U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 21-0339 BLA

DONALD R. BIGERS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HERITAGE COAL COMPANY, LLC	)	
	)	
and	)	
	)	
PEABODY ENERGY CORPORATION	)	DATE ISSUED: 01/26/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Granting Benefits of Noran J. Camp, Administrative Law Judge, United States Department of Labor.

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.) Lexington, Kentucky for Employer and its Carrier.

Olgamaris Fernandez (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD, and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Noran J. Camp's Decision and Order - Granting Benefits (2018-BLA-05880) rendered on a claim filed on December 13, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ initially found Heritage Coal Company, LLC (Heritage), self-insured through its parent company Peabody Energy Corporation (Peabody Energy), is the responsible operator liable for the payment of benefits. He credited Claimant with twenty-nine years of underground coal mine employment and determined Claimant established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, the ALJ concluded Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[1] Further, he found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer contends the district director, the Department of Labor (DOL) official who initially processes claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause of the U.S. Constitution, art. II § 2, cl. 2.[2] It also asserts the duties the district director performs create an inherent conflict of interest that violates its due process rights. Furthermore, it asserts the ALJ erred in excluding deposition transcripts purportedly relevant to Employer's liability and erred in finding it liable for the payment of benefits. On the merits of entitlement, Employer asserts the ALJ

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[2] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

erred in finding Claimant established total disability, and thus erred in finding he invoked the Section 411(c)(4) presumption.[3]

Claimant did not file a response. The Director, Office of Workers' Compensation Programs (the Director), has filed a response urging the Benefits Review Board to reject Employer's constitutional arguments. He also argues the ALJ did not err in excluding deposition testimony pertaining to Peabody Energy's liability but agrees with Employer that the ALJ erred in failing to adequately consider Employer's liability arguments.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Responsible Insurance Carrier

Employer concedes Heritage is the correct responsible operator and it was self-insured by Peabody Energy on the last day Heritage employed Claimant; thus we affirm these findings.[5] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 37-38; Employer's Brief at 15, 67. Nonetheless, it alleges Patriot Coal Corporation (Patriot) should have been named the

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-nine years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983).

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Employer's Exhibit 14.

[5] Employer also states it "preserve[s]" its "ability to challenge" Black Lung Benefits Act (BLBA) Bulletin No. 16-01 as an invalid rule. Employer's Brief at 59-60. Generally, Employer argues Bulletin No. 16-01 contradicts liability rules under the Act, was issued without notice and comment, and violates the Administrative Procedure Act (APA). *Id*. Apart from one sentence summarizing its arguments, Employer has not set forth sufficient detail to permit the Board to consider the merits of these issues. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b).

responsible carrier and thus liability for the claim should transfer to the Black Lung Disability Trust Fund (Trust Fund). Employer's Brief at 15-69.

Patriot was initially another Peabody Energy subsidiary. Director's Exhibit 45. In 2007, after Claimant ceased his coal mine employment with Heritage, Peabody Energy transferred a number of its other subsidiaries, including Heritage, to Patriot. *Id*. That same year, Patriot was spun off as an independent company. *Id*. On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. *Id*. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Heritage, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibits 28, 45. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners last employed by Heritage when Peabody Energy owned and provided self-insurance to that company.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated the self-insured carrier in this claim and thus the Trust Fund is responsible for the payment of benefits following Patriot's bankruptcy. Employer's Brief at 15-69. It argues the ALJ erred in finding Peabody Energy liable for benefits because:[6] (1) the district director is an inferior officer not properly appointed under the Appointments

