Commonwealth of Kentucky
Workers' Compensation Board

OPINION ORIGINALLY ENTERED: April 2014
OPINION WITHDRAWN: MAY 1, 2014
OPINION RE-ENTERED: MAY 1, 2014

CLAIM NO. 201200800

SOUTHERN COAL CORP./VIRGINIA FUEL CORP. PETITIONER

VS. **APPEAL FROM HON. JONATHAN WEATHERBY, ADMINISTRATIVE LAW JUDGE**

DAVID ALLEN STEPHENS
and HON. JONATHAN WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING
* * * * * *

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

STIVERS, Member. Southern Coal Corp./Virginia Fuel Corp. ("Virginia Fuel") seeks review of the October 21, 2013, order and award rendered on remand by Hon. Jonathan Weatherby, Administrative Law Judge ("ALJ"). The ALJ found David Allen Stephens ("Stephens") sustained cumulative trauma injuries in the course of his employment with

Virginia Fuel and awarded permanent partial disability ("PPD") benefits and medical benefits. Virginia Fuel also appeals from the December 6, 2013, order denying its petition for reconsideration.

Stephens alleged cumulative trauma injuries to his right shoulder and both hands (carpal tunnel syndrome) due to work activity in the employment of Virginia Fuel and his predecessor employers. Significantly, Stephens failed to allege a date of manifestation. Stephens later filed a motion to amend the Form 101 to allege an "alternative injury date of January 28, 2012," the date Virginia Fuel asserted it last employed Stephens. He also moved to amend the November 7, 2012, benefit review conference ("BRC") order to reflect an alternative date of injury of January 28, 2012, and to include waiver, estoppel, and implied agency as contested issues. In separate orders dated November 30, 2012, the ALJ sustained Stephens' motion to amend the Form 101 and motion to amend the BRC order.

Stephens primarily relied upon the Form 107 medical report and attached addendum of Dr. Robert Hoskins dated July 8, 2012, generated as a result of an independent medical evaluation ("IME") performed on June 4, 2012. Virginia Fuel relied primarily on the medical report of Dr. Timothy Kriss, the medical report and deposition of Dr.

Ronald Burgess, and other medical records which revealed Stephens had been diagnosed with bilateral carpal tunnel syndrome and upper extremity problems prior to the alleged cumulative trauma injuries of January 28, 2012, and June 13, 2012.

Stephens worked for Virginia Fuel from August 2011 until January 28, 2012, as a mechanic and repairman. He also performed some maintenance work. Stephens denied sustaining an injury on January 28, 2012. His employment with Virginia Fuel terminated on January 28, 2012, due to a layoff of over 200 employees. Stephens testified that during the period from August 2011 to January 28, 2012, seventy-five percent of his employment was spent in Kentucky and twenty-five percent in Virginia. Even though the record revealed he was an employee of A & G Coal Corporation ("A & G"), Stephens alleged he returned to work for Virginia Fuel from June 3, 2012, to June 13, 2012. During this period in June, Stephens worked exclusively in Virginia. Because Stephens did not assert a claim against A & G, Virginia Fuel filed a motion to dismiss asserting he was not its employee between June 3, 2012, and June 13, 2012. Rather, it contended Stephens was an employee of A &

G, a completely separate entity.[1] In an order dated October 11, 2012, the ALJ ordered Virginia Fuel's motion to dismiss would be passed until the final hearing. In the November 29, 2012, hearing order the ALJ wrote as follows: "defendant's motion will be decided as an issue."

In the initial opinion and order of January 28, 2013, the ALJ found Stephens was alleging "a cumulative trauma injury wherein his last employer was Virginia Fuel on June 13, 2012." He noted Stephens indicated he had been laid off in January 2012 and called back to work in June 2012 and given the choice to work in either Virginia or Kentucky. The ALJ found it was undisputed Stephens worked entirely in the state of Virginia after being called back in June 2012, the employment paperwork was executed entirely in Virginia, and no part of this period of employment took place in Kentucky. Consequently, the ALJ found Stephens did not meet the criteria for extraterritorial jurisdiction as defined in KRS 342.670(1). The ALJ also concluded estoppel and waiver did not apply and the claim was barred due to lack of jurisdiction.

