

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JOHN WYNES)
Claimant)
V.)
D & D ENTERPRISES INC.) AP-00-0482-725
Respondent) CS-00-0462-822
AND)
UTAH BUSINESS INSURANCE CO. INC.)
Insurance Carrier)

ORDER

The claimant, through Jeff Cooper, requested review of Administrative Law Judge (ALJ) Brian Brown's Award, dated April 19, 2024. Kristina Mulvany appeared for the respondent and its insurance carrier (respondent). The Board heard oral argument on August 29, 2024.

RECORD AND STIPULATIONS

The Board considered the same record as the ALJ, consisting of the: (1) regular hearing transcript, held September 29, 2023; (2) deposition transcript of Howard Aks, M.D., taken October 31, 2023, with exhibits; (3) deposition transcript of Richard Thomas, taken November 3, 2023; with exhibits; (4) deposition transcript of James Appelbaum, M.D., taken December 5, 2023, with exhibits; (5) deposition transcript of the claimant, taken December 20, 2023; (6) deposition transcript of Steve Benjamin, taken January 12, 2024, with exhibits; (7) deposition transcript of David Clymer, M.D., taken January 15, 2024; with exhibits; (8) joint stipulation, filed April 16, 2024; (9) documents of record filed with the Division; and (10) parties' briefs.

ISSUE

Is the claimant permanently and totally disabled due to his accidental work injury?

FINDINGS OF FACT

John Wynes, 59 years old, who lives in rural Montrose, Missouri, population 390, worked for the respondent installing and relocating mobile and prefab homes. He worked full-time, earning \$17 an hour. He denied any problems doing physical work before a work injury which occurred on November 18, 2021. At that time, the claimant was on a ladder

and he fell 10 feet to the ground, landing on his back and hitting his head. The ground was hard and frozen. He did not lose consciousness. The claimant experienced immediate mid/low back pain, neck pain and headaches.

The claimant was transported by emergency medical services to Overland Park Regional Medical Center. He complained of severe back pain and leg weakness, with decreased sensation bilaterally. The head CT was negative for acute injury, the neck CT showed severe multilevel chronic degenerative changes with no new injury or fracture, and the thoracic and lumbar spine CTs showed minor compression fracture deformities at L1 and L2. These findings were subsequently confirmed by MRI. Neurosurgery recommended conservative care. The claimant was placed in a TLSO brace and released with prescriptions.

On February 21, 2022, the claimant saw Howard Aks, M.D., at his attorney's request. Dr. Aks is board-certified in anesthesia, pain management, and as an independent medical examiner. The claimant complained of mid to lower back pain radiating into his right leg on occasion with numbness and tingling in the interior thigh, pain radiating around his abdomen just below the belly button, and a headache starting in the occipital area and radiating frontally to the temple area on the left side and neck.

Dr. Aks diagnosed the claimant with compression fractures at L1 and L2, possible right lumbar facet syndrome, chronic neck pain, probable cervical facet syndrome left side, possible left cervical radiculopathy, bilateral occipital neuralgia, and myofascial pain syndrome. The doctor imposed temporary work restrictions and recommended additional treatment.

Theodore Koreckij, M.D., began treating the claimant in March 2022, according to the record. According to the claimant, the doctor ordered physical therapy and issued temporary light duty restrictions. The only documents from Dr. Koreckij in the evidentiary record related to an April 14, 2022 visit. At that time, Dr. Koreckij suggested work conditioning, temporary restrictions to alternate sitting and standing for pain control, no repeated standing, and no lifting over 15 pounds. The evidentiary record does not contain any permanent restrictions from Dr. Koreckij. While Dr. Koreckij's records do not reflect neck pain complaints, the claimant testified he told the doctor about both his headaches and neck pain.

On August 15, 2022, the claimant saw David Clymer, M.D., at the respondent's request, pursuant to a preliminary hearing order. Dr. Clymer is a board-certified orthopedic surgeon. The claimant complained of low back pain, with some extension into the right buttock and right thigh region. The claimant reported neck stiffness and discomfort, chronic crepitus on neck movement, and headaches. The claimant also told Dr. Clymer he had a motor vehicle accident (MVA) 20 years earlier requiring about one week of hospitalization, with residual headaches and neck pain.

