify the continued payment of TTD benefits. It contends Stoner's work at Centerstone constituted a return to customary employment thus, Stoner was not entitled to TTD benefits during his employment.

Second, Boys Haven argues the ALJ erred in not applying an offset for wages paid during the overlapping period of TTD benefits from April 2018 through December 2018. It calculated Stoner's wages from April 30, 2018, through December 29, 2018 totaled $10,457.14. Boys Haven asserts the evidence filed and Stoner's

testimony of hours worked and his hourly rate were sufficient for the ALJ to apply the offset for wages pursuant to KRS 342.730(7), even though there was no evidence of the "applicable taxes" or net wages paid.

ANALYSIS

As the claimant in a workers' compensation proceeding, Stoner had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Stoner was successful in that burden, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal.

McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Boys Haven first argues the ALJ erred in awarding TTD benefits while Stoner worked part-time at Centerstone from April 30, 2018 to December 29, 2018. TTD is statutorily defined in KRS 342.0011(11)(a) as "the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment[.]" In Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed that until MMI is achieved, an employee is entitled to TTD benefits as long as he remains disabled from his customary work or the work he was performing at the time of the injury. In Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000), the Kentucky Supreme Court explained, "It would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but not the type that is customary or that he was performing at the time of his injury." Thus, a release "to perform minimal work" does not constitute a "return to work" for purposes of KRS 342.0011(11)(a).

In Livingood v. Transfreight, LLC, et, al., supra, the Supreme Court declined to hold a claimant is entitled to TTD benefits so long as he or she is unable to perform the work performed at the time of the injury. The Court stated, "... we reiterate today, *Wise* does not 'stand for the principle that workers who are unable to perform their customary work after an injury are always entitled to TTD.'" Id. at 254. Most recently in Trane Commercial Systems v. Tipton, supra, the Supreme

Court clarified when TTD benefits are appropriate in cases where the employee returns to modified duty. The Court stated:

> We take this opportunity to further delineate our holding in *Livingood,* and to clarify what standards the ALJs should apply to determine if an employee "has not reached a level of improvement that would permit a return to employment." KRS 342.0011(11)(a). Initially, we reiterate that "[t]he purpose for awarding income benefits such as TTD is to compensate workers for income that is lost due to an injury, thereby enabling them to provide the necessities of life for themselves and their dependents." *Double L Const., Inc.,* 182 S.W.3d at 514. Next, we note that, once an injured employee reaches MMI that employee is no longer entitled to TTD benefits. Therefore, the following only applies to those employees who have not reached MMI but who have reached a level of improvement sufficient to permit a return to employment.
>
> As we have previously held, "[i]t would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but not the type [of work] that is customary or that he was performing at the time of his injury." Central Kentucky Steel v. Wise, 19 S.W.3d at 659. However, it is also not reasonable, and it does not further the purpose for paying income benefits, to pay TTD benefits to an injured employee who has returned to employment simply because the work differs from what she performed at the time of injury. Therefore, absent extraordinary circumstances, an award of TTD benefits is inappropriate if an injured employee has been released to return to customary employment, i.e. work within her physical restrictions and for which she has the experience, training, and education; and the employee has actually returned to employment. We do not attempt to foresee what extraordinary circumstances might justify an award of TTD benefits to an employee who has returned to employment under those circumstances; however, in making any such award, an ALJ must take into consideration the purpose for paying income benefits and set forth specific evidence-based on reasons why an award of TTD benefits in addition to the employee's wages would forward that purpose.

Id. at 807.

In determining Stoner's entitlement to TTD benefits, the ALJ was required to provide an adequate basis to support his/her 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., 634 S.W.2d 440 (Ky. App. 1982). While an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result, he is required to 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 526 (Ky. 1973).