[1] The testimony revealed Virginia Fuel was a subsidiary of Justice Companies and A & G was a subsidiary of Southern Coal Corporation. Justice Companies and Southern Coal Corporation were the subsidiaries of Justice Corporation. A & G and Virginia Fuel were separate companies with separate federal and state tax identification and mine identification numbers and operated independently.

Based on his findings of fact and conclusions of law, the ALJ stated all other issues were moot and dismissed Stephens' claim. In an opinion rendered July 15, 2013, we vacated and remanded stating as follows:

> Given these contested issues, the ALJ should have first determined the entity that employed Stephens in June 2012. Instead, the ALJ based his decision to dismiss Stephens' claim on the fact he worked entirely in Virginia after being called back to work in June, his employment paperwork was executed in Virginia, and none of his employment during that period took place in Kentucky. The ALJ never made a finding Stephens was employed during that period either by A & G or Virginia Fuel. Thus, we are unable to determine which entity the ALJ believed was Stephens' employer in June 2012. In the findings of fact, the ALJ stated it was undisputed Stephens worked entirely in Virginia after being called back to work, signaling he may have believed Stephens worked for Virginia Fuel. However, the ALJ went on to reject Stephens' contention estoppel and waiver applied, thus indicating he may have believed A & G was Stephens' employer. From the ALJ's findings we are unable to determine which entity the ALJ concluded was Stephens' employer in June 2012.
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> In that same vein, the ALJ never addressed the issue of implied agency which he identified as a contested issue in his November 30, 2012, order, allowing the November 7, 2012, BRC order to be amended. Similarly, the ALJ did not address Virginia Fuel's motion to dismiss in which it argued Stephens was not an employee of

Virginia Fuel in June 2012. Therefore, the January 28, 2013, decision and the February 25, 2013, order of the ALJ must be vacated and this matter remanded to the ALJ for a determination as to Stephens' employer in June 2012. After determining Stephens' employer, the ALJ must address Virginia Fuel's motion to dismiss as well as the implied agency issue raised by Stephens.

The ALJ's decision regarding Stephens' employer in June 2012 must be supported by sufficient findings of fact. If the ALJ determines Virginia Fuel was Stephens' employer, then he must resolve Stephens' claim of a cumulative trauma manifesting in June 2012. If the ALJ determines A & G was Stephens' employer he must also address Virginia Fuel's motion to dismiss and, as previously noted, Stephens' assertion of implied agency.

In addition, we agree with Stephens the claim must also be remanded for the ALJ to resolve Stephens' claim for a cumulative trauma injuries culminating with the termination of his employment with Virginia Fuel in January 2012. The ALJ sustained Stephens' motion to amend his Form 101 to allege an alternative injury date of January 28, 2012, the last date Virginia Fuel agreed Stephens was employed by it. [footnote omitted] Stephens' testimony, which appears to be corroborated by Collett, establishes when he worked for Virginia Fuel in the latter part of 2011 into early January 2012, he worked a substantial amount of time in Kentucky. Stephens estimated seventy-five percent of his employment was in Kentucky and twenty-five percent was in Virginia. This testimony certainly indicates if Stephens

sustained cumulative trauma injuries during the latter part of 2011 through January 28, 2012, they occurred in Kentucky. Therefore, the ALJ must determine whether Stephens sustained cumulative trauma injuries during the course of his employment with Virginia Fuel and whether the injuries occurred in Kentucky. If the ALJ determines Stephens sustained cumulative trauma injuries in Kentucky, then KRS 342.670 does not apply as Stephens would not have sustained injuries outside the territorial limits of Kentucky. However, if the ALJ determines Stephens sustained a [sic] cumulative trauma injuries in the course of his employment in Virginia then the ALJ must analyze the claim under the guidelines contained in KRS 342.670.