Dr. Clymer noted the claimant did not use an assistive device to walk and his gait was fairly normal. Dr. Clymer diagnosed the claimant with a mild head injury without significant concussion, intracranial problems or occipital neuralgia; a new, moderate neck sprain/strain which caused some symptomatic aggravation of preexisting arthritis; and mild compression fractures at L1 and L2 which had healed nicely with time and conservative management, but have left the claimant with some mild increase in low back discomfort. The doctor opined the claimant's work accident was the prevailing factor for his head injury, neck sprain or strain and low back injury.

Using the *AMA Guides to the Evaluation of Permanent Impairment*, 6th Edition (*Guides*), as a guideline and starting point, Dr. Clymer assigned the claimant 3% permanent partial impairment to the head and neck injury, using table 17-2, on page 564, and 8% permanent partial impairment to the low back injury, using table 17-4, on page 573. The doctor combined the ratings for 11% permanent partial impairment to the body as a whole. Dr. Clymer noted the more significant chronic problems in the claimant's cervical spine and head region involve severe chronic posttraumatic and degenerative arthritis in the neck and stated, "This may cause some ongoing symptoms and limitations, but I believe this is the result of preexisting problems and not specifically related to the workplace event."¹

Dr. Clymer believed the claimant had reached maximum medical improvement (MMI) for his work-related injuries and imposed permanent work restrictions. The doctor opined the claimant was unable to perform heavy lifting up to 200 pounds, but is able to lift in the range of 50 to 75 pounds. The doctor had no other restrictions related to the claimant's activities or work. The doctor was unaware of any work restrictions predating the accident of November 18, 2021. The results of a functional capacity evaluation done on May 4, 2023, did not alter Dr. Clymer's opinions regarding the claimant's permanent physical restrictions. Dr. Clymer opined the claimant will not require future medical treatment.

On November 28, 2022, James Appelbaum, M.D., saw the claimant at the respondent's request. Dr. Appelbaum is a board-certified neurologist. The claimant complained of chronic achy low back pain, neck pain, headaches, blurred vision, feeling like he will pass out, and occasional left arm numbness, which Dr. Appelbaum testified was non-organic, or not due to a real problem. The claimant reported his symptoms were worse when he would bend over and raise back up.

Dr. Appelbaum diagnosed the claimant with a compression fracture at two levels in his lumbar spine, cervicalgia, and chronic intractable headache pain. The doctor opined the work accident was the prevailing factor for the lumbar spine, but was not clear whether it was a factor for his neck pain and headaches, stating: "[T]he only pictures we had of the

¹ Clymer Depo., Ex. 2 at 5.

neck were degenerative changes, so those are just arthritis type of changes that occur with the passage of time, wear and tear. So there wasn't anything that was directly relatable to the work accident."²

Using the *Guides* and considering all competent medical evidence, Dr. Appelbaum assigned the claimant 11% permanent partial impairment to the body as a whole. Dr. Appelbaum believed the claimant would require future medical treatment in the form of an epidural injection, gabapentin, evaluation by a pain management specialist and MRI studies to address the headache, neck and arm numbness complaints. The doctor deferred to a functional capacity evaluation (FCE) before imposing permanent work restrictions.

The FCE was performed on May 4, 2023. The FCE showed the claimant could occasionally lift 35 pounds floor to waist, 30 pounds floor to shoulder, 35 pounds waist to shoulder; carry up to 35 pounds bilaterally; push 53 pounds of force and pull 54 pounds of force; frequent lift up to 35 pounds floor to waist, 30 pounds floor to shoulder, 35 pounds waist to shoulder; carry up to 35 pounds bilaterally; frequently sit, stand, and walk; occasionally climb stairs and ladders; frequently reach desk level, reach overhead, reach floor level, balance, stoop; occasionally kneel and crouch; and frequently do fine manipulation tasks.

The FCE was interpreted by the test-taker as showing the claimant giving invalid and inconsistent physical effort throughout testing. However, the claimant was consistent on 19 of 20 static validity tests. Moreover, the test-taker opined the evaluation was an accurate representation of the claimant's functional abilities within his perceived pain level.