[6] Employer also argues 20 C.F.R. §725.456(b)(1) violates the Longshore and Harbor Workers' Compensation Act and the APA. Employer's Brief at 60-61. That regulation specifies "[d]ocumentary evidence pertaining to the liability of a potentially liable operator and/or the identification of a responsible operator which was not submitted to the district director shall not be admitted into the hearing record in the absence of extraordinary circumstances." 20 C.F.R. §725.456(b)(1). As the Director correctly argues, 30 U.S.C. §932(a) incorporated the provisions of the Longshore Act and the APA into the Black Lung Benefits Act "except as otherwise provided . . . by regulations of the Secretary." 30 U.S.C. §932(a). Thus, even if we were to accept Employer's interpretation of the regulation, the Secretary of Labor has the "authority to adopt regulations that differ from the APA and the Longshore Act." Director's Brief at 20-21, *citing Nat'l Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001), *rev'd in part on other grounds*, *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 869 (D.C. Cir. 2002). Further, although ALJ Camp rendered the decision at issue in the present appeal, Employer asserts "ALJ [John P. Sellers, III] and the Director's actions in this matter ultimately devest [sic] the ALJ of any control over the discovery and development of the record on the liability issue which is inconsistent with the Act." Employer's Brief at 60-61. Employer has failed to identify any action or finding by either ALJ Sellers or "the Director" pertinent to this case which implicates the issue raised in its argument. Thus we decline to address this argument. *See Cox*, 791 F.2d at 446-47; 20 C.F.R. §802.211(b).

Clause[7]; (2) the regulatory scheme under which the district director determines the liability of a responsible operator and its carrier when, at the same time, the DOL administers the Trust Fund, creates a conflict of interest that violates its due process right to a fair hearing; (3) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (4) before transferring liability to Peabody Energy, the DOL must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (5) the DOL released Peabody Energy from liability; (6) the Director is equitably estopped from imposing liability on Peabody Energy; (7) the ALJ's reliance on 20 C.F.R. §§725.495(a)(2)(i) and 725.493(b)(2) is misplaced; and (8) the DOL violated its due process rights by not maintaining adequate records with respect to Patriot's bond and failing to monitor Patriot's financial health.[8] Employer's Brief at 15-69. It maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure.

The Board has previously considered and rejected these arguments in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (Oct. 25, 2022), *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022), and *Graham v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0221 BLA, slip op. at 7-8 (June 23, 2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments.[9] Given that binding precedent, any error by the ALJ in failing to

[7] Employer raised this argument for the first time to the ALJ at the hearing. Hearing Tr. at 40-41.

[8] Employer also states it wants to "preserve" its argument that its due process rights were violated because the ALJ "cut off" discovery "prematurely." Employer's Brief at 54. Employer neither asks the Board to address this issue nor sets forth any argument that would permit our review. *See Cox*, 791 F.2d at 446-47; 20 C.F.R. §802.211(b).

[9] Employer argues the ALJ erred in excluding the depositions of David Benedict and Steven Breeskin, two former Department of Labor (DOL) Division of Coal Mine Workers' Compensation officials. Employer's Brief at 16-27. In *Bailey*, the same depositions were admitted and the Board held they do not support Employer's argument that the DOL released Peabody Energy from liability when it authorized Patriot to self-insure and released a letter of credit that Patriot financed under Peabody Energy's self-insurance program. *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 15 n. 17 (Oct. 25, 2022). Given that the Board has previously held the depositions do not support Employer's argument, any error in excluding them here is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

address these arguments is harmless as a matter of law. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Thus we affirm the ALJ's determination that Heritage and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2). The ALJ found Claimant established total disability based on the pulmonary function study evidence, the medical opinion evidence, and in consideration of the evidence as a whole.[10] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 29-30.

Pulmonary Function Testing

Employer contends the ALJ erred in finding the pulmonary function study evidence establishes total disability. Employer's Brief at 9-15. We disagree.

The ALJ weighed four pulmonary function studies dated February 28, 2017, December 7, 2017, August 17, 2018, and December 20, 2018. Decision and Order at 12-13. He noted the studies reported differing heights for Claimant.[11] *Id*. Resolving the conflict in the reported heights, he found Claimant's actual height is 69.8 inches. *Id.; see Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983) ("If there are substantial

[10] The ALJ found the arterial blood gas studies do not establish total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii)-(iii); Decision and Order at 29-30.