We express no opinion regarding the viability of Stephens' claim and the applicability of KRS 342.670 regarding his alleged cumulative trauma injuries occurring during the time he was employed by Virginia Fuel in the latter part of 2011 through January 28, 2012. However, the ALJ must resolve that issue, as Stephens pled alternative cumulative trauma injuries which occurred during the period he was employed by Virginia Fuel in the latter part of 2011 through January 28, 2012.

Accordingly, the January 28, 2013, opinion and order and the February 25, 2013, order denying the petition for reconsideration are **VACATED**. This claim is **REMANDED** to the ALJ for entry of an amended opinion and order determining Stephens' employer in June 2012. The ALJ shall then resolve all other related contested issues in conformity with the views expressed herein. In addition, the ALJ must also render a decision, supported by

> sufficient findings of fact, regarding Stephens' alleged cumulative trauma injuries occurring during the period he was employed by Virginia Fuel in the latter part of 2011 through January 28, 2012.

There was no appeal of the Board's decision.

In the October 21, 2013, order and award, relying upon the testimony of an employee of Justice Companies, Joshua Collett, the ALJ found and concluded as of June 1, 2012, Stephens was an employee of A & G. The ALJ also concluded that in having Stephens execute a "new hire paperwork packet," A & G took the necessary steps to separate itself from Virginia Fuel and avoid implied agency. Since Stephens was not employed by Virginia Fuel in June 2012, the ALJ granted Virginia Fuel's motion to dismiss Stephens' June 13, 2012, injury claim. However, the ALJ found Stephens sustained cumulative trauma injuries while in the employ of Virginia Fuel finding as follows:

> 6. In order to be characterized as an active disability, an underlying pre-existing condition must be symptomatic and impairment ratable pursuant to the AMA Guidelines immediately prior to the occurrence of the work-related injury. *Finley v. DBM Technologies*, 217 SW3d 261 (2007).
>
> 7. The Defendant maintains the burden of proving the existence of a pre-existing condition. *Wolf Creek Collieries v. Crum*, 673 SW2d 735 (Ky. App. 1984).

> 8. The Defendant offers the deposition testimony of Dr. Burgess who observed and opined that the Plaintiff had been diagnosed with bilateral carpal tunnel syndrome prior to his September 10, 2011 employment with the Defendant and that he had an active impairment rating of between eight and ten percent when he was hired. The ALJ finds that the opinion of Dr. Hoskins is more credible regarding the Plaintiff's work injury and finds in accordance with Dr. Hoskins' opinion that the Plaintiff's condition is due to cumulative trauma over many years of work as a heavy equipment mechanic with repetitive use of tools, movement, and overhead work.

The ALJ found notice was given as soon as practicable. With respect to the impairment attributable to the cumulative trauma injuries, the ALJ found as follows:

> 13. The ALJ finds that the most credible medical evidence in this matter is the submissions of Dr. Hoskins who opined that the Plaintiff has a 22% whole person impairment and that he retains the ability to return to the same type of work.
>
> 14. The ALJ finds in accordance with the opinion of Dr. Hoskins that the Plaintiff has a 22% whole person impairment and that he retains the ability to return to the same type of work.
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> 15. The ALJ therefore finds that the Plaintiff's cumulative trauma injuries to include carpal tunnel syndrome and bilateral shoulder injuries are compensable and that the

> outstanding medical expenses related thereto are reasonable and necessary.

Virginia Fuel filed a petition for reconsideration making many of the same arguments it asserts on appeal. In a December 6, 2013, order, the ALJ stated that based upon Dr. Hoskins' credible opinion, he found Stephens suffered cumulative trauma injuries which consisted of carpal tunnel syndrome and bilateral shoulder injuries. Since Virginia Fuel did not cite any patent errors which would cause him to change his conclusion, the ALJ denied the petition for reconsideration.