On October 18, 2023, Dr. Appelbaum issued an addendum report after reviewing the claimant's FCE results. The doctor basically adopted the result of the FCE and imposed the following permanent work restrictions: occasional lifting 35 pounds floor to waist, 30 pounds floor to shoulder, 35 pounds waist to shoulder; carry up to 35 pounds bilaterally; push 53 pounds of force and pull 54 pounds of force; frequent lifting up to 35 pounds floor to waist, 30 pounds floor to shoulder, 35 pounds waist to shoulder; carry up to 35 pounds bilaterally; frequent sitting, standing, walking; occasional climbing stairs and ladders; frequent reaching desk level, reaching overhead, reaching floor level, balance, stoop; occasional kneeling and crouching; and frequent fine manipulation tasks.

On April 10, 2023, the claimant returned to Dr. Aks for a rating evaluation. The claimant made additional complaints of some weakness in his left arm. Dr. Aks noted the claimant had objective findings of cervical radiculopathy, namely elbow weakness with flexion and decreased hand grasp. Using the *Guides* as a starting point, the claimant's pain, objective findings, the effect of the injury on the claimant's body mechanics and the effects on his activities of daily living, Dr. Aks assigned the claimant 6% permanent partial

² Appelbaum Depo. at 9.

impairment to the body as a whole for cervical spine pain, using table 17-2, on page 564, and 9% permanent partial impairment to the body as a whole for lower back pain, using table 17-4, on page 570. The doctor combined the ratings for 14% permanent partial impairment to the body as a whole. The doctor opined the claimant is at MMI, but will need future medical treatment to control pain and improve his disability.

Dr. Aks imposed permanent work restrictions of no lifting greater than 30 pounds; no pushing or pulling more than 45 pounds; no overhead lift 20 pounds; no sitting longer than 60 minutes without changing positions no standing more than 30 minutes without sitting; no walking longer than 20 minutes without stopping; no frequent bending, stooping or twisting; and no frequent climbing ladders. Dr. Aks testified the work restrictions were based on the claimant's subjective tolerance and a Functional Capacity Evaluation. The FCE was done on May 4, 2023.

The claimant did not tell Dr. Aks about his MVA from 20 years earlier. However, Dr. Aks noted the claimant fully recovered, did not have physical issues in the intervening years and was able to do very physical construction work and all activities of daily living.

On August 1, 2023, Richard Thomas interviewed the claimant by phone at his attorney's request. Mr. Thomas has over 50 years' experience in vocational rehabilitation. Mr. Thomas noted the claimant went straight from graduating high school to working construction jobs. The claimant told Mr. Thomas he used a walking stick, especially to ambulate over uneven ground. Mr. Thomas prepared a list of 14 non-duplicative tasks for the five years preceding the claimant's accident. Mr. Thomas believed the claimant is unable to return to any job he has held in the last 14 years, including construction work, and the claimant has no transferable job skills. Mr. Thomas noted the claimant would have to drive 50-70 miles in his job for the respondent.

Mr. Thomas opined the claimant is incapable of engaging in any work in the open labor market at a competitive level based on his age, education, work experience and restrictions. Mr. Thomas considered the restrictions from Drs. Aks, Clymer and Koreckij in combination in assessing the claimant's ability to work. As an aside, the restrictions from Dr. Koreckij used by Mr. Thomas were temporary (not permanent) restrictions from April 2022 only. It does not appear Mr. Thomas considered the restrictions from Dr. Appelbaum.

Out of the 14 tasks on Mr. Thomas' task list, Dr. Aks opined the claimant is unable to perform any of them for a 100% task loss.

On October 19, 2023, Steve Benjamin interviewed the claimant by Zoom at the respondent's attorney's request. Mr. Benjamin prepared a list of 19 non-duplicative tasks for the seven years preceding the claimant's accident.

Mr. Benjamin testified the claimant is capable of earning up to \$501.40 based on a 40 hour work week as a cleaner, courier, transportation driver or production worker, using

Dr. Appelbaum's restrictions. Comparing this amount to the \$619.70 the claimant was earning while working for the respondent results in a wage loss of 19.1%. Using Dr. Clymer's restrictions, Mr. Benjamin testified the claimant is capable of earning \$526.30 in a 40 hour week as building maintenance, cleaner, delivery driver or production worker, resulting in a 15.1% wage loss. Using Dr. Aks' restrictions, Mr. Benjamin opined the claimant is unable to work in the open labor market resulting in 100% wage loss. Mr. Benjamin opined the claimant would have no wage loss under Dr. Koreckij's full duty release, but as stated earlier, the record does not properly contain Dr. Koreckij's permanent restrictions.