The ALJ made specific findings regarding the award of TTD benefits while Stoner was working part-time at Centerstone in her Order addressing Boys Haven's Petition for Reconsideration. The ALJ detailed Stoner's duties at Boys Haven, as well as his duties at Centerstone and found his work at Centerstone was "clearly less physically demanding and only done on a part-time basis." She found Stoner was not at MMI and his part-time work at Centerstone did not constitute a return to customary employment. Stoner's job at Boys Haven involved regular use of physical restraints, whereas his job at Centerstone involved escorting patients. Stoner testified the work was less physically demanding than the job where he was injured. The ALJ addressed Boys Haven's request for additional findings quite thoroughly and found a return to only part-time work that is not his customary employment

constitutes an extraordinary circumstance under Trane. We also note Stoner's hourly rate of pay at Boys Haven was $14.43, while he made less, $12.50 per hour, at Centerstone. The ALJ's findings are supported by substantial evidence contained in the record and she sufficiently explained her reasoning. Accordingly, we affirm on this issue.

Boys Haven also argues it is entitled to a credit against TTD benefits pursuant to KRS 342.730(7). The Board fully appreciates the fundamental purpose of TTD benefits replacing lost wages, and therefore, when an employer permits alternative work for an employee before they reach MMI, a credit for wages paid to offset TTD benefits is sanctioned by KRS 342.730(7), effective July 14, 2018, which states as follows:

> Income benefits otherwise payable pursuant to this chapter for temporary total disability during the period the employee has returned to a light-duty or other alternative job position shall be offset by an amount equal to the **employee's gross income minus applicable taxes** during the period of light-duty work or work in an alternative job position. (emphasis added).

The party seeking the credit, in this case, Boys Haven, bears the burden of establishing a proper legal basis for the request. American Standard v. Boyd, 873 S.W.2d 822 (Ky. 1994); Millersburg Military Institute v. Puckett, 260 S.W.3d 339 (Ky. 2008).

In Whitaker v. Irvine Nursing & Rehabilitation, Claim. No. 2019-86691, rendered June 20, 2022, the ALJ awarded the employer credit for wages paid during the period during which TTD benefits were awarded. This Board reversed, as the employer only introduced evidence of post-injury gross wages, not wages **minus**

applicable taxes. In its response brief to this Board, Irvine Nursing suggested "it could 'easily provide' the necessary information so that the proper credit can be calculated." However, the Board stated, "additional proof at this stage of the litigation is tantamount to a 'second bite at the apple' and is inappropriate." *See* Nesco v. Haddix, 339 S.W.3d 465, 472 (Ky. 2016). The correct time to have introduced evidence of Whitaker's post-injury wages less applicable taxes was during the pendency of the litigation before the ALJ issued the final order and award. Irvine Nursing failed to produce the appropriate wage records. The Board also clearly set forth the requirement that the employer must present evidence of the employee's gross income minus applicable taxes during the period of light duty or modified work in General Motors v. Smith, Claim No. 2022-01035, rendered February 23, 2024 (not yet final).

The Court of Appeals recently had the opportunity to interpret KRS 342.730(7) in Dart Container Co., Inc. v. Bailey, 2024 Ky. App. Unpub. LEXIS 249 (Ky. App. April 19, 2024) and adopted language from the Board: "[W]e find nothing ambiguous within the explicit language of KRS 342.730(7). KRS 342.730(7), as amended, is clear. The credit against income benefits for post-injury wages encompasses the 'employee's gross income minus applicable taxes.'" (emphasis in original).

In Bailey, the employer failed to timely produce the appropriate wage records showing the net wages paid. The ALJ awarded the offset; however the Board reversed, holding Dart's failure to produce proof of net wages until after the entry of

the award prevented it from obtaining an offset. The Court of Appeals affirmed the Board.