On appeal, Virginia Fuel challenges the ALJ's decision on two grounds. First, it asserts the ALJ failed to properly address the issue of a pre-existing disability. It posits the ALJ apparently concluded as a matter of law, his finding of cumulative trauma injuries precluded a carve out for a pre-existing active impairment. It argues the uncontradicted medical evidence established pre-existing active bilateral carpal tunnel syndrome which was impairment ratable. Thus, a carve out was mandated. It argues Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007) recognized an impairment due to a pre-existing active condition must be excluded from the calculation of PPD benefits and "outlined the requirements for establishing a

non-compensable pre-existing active impairment." It argues since this pre-existing active impairment pre-dated Stephens' employment with Virginia Fuel, Stephens can only receive PPD benefits due to the worsening of his condition during the period of his employment with Virginia Fuel from August 2011 to January 2012. It cites to Stephens' deposition and hearing testimony that he had active symptoms of numbness in his hands and suffered from carpal tunnel syndrome well before his employment began with Virginia Fuel. Virginia Fuel maintains Stephens' testimony established this condition continuously bothered him for the past five or six years. Further, Stephens' treatment records "nailed down" when the symptoms and treatment began, how long they continued, and they were actively symptomatic shortly before Stephens began work for Virginia Fuel in August 2011. Given this evidence, Virginia Fuel maintains it only had to establish the condition resulted in a ratable impairment prior to Stephens' employment with Virginia Fuel. It argues Dr. Burgess' testimony that Stephens had a 10% impairment rating for bilateral carpal tunnel syndrome, 9% of which pre-existed his employment satisfies the second requirement of Finley. Virginia Fuel notes Dr. Burgess agreed with Dr. Hoskins that cumulative trauma was the "general cause" of Stephens' carpal tunnel

syndrome. Consequently, it argues while Dr. Hoskins marked "no" as to whether there was a pre-existing active impairment, his follow-up response actually indicates he believed all of Stephens' 22% impairment was pre-existing and active prior to his employment with Virginia Fuel. In support of this contention, it notes Dr. Hoskins opined Stephens reached maximum medical improvement for his condition on October 26, 2010. It requests the decision of the ALJ be reversed with instructions the ALJ determine Stephens' pre-existing active impairment is either 9% or 22%.

Next, Virginia Fuel argues the ALJ failed to properly address whether Stephens' shoulder complaints were the result of a compensable work-related injury or cumulative trauma. Virginia Fuel asserts the evidence fails to establish a compensable shoulder injury. In making this argument, Virginia Fuel relies heavily on Dr. Kriss' opinions. Additionally, it argues there is no nexus between Stephens' shoulder problems and his employment with Virginia Fuel since there were no shoulder complaints during or after his employment with Virginia Fuel. It asserts "listing" the bilateral shoulder complaints as compensable is insufficient and does not provide an adequate explanation for the ALJ's determination Stephens'

bilateral shoulder condition is compensable. There must be some discussion sufficient to provide the parties with the basis for the ALJ's decision Stephens' shoulder condition was compensable.

Virginia Fuel also contends Dr. Hoskins did not provide the "objective evidence" establishing an injury to the shoulder, nor did he address the work-relatedness of these conditions. It contends the treatment notes do not reveal shoulder complaints during and shortly after Stephens' employment with Virginia Fuel. Therefore, remand is required with instructions to sufficiently address this issue. For a number of reasons, we vacate and remand.