Out of the 19 tasks on Mr. Benjamin's task list, Dr. Clymer opined the claimant was unable to perform 6 for a 31.6% task loss; and Dr. Appelbaum opined the claimant was unable to perform 13 for a 68% task loss. Mr. Benjamin noted the claimant lived in a fairly rural area and he would have to drive to find work in certain nearby communities.

The claimant continues to experience headaches and have difficulty with sleeping, bending, pushing, pulling, lifting and prolonged walking, sitting and standing. He testified he can only drive short distances. He sometimes has decreased strength and range of motion from his injury. He takes over-the-counter pain medication, but testified nothing helps with the pain. The claimant testified he is unable to perform any sort of full-time employment. He has not looked for any sort of work, including light duty jobs. He filed for Social Security disability in June of 2023.

The ALJ relied on some of his analysis regarding the claimant's functional impairment and percentage of work disability in denying the claimant benefits based on a permanent total disability. Relevant to the sole issue of permanent total disability, the ALJ's Award stated:

The credibility of Claimant's neck and head complaints, moreover, are at issue:

- ◆ He testified he experiences dizziness and dizzy spells as a result of his accident. When asked, however, why these complaints are absent from all 3 evaluating physicians' reports, he stated he informed all the doctors and does not know why their reports do not reflect his dizziness.
- ◆ Dr. Appelbaum noted Claimant denied experiencing any loss of consciousness to other treating and evaluating physicians but told him about feeling dazed after the accident.
- ◆ He claimed to be completely numb in his right shoulder when Dr. Appelbaum performed pinprick testing-- a finding which the doctor testified was non-organic, non-anatomical, and non-neurologic.
- ◆ The FCE evaluation reflected invalid and inconsistent efforts by Claimant during testing.

- ◆ He told Dr. Aks - and testified - he had fully recovered from a previous and very serious motor vehicle accident, and was not experiencing any neck or head pain as a result of that accident. But Dr. Clymer testified Claimant related a history of prior neck pain and headaches he had experienced for quite a number of years before the accident.

Given Claimant's credibility issues, the Court finds Dr. Clymer's rating to be more credible than Dr. Aks' rating.

...

In determining the extent of Claimant's task and wage loss, the Court finds the opinions of Dr. Appelbaum and Mr. Benjamin most persuasive.

The Court does not find Dr. Koreckij's full duty release (or Mr. Thomas' utilization of Dr. Koreckij's temporary restrictions) to be credible. Dr. Clymer issued his general 50-75 lb. lifting restriction before Claimant underwent his FCE. After reviewing the FCE findings, Dr. Clymer testified they did not change his previous general lifting restriction. Dr. Aks' based his recommended restrictions upon Claimant's FCE findings, and by taking into account Claimant's perceived limitations. Dr. Appelbaum's opinion on restrictions were based on Claimant's FCE findings alone.

Claimant's FCE results were arguably compromised by the examiner determining Claimant was providing an inconsistent and invalid effort. Nonetheless, the exhibitor considered the evaluation's results to accurately represent Claimant's abilities. The FCE showed Claimant was capable of medium demand work. The Court generally finds value in a doctor who takes into account a claimant's self perceived limitations when determining appropriate restrictions, as Dr. Aks did in this case. But in the Court's view - due to Claimant's credibility issues previously noted - Claimant's perception of his own limitations is of significantly less value than are Dr. Appelbaum's restrictions, which were based upon the FCE's objective data alone.

The Court also finds Mr. Benjamin's vocational findings and task/wage loss analysis are more credible than those of Mr. Thomas. Mr. Benjamin started with the recommended restrictions of Drs. Koreckij, Aks, Clymer, and Appelbaum, and through a systematic process, he identified specific available jobs in Claimant's area which fit within each separate doctor's restrictions (finding no available jobs within Dr. Aks' restrictions). Mr. Benjamin then testified as to the manner by which he estimated the wages Claimant could reasonably earn with those available jobs.