The present case, however, differs from Bailey, Whitaker, and Smith. In those cases, the defendant-employers had access to the wage information, as the plaintiffs continued to work for the same employer post-injury. Here, Stoner did not return to work for Boys Haven and went to work for another employer, Centerstone. 803 KAR 25:010 Sec. 7 addresses applications for resolution of a claim and includes provisions on obtaining wage information. Sec. 7(2)(e)2 states in relevant part:

> 2. For plaintiff, if requested by defendant, wage information and wage records for all wages earned by plaintiff, if any, subsequent to the injury, including any wages earned as of the date of service of the notice of disclosure while employed for any employer other than one (1) for whom he or she was employed at the time of the injury; Plaintiff may provide a release for the information or records in lieu of providing those records.
> …
> 4. For plaintiff, wage information for all wages earned, if any, for any employment for which the plaintiff was engaged concurrent to the time of the injury on a Form AWW-CON;
> …
> 8.b. If the plaintiff has earned wages for a defendant after the injury that is the subject of the litigation, the defendant shall provide post-injury wage information records on a Form AWW-POST.

The administrative regulations recognize there is a distinction between those wage records controlled by the employer where the injury occurred and different employers with whom the employee worked concurrently or subsequently to the injury.

On September 27, 2023, Boys Haven filed Stoner's personnel records from Centerstone. The records state Stoner was an hourly worker making $12.50 per

hour but do not contain information regarding his gross or net wages from his paychecks. Boys Haven contends it subpoenaed the wage information and filed what it received. Boys Haven clearly did not offer proof of net wages as required by KRS 342.730(7) but it was not privy to that information, so the question here is whether the burden shifted to Stoner to provide the records. Boys Havens states in its brief it subpoenaed the information, but the subpoena is not part of the evidentiary record. Further, there were no requests for production or motions to compel the records or wage statements from Centerstone or Stoner. Boys Haven posits the burden of proof shifts to Stoner to prove the applicable taxes taken from his wages at Centerstone. No legal authority is tendered to support that position and the Board rejects it.

The ALJ ruled against the party asserting the credit and who bore the burden of proof. Therefore, the question on appeal is whether compelling evidence requires a contrary result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The only proof supplementing the Centerstone personnel records which showed Stoner's hourly rate is his own testimony that he worked 24 hours per week, earning $12.50 per hour from April to December 2018. We cannot say this evidence establishes Stoner's "gross income minus applicable taxes" to compel a finding in Boys Haven's favor.

The ALJ did not abuse her discretion and the applicable precedent in failing to award an offset. Thus, we affirm on this issue.

Accordingly, the November 20, 2023 Opinion, Award, and Order; December 19, 3023 Order on Petition for Reconsideration; and January 18, 2024 Order, rendered by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER: **LMS**

HON JOSHUA W. DAVIS
HON BRIAN W. DAVIDSON
401 S. FOURTH ST., STE 2200
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT: **LMS**

HON TAMARA TODD COTTON
HON STEPHANIE N. WOLFINBARGER
640 S. FOURTH ST., STE 400
LOUISVILLE, KY 40202

RESPONDENTS

NORTON AUDUBON HOSPITAL **USPS**
DEPT. 86100 PO BOX 36370
LOUISVILLE, KY 40233-6370

BLUEGRASS HEALTH PSYCHOLOGY, INC. **USPS**
2220 YOUNG DRIVE
LEXINGTON, KY 40505

OHIO VALLEY PAIN INSTITUTE **USPS**
1169 EASTERN PKWY, STE 400
LOUISVILLE, KY 40229

DR. MICHAEL CASNELLIE **USPS**
3615 NEWBURG ROAD
LOUISVILLE, KY 40218

LOUISVILLE ORTHOPAEDICS CLINIC AND SPORTS REHAB **USPS**
AARON COMPTON, MD

KATHERINE HARRELL, NP
4130 DUTCHMANS LANE, STE 300
LOUISVILLE, KY 40207

KORT PHYSICAL THERAPY-SIX MILE **USPS**
3509 SOUTH HURSBOURNE LANE
LOUISVILLE, KY 40229

ADMINISTRATIVE LAW JUDGE: **LMS**

HON STEPHANIE L. KINNEY
MAYO-UNDERWOOD BLDG
500 MERO ST, 3rd FLOOR
FRANKFORT, KY 40601