A cumulative trauma injury must be distinguished from an acute trauma injury where a single traumatic event causes the injury. In Randall Co. v. Pendland, 770 S.W.2d 687, 688 (Ky. App. 1989), the Kentucky Court of Appeals adopted a rule of discovery with regard to cumulative trauma injury holding the date of injury is "when the disabling reality of the injuries becomes manifest." (emphasis added). In Special Fund v. Clark, 998 S.W.2d 487, 490 (Ky. 1999), the Supreme Court of Kentucky defined "manifestation" in a cumulative trauma injury claim as follows:

> In view of the foregoing, we construed the meaning of the term 'manifestation of disability,' as it was used in Randall Co. v. Pendland, as referring to physically and/or occupationally disabling symptoms which lead the worker to discover that a work-related injury has been sustained.

In other words, a cumulative trauma injury manifests when "a worker discovers that a physically disabling injury has been sustained [and] knows it is caused by work." Alcan Foil Products v. Huff, 2 S.W.3d 96, 101 (Ky. 1999). A worker is not required to self-diagnose the cause of a harmful change as being a work-related cumulative trauma injury. *See* American Printing House for the Blind v. Brown, 142 S.W.3d 145 (Ky. 2004). Rather, a physician must diagnose the condition and its work-relatedness.

In cumulative trauma claims, the date upon which the obligation to give notice is triggered by the date of manifestation. Special Fund v. Clark, supra. Pursuant to KRS 342.185(1), a claimant has two years "after the date of accident" or following the suspension of payment of income benefits to file a claim. The Court of Appeals, in the case of Randall Co./Randall Div. of Textron, Inc. v. Pendland, supra, stated as follows regarding the clocking of the statute of limitations in the case of a cumulative trauma claim:

> We therefore conclude that in cases where the injury is the result of many mini-traumas, the date for giving notice and the date for clocking a statute of limitations begins when the disabling reality of the injuries becomes manifest.

We are compelled to note neither party takes issue with the ALJ's failure to make a specific finding that Stephens sustained cumulative trauma injuries in Kentucky while employed by Virginia Fuel. That fact aside, the first error concerns the lack of a finding as to the date of manifestation for the alleged cumulative trauma injuries. Stephens testified that on or near January 28, 2012, he and over two hundred other employees were laid off from work for reasons unrelated to his alleged injuries. Clearly, the date Stephens was laid off does not comprise a date of manifestation. Therefore, the ALJ's determination Stephens sustained cumulative trauma injuries and the award of PPD benefits must be vacated. On remand, the ALJ must determine the date of manifestation of Stephens' alleged cumulative trauma injury or injuries. The ALJ must also review the applicable law pertaining to a cumulative trauma injury as set forth herein and make the necessary findings, based on the evidence in the record. It is the date of manifestation of disability that controls the starting date for liability in work-related cumulative trauma

situations. American Printing House for the Blind v. Brown, 142 S.W.3d 145, 148 (Ky. 2005). This is true for both the alleged bilateral carpal tunnel syndrome and right shoulder injury. We also observe that the finding of bilateral shoulder injuries is clearly erroneous as Stephens only alleged a right shoulder injury and Dr. Hoskins did not assess an impairment rating for a left shoulder condition.

The ALJ erred in another critical respect. While in claims for hearing loss, KRS 342.7305 causes liability to fall on the last employer, this is not the case with non-hearing loss cumulative trauma injury claims. In Southern Kentucky Concrete Contractors, Inc. v. Campbell, 662 S.W.2d 221, 222 (Ky. App. 1983), the claimant's pre-existing condition was found to be attributable to "his hard manual labor" with multiple employers over the years of his work life. It was determined that the last employer– Southern Kentucky Concrete – could not be held liable to the extent the claimant's condition was work-related and pre-existed his employment at Southern Kentucky Concrete. Thus, the Court remanded the matter with the following directions:

> We are therefore of the opinion that this case should be remanded to the Workers' Compensation Board with

> directions to determine the percentage of Campbell's disability attributable to the work performed by him while employed by Southern, and Southern is to be liable to that extent. Absent evidence to the contrary, Southern shall be liable for that percentage of Campbell's disability which is equal to the percentage of Campbell's worklife spent with Southern. The remainder of his disability is the responsibility of the Special Fund.

Id. at 222-223.

In Southern Kentucky Concrete, supra, the fact-finder determined "Campbell suffered a permanent, total, occupational disability that occurred during his lifetime of employment as a manual laborer." Similarly, in the case *sub judice*, the ALJ found “in accordance with Dr. Hoskins’ opinion that the Plaintiff’s condition is due to cumulative trauma over many years of work as a heavy equipment mechanic with repetitive use of tools, movement, and overhead work.” The ALJ also relied upon Dr. Hoskins’ impairment rating in calculating Stephens’ PPD benefits.

In the October 21, 2013, order and award, the ALJ imposed liability for all of Stephens’ disability on Virginia Fuel. However, this determination can only stand if the evidence indicates the period from August 2011 through January 28, 2012, in and of itself, caused all of Stephens’ occupational disability. The evidence does not

point to this. In his Form 107, under the heading "Explanation of Causal Relationship," Dr. Hoskins stated as follows:

> Within a reasonable degree of medical probability, Mr. Stephens' impairment is the result of cumulative trauma encountered over his many years of work as a heavy equipment mechanic – a job that involved repetitive use of heavy pneumatic tools, forceful gripping, repetitive movements, and overhead work.

Although Dr. Hoskins went on to state Stephens did not have an active impairment prior to these injuries, it is clear he believed Stephens' cumulative trauma injuries were due to his entire employment in the coal industry and for other entities.[2] Consequently, we believe Dr. Hoskins' statement that Stephens did not have an active impairment is directly contradicted by his explanation of causal relationship. Further, Stephens' testimony establishes he had been diagnosed with carpal tunnel syndrome for which surgery was recommended well before he began work with Virginia Fuel. Additionally, Stephens' testimony firmly establishes his shoulder problems pre-dated his employment with Virginia Fuel. His testimony is

[2] Stephens' testimony and his Form 104 establish he worked for Fox Knob Coal from September 2006 to August 2011, Dixie Fuel from 2002 to 2006, Logan Corporation from 1999 to 2002, Dana Corporation from 1996 to 1999, and K-Mart from 1990 to 1996.

buttressed by the medical records of his family physician, Dr. Stephen K. Morgan, and the records of Dr. Margaret Napolitano, who saw Stephens in 2010 and diagnosed bilateral carpal tunnel syndrome. Stephens testified Dr. Napolitano recommended he undergo surgery for the bilateral carpal tunnel syndrome.

Just as important, is the fact that in the October 21, 2013, order and award or the December 6, 2013, order there is no finding Stephens had a pre-existing dormant condition aroused into disabling reality by the work he performed during the five or six month period he worked for Virginia Fuel. Significantly, there is no allegation by Stephens of any injurious event occurring between August 2011 and January 28, 2012, the date he was laid off. In the order and award, the ALJ addressed the presence of a pre-existing active impairment noting that Virginia Fuel had offered the deposition of Dr. Burgess who diagnosed carpal tunnel syndrome prior to the September 10, 2011, employment date. He noted Dr. Burgess believed Stephens had an active impairment rating between 8% and 10% when he was hired. The ALJ stated he found the opinion of Dr. Hoskins more credible regarding the work injury and concluded Stephens' condition was due to a cumulative trauma over many years. This finding clearly negates a

finding of a dormant condition being aroused into disabling reality. In fact, the ALJ has ruled out the arousal of a dormant non-disabling condition into disabling reality during Stephens' employment at Virginia Fuel. By finding Stephens sustained cumulative trauma over many years of work as a heavy equipment mechanic, the ALJ by implication specifically rejected the premise Stephens' work at Virginia Fuel resulted in arousal of a pre-existing dormant non-disabling condition into disabling reality. The ALJ is left, then, with analyzing this as a cumulative trauma claim with multiple employers, and Southern Kentucky Concrete, supra, is determinative.