By contrast, instead of attempting to locate potential jobs within each doctor's restrictions, Mr. Thomas effectively "combined" restrictions recommended by Drs. Aks, Clymer, and Koreckij (albeit Dr. Koreckij's temporary restrictions, which the Court finds irrelevant). Mr. Thomas then applied the "combined" restrictions, and concluded there were no available jobs. Moreover, he did not utilize Dr. Appelbaum's restrictions in his process even though he was aware Dr. Appelbaum

had evaluated Claimant. Mr. Thomas' analysis also took into account Claimant's questionable self-perceived limitations. Finally, Mr. Benjamin is currently involved in job placement work; Mr. Thomas testified he has not performed such work since 1993.

Consistent with the opinions of Dr. Appelbaum and Mr. Benjamin, the Court therefore finds Claimant's injury caused him to sustain a 68.4% task loss and a 19.1% wage loss, resulting in a work disability of 43.75%.

...

Claimant bases his PTD argument upon Dr. Aks' opinion and recommended restrictions. The vocational experts, Mr. Benjamin and Mr. Thomas, agree Claimant would not be able to re-enter the open labor market under Dr. Aks' posed restrictions. As previously discussed, the Court views Dr. Appelbaum's recommended restrictions and Mr. Benjamin's vocational opinions to be more credible than those of Dr. Aks and Mr. Thomas. Dr. Appelbaum and Mr. Benjamin opined Claimant was employable in the open labor market and the Court agrees with their analysis and findings.

The Court also notes the uncontroverted evidence that based on his own self-perceived limitations and the symptoms he relates to his injuries, Claimant made no attempt whatsoever to return to work. He did not apply or interview for any jobs. Again, the Court generally finds value in a claimant's self perceived limitations and how this may impact ones willingness to look for work. But the Court has previously outlined its reasons why Claimant's testimony is not credible in this regard. Further impacting Claimant's credibility was that he stated an inability to recall or name any of his specific employers from before he began working for Respondent in 2014.³

The ALJ gave no weight to any restrictions from Dr. Koreckij.

PRINCIPLES OF LAW AND ANALYSIS

The claimant contends the overwhelming credible evidence supports a finding he is essentially and realistically unemployable, and the ALJ's credibility determinations against him are unfounded. The respondent maintains the Award should be affirmed.

K.S.A. 44-501b(c) states the claimant carries the burden of proof to establish the right to an award of compensation and to prove the various conditions on which the claimant's right depends. Under K.S.A. 44-508(h), the trier of fact shall consider the whole record.

³ ALJ Award at 12-16.

K.S.A. 44-510c(a)(2) states, “Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Expert evidence shall be required to prove permanent total disability.”

Whether a worker is permanently and totally disabled is a factual determination based on the totality of the circumstances. *Wardlow* states, “The trial court’s finding that Wardlow is permanently and totally disabled because he is essentially and realistically unemployable is compatible with legislative intent.”⁴ The district court relied on all of the evidence, including the seriousness of a worker’s permanent injuries, medical findings, past work history, restrictions and ability to work, age, lack of training, ability to drive and the need to change body positions. *Wardlow*, while interpreting a prior version of K.S.A. 44-510c(a)(2), continues to be followed.⁵

As part of considering whether the claimant was permanently and totally disabled, the ALJ found the claimant not credible with respect to his perceived limitations. The ALJ noted the claimant made no attempt to apply, interview or return to work. The ALJ noted the claimant’s credibility was also in doubt because he could not recall the names of his employers before 2014.

The Appeals Board possesses authority to review de novo all decisions, findings, orders and awards of compensation issued by administrative law judges.⁶ A de novo hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the administrative law judge.⁷

The Board has no trouble finding the claimant to be a consistently unreliable historian, but accepts his testimony as generally credible. In other words, we do not find the claimant is misleading the finder of fact. The claimant’s lack of documented complaints about dizziness in the medical records is not a marker of credibility. The claimant telling Dr. Appelbaum he was dazed after hitting his head on solid, frozen ground, while not telling other doctors about loss of consciousness, is not inconsistent. The claimant would be expected to be dazed after a fall. Also, a lack of consciousness is not synonymous with dizziness. The claimant’s reported whole right arm numbness to Dr. Appelbaum is non-organic, but does not necessarily lend to a finding of untruthfulness. The FCE results, reported as invalid and inconsistent, also show the claimant passed 19 of 20 reliability

⁴ *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

⁵ See *Shinn v. Tony’s Drywall*, No. 115,718, 2017 WL 3207371 (Kansas Court of Appeals unpublished opinion filed July 28, 2017).