[11] Dr. Chavda recorded a height of 69.75 inches on the February 28, 2017 study, Dr. Tuteur recorded a height of 71 inches on the December 7, 2017 study, Dr. Baker recorded a height of 69.75 inches on the August 17, 2018 study, and Dr. Selby recorded a height of 70 inches on the December 20, 2018 study. Director's Exhibits 18, 22; Claimant's Exhibit 1; Employer's Exhibit 14.

differences in the recorded heights among all the studies, the administrative law judge must make a factual finding to determine claimant's actual height."). Because there is no value for a height of 69.8 inches in the table at Appendix B of 20 C.F.R. Part 718, he rounded up to the next listed table height of 70.1 inches to determine whether these studies are qualifying.[12] Decision and Order at 12 n. 29. He found the February 28, 2017, August 17, 2018, and December 20, 2018 studies produced qualifying values pre-bronchodilator, the December 7, 2017 study produced non-qualifying values pre-bronchodilator, and none of the studies produced qualifying values post-bronchodilator. Decision and Order at 12-13. Because a preponderance of the pre-bronchodilator studies produced qualifying values, the ALJ found Claimant established total disability. *Id*. at 29.

Employer contends the ALJ should have discredited the results of the December 20, 2018 study as "equivocal." Employer's Brief at 12-13. Although the study produced qualifying pre-bronchodilator results, Employer argues "Dr. Selby did not believe this study represented a permanent condition in light of the [non-qualifying] post-bronchodilation values." *Id*. This argument is unpersuasive. The Department of Labor has cautioned against reliance on post-bronchodilator results in determining total disability, stating that "the use of a bronchodilator does not provide an adequate assessment of the miner's disability, [although] it may aid in determining the presence or absence of pneumoconiosis." 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). Thus the ALJ permissibly relied on the pre-bronchodilator portion of this study and was not required to disregard it in light of its non-qualifying post-bronchodilator results. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989).

Employer next contends the ALJ should have discredited the August 17, 2018 study because its FEV1 results are "so out of line with the other studies of record that it is highly questionable." Employer's Brief at 13. It does not cite any evidence to establish that this study is not in compliance with the quality standards or is otherwise invalid.[13] Nor has it

[12] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[13] When addressing a pulmonary function study conducted in anticipation of litigation, an ALJ must determine whether it is in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see also* 20 C.F.R. Part 718, Appendix B. If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The

set forth how the ALJ exceeded his discretion in crediting this study. *Napier*, 301 F.3d at 712-14; *Greer v. Director, OWCP*, 940 F.2d 88, 90-91 (4th Cir. 1991) (recognizing that, because pneumoconiosis is a chronic condition, a miner's functional ability on a pulmonary function study may vary, and thus could measure higher on any given day than its typical level). Thus we are not persuaded by this argument.

Employer further argues the ALJ did not explain his basis for finding Claimant's height is 69.8 inches. Employer's Brief at 9-10. It asserts the record "can at most establish a height of 'at least' 69.7 inches." *Id.* Therefore it contends the ALJ should have used the Appendix B table values applicable to a height of 69.7 inches and not 70.1 inches. *Id*.

We note, however, that even if Claimant's height was 69.7 inches, the February 28, 2017, August 17, 2018, and December 20, 2018 studies would still result in qualifying values pre-bronchodilator.[14] A pulmonary function study is qualifying for total disability if it yields an FEV1 value that is qualifying "for an individual of the miner's age, sex, and height," and yields either an FVC or an MVV value that is qualifying, or an FEV1/FVC ratio of 55 percent or less. 20 C.F.R. §718.204(b)(2)(i).

A pulmonary function study performed on a male miner who is 69 years old and 69.7 inches tall is qualifying if it produces an FEV1 value equal to or less than 1.88 and either an FVC value equal to or less than 2.43, an MVV value equal to or less than 75, or an FEV1/FVC ratio of 55 percent or less. 20 C.F.R. §718.204(b)(2)(i); *see* 20 C.F.R. Part 718, Appendix B. Claimant was 69 when he performed the February 28, 2017 study and it produced an FEV1 value of 1.69 and an FEV1/FVC ratio of 52% pre-bronchodilator.[15] Director's Exhibit 18.

ALJ must then, in his role as factfinder, determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987); *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are suspect or unreliable).

[14] Although the ALJ summarily stated Claimant's height is 69.8 inches, we recognize this figure represents a median value of the four recorded heights (70+69.75/2=69.8). Thus we can discern the ALJ's basis for assessing Claimant's height and conclude Employer's argument is not persuasive. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why he did it, the duty of explanation under the APA is satisfied).