As required by Southern Kentucky Concrete, supra, the ALJ must determine what percentage of Stephens' impairment ratings for both the carpal tunnel syndrome and the right shoulder condition, *if any*, are directly attributable to his employment from August 2011 to January 28, 2012, with Virginia Fuel. In doing so, the ALJ must cite, in his amended opinion and order, the medical proof that establishes Stephens' work at Virginia Fuel contributed to his overall cumulative trauma injury or injuries and then, with specificity, denote to what degree it contributed. Simply because Stephens was last employed by Virginia Fuel does not impose liability on Virginia Fuel

for all of his alleged permanent impairment and resulting occupational disability. There must be evidence of record establishing that Stephens' work activities performed during the period of employment between August 2011 and January 28, 2012, contributed to his overall permanent condition, producing some degree of harmful change to the human organism. This analysis must be performed for both alleged injuries to his hands, bilateral carpal tunnel syndrome, and the right shoulder.

Finally, as previously noted the ALJ erred in finding Stephens suffered bilateral shoulder injuries. Dr. Hoskins' Form 107-I reflects a diagnosis of: "1) bilateral median sensory neuropathy at wrists (carpal tunnel syndrome) – right, subjectively & clinically, somewhat worse than left," and 2) "right snapping scapula with associated periscapular myofascial pain." In the Form 107-I Addendum, Dr. Hoskins assessed a 6% impairment rating for only the right shoulder condition. There was no diagnosis of a left shoulder injury and likewise no impairment was assessed for a left shoulder injury.

We are compelled to address that portion of Virginia Fuel's second argument in which it asserts objective medical evidence does not support a finding of a right shoulder injury. In his Form 107-I, Dr. Hoskins

diagnosed a right shoulder injury. In the Form 107-I Addendum, Dr. Hoskins explained the basis for his determination Stephens had a right shoulder injury and the basis for the impairment rating assessed for that condition. Thus, there is evidence of an injury to the shoulder. However, as is true for his diagnosis of bilateral carpal tunnel syndrome, Dr. Hoskins does not delineate that portion, if any, of the impairment rating for the shoulder injury which is attributable to Stephens' employment with Virginia Fuel from August 2011 to January 28, 2012. Therefore, on remand, in analyzing whether Stephens has a compensable shoulder injury as a result of his employment with Virginia Fuel, the ALJ must determine what percentage of Stephens' 6% impairment rating for the right shoulder condition, if any, is directly attributable to his work at Virginia Fuel. Again, the ALJ must cite in the amended opinion and order the medical proof which establishes Stephens' work at Virginia Fuel contributed to some degree to the effects of his cumulative trauma shoulder injury. Simply because Stephens was last employed by Virginia Fuel does not impose any or all of the liability upon Virginia Fuel for Stephens' alleged cumulative trauma shoulder injury. As previously noted, there must be evidence in the record establishing that

Stephens' work activities performed during the short period he was employed by Virginia Fuel contributed to his permanent shoulder condition producing some degree of harmful change to the human organism.

Accordingly, those portions of the October 21, 2013, order and award and the December 6, 2013, order ruling on the petition for reconsideration finding Stephens sustained cumulative trauma injuries of bilateral carpal tunnel syndrome and to both shoulders while working for Virginia Fuel and awarding PPD benefits and medical benefits are **VACATED**. This claim is **REMANDED** to the ALJ for additional findings of fact and rendition of an amended opinion concerning Stephens' claim for cumulative trauma injuries to his hands and right shoulder consistent with the views expressed herein.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON H BRETT STONECIPHER
300 E MAIN ST STE 400
LEXINGTON KY 40507

COUNSEL FOR RESPONDENT:

HON SHERRY BRASHEAR
P O BOX 1626
HARLAN KY 40831

ADMINISTRATIVE LAW JUDGE:

HON JONATHAN WEATHERBY
2780 RESEARCH PARK DR
LEXINGTON KY 40511