⁶ See K.S.A. 44-555c(a).

⁷ See *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2017 WL 2991555 (Kan. WCAB June 22, 2017).

factors, so the FCE is of little significance as a truth detector. Plus, the FCE was viewed as a fair representation of the claimant's abilities. Admittedly, the claimant's inconsistent reporting about his prior MVA resulting in a coma, hospitalization, neck pain, and headaches is troubling, but he told Dr. Clymer about the event. It would seem odd for the claimant to be honest with the respondent's hired expert if he was attempting to downplay a preexisting accident and resulting physical conditions.

The permanent total disability statute does not require an injured worker to look for employment. Arguably, a worker who believes him or herself to be unemployable would not look for work. The claimant's inability to name employers apart from the respondent can be interpreted as the claimant having a poor memory, and not indicative of his level of honesty. Even if the claimant could recall the names of his employers prior to 2014, this information would be of limited value. The evidence shows the claimant has only done construction work his entire adult life.

The Board finds the claimant is not permanently and totally disabled on account of his work-related injury by accident. We have considered the evidence, the statute concerning permanent total disability and the directive in *Wardlow*:

- While the claimant had a compensable injury causing permanent injury to his head, neck and fractures to L1 and L2, he did not require surgery and is not currently taking prescription medication.
- The claimant's permanent restrictions from Drs. Clymer and Appelbaum allow him to work. Dr. Aks' opinion is to the contrary, but the greater weight of the credible evidence supports the ALJ's conclusion.
- The expert vocational testimony is contradictory. Mr. Benjamin found the claimant could work under the restrictions of Drs. Clymer and Appelbaum, but not using the restrictions from Dr. Aks. Mr. Thomas' opinion the claimant is incapable of substantial and gainful employment was based on combining the permanent restrictions from Drs. Clymer and Aks, and the temporary restrictions from Dr. Koreckij, which are not in evidence. Mr. Thomas did not voice an opinion with respect to Dr. Appelbaum's restrictions and the claimant's ability to engage in any type of substantial and gainful employment using such restrictions.
- There is sufficient evidence suggesting the claimant can never return to his medium to heavy level of construction work, the only work he has performed based on his occupational history. The test for permanent total disability, however, is not statutorily based on only whether you can return to your prior work, but whether you can engage in any type of substantial and gainful employment.

- The claimant's high school education, by itself, is not viewed as an impediment to employment.
- The claimant's age, currently 59, is not viewed as weighing in favor of permanent total disability.
- The claimant's, geographical location is a hindrance to employment, so commuting to a job is reasonable.
- No doctor restricted the claimant against driving. Dr. Appelbaum allowed the claimant to frequently sit and Dr. Aks allowed sitting not to exceed one hour. Commuting for a job is within the claimant's ability.
- The ALJ finding the claimant could no longer do 68% of his tasks from the five years prior to his injury is considered as supporting the claimant's argument of permanent total disability.
- The ALJ finding the claimant had the ability to earn 80.9% of his average weekly wage is contrary to finding the claimant is permanently and totally disabled.
- The claimant's perceived pain supports his belief he is permanently and totally disabled. The Board finds the claimant's pain complaints are credible, but his pain complaints do not mean he is objectively permanently and totally disabled.

Overall, the Board concludes the claimant has not been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Dr. Appelbaum provided permanent work restrictions somewhere between those of Dr. Aks and Dr. Clymer. The ALJ adopted Dr. Appelbaum's opinion regarding restrictions. Mr. Thomas did not give an opinion as to the claimant's employability using Dr. Appelbaum's restrictions. The Board generally agrees with the ALJ's analysis on this matter. Again, while the claimant is incapable of his past construction work, he is not incapable of performing any type of substantial and gainful employment. The claimant is not permanently and totally disabled on account of his work injury of November 18, 2021.

AWARD

WHEREFORE, the Board affirms the Award.

IT IS SO ORDERED.

Dated this _____ day of September, 2024.

JOHN WYNES

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BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (via OSCAR)
Jeff Cooper
Kristina Mulvany
Hon. Brian Brown