[15] Employer argues the MVV portion of the February 28, 2017 study is invalid but has not explained why that makes a difference in this case, as the study produced a

A study is qualifying for a male miner with the same height but who is 70 years old if it produces an FEV1 value equal to or less than 1.87 and either an FVC value equal to or less than 2.41, an MVV value equal to or less than 75, or an FEV1/FVC ratio of 55 percent or less. 20 C.F.R. §718.204(b)(2)(i); *see* 20 C.F.R. Part 718, Appendix B. Claimant was 70 when he performed the August 17, 2018 study and it produced an FEV1 of 1.49 and an FEV1/FVC ratio of 54% pre-bronchodilator. Claimant's Exhibit 1.

For a male miner with the same height but who is 71 years old, a study is qualifying if it produces an FEV1 value equal to or less than 1.85 and either an FVC value equal to or less than 2.39, an MVV value equal to or less than 74, or an FEV1/FVC ratio of 55 percent or less. 20 C.F.R. §718.204(b)(2)(i); *see* 20 C.F.R. Part 718, Appendix B. Claimant was 71 when he performed the December 20, 2018 study and it produced an FEV1 of 1.82 and an FEV1/FVC ratio of 54% pre-bronchodilator. Employer's Exhibit 14.

Thus even applying the height Employer advocates, a preponderance of the pre-bronchodilator studies would still establish total disability because three of the four studies would result in qualifying values.[16] Employer, therefore, has not explained how the error it alleges would make a difference. *See Shinseki*, 556 U.S. at 413. We thus affirm the ALJ's finding the pulmonary function study evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(i).

Medical Opinions

The ALJ also weighed the medical opinions of Drs. Baker, Sood, and Tuteur that Claimant is totally disabled and Dr. Selby's opinion that he is not. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14-28, 30; Director's Exhibits 18, 21, 22; Claimant's Exhibit 1; Employer's Exhibit 14. He found the opinions of Drs. Baker, Sood, and Selby reasoned and documented, and Dr. Tuteur's opinion unpersuasive. Decision and

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qualifying FEV1 value and a qualifying FEV1/FVC ratio. *See Shinseki*, 556 U.S. at 413; Employer's Brief at 13-14.

[16] The ALJ initially and correctly recognized that three of the four studies produced qualifying values pre-bronchodilator, as he found the December 7, 2017 study did not produce qualifying values pre-bronchodilator. Decision and Order at 12-13. Although he erroneously stated in a separate part of his Decision and Order that "[a]ll of the pre-bronchodilator FEV1 and FEV1/FVC ratio values are equal to or less than the required table qualifying values for age, height and gender," we consider that error to be harmless because the record supports his finding that a preponderance of the testing is qualifying for total disability, as three of the four pre-bronchodilator studies are qualifying. *Larioni*, 6 BLR at 1-1278.

Order at 14-28, 30. Based on the physicians' respective qualifications, he found the opinions of Drs. Baker and Sood outweigh Dr. Selby's contrary opinion. *Id*.

Employer raises no specific arguments regarding the medical opinion evidence other than its contention that the pulmonary function studies do not establish total disability, which we have rejected. Employer's Brief at 14-15. As Employer does not specifically challenge any of the ALJ's credibility findings, we affirm the ALJ's determination that the medical opinions establish total disability.[17] *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(iv); Decision and Order 30.

We further affirm the ALJ's conclusion that the evidence, weighed together, establishes total disability. *Rafferty*, 9 BLR at 1-232; 20 C.F.R. §718.204(b)(2); Decision and Order at 30-31. Thus, we affirm the ALJ's finding Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1). We further affirm, as unchallenged on appeal, his finding that Employer did not rebut the presumption. 20 C.F.R. §718.305(d)(1)(i), (ii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 37.

[17] Because Claimant established total disability through the opinions of Drs. Baker and Sood, we need not address Employer's argument that the ALJ erred in crediting Dr. Chavda's opinion diagnosing total disability or relying on his opinion that was obtained through the DOL pilot program. *See Larioni*, 6 BLR at 1-1278; 20 C.F.R. §718.204(b)(2)(iv); Employer's Brief at 52-53.

Accordingly, the ALJ's Decision and Order - Granting Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge