



BRB No. 21-0587 BLA

STEPHEN M. HELA)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CONSOL PA COAL COMPANY)	
)	
and)	
)	
CONSOL ENERGY, INCORPORATED)	DATE ISSUED: 03/22/2023
)	
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 Awarding Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Lynda D. Glagola (Lungs at Work), McMurray, Pennsylvania, lay representative, for Claimant.

Deanna Lyn Istik (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2019-BLA-06308) rendered on a claim filed on August 21, 2018,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant had 13.70 years of coal mine employment and therefore could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).² Considering entitlement under 20 C.F.R. Part 718, she found Claimant established clinical and legal pneumoconiosis and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Thus, she awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established clinical and legal pneumoconiosis and a totally disabling respiratory or pulmonary impairment.³ Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Benefits Review 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'Keefe v. Smith, Hinchman, & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Entitlement Under 20 C.F.R. Part 718

¹ Claimant filed two prior claims that he later withdrew; therefore, they are considered not to have been filed. 20 C.F.R. §725.306(b); Director's Exhibits 1, 2.

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has 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.

³ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established 13.70 years of coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b)(2); Decision and Order at 5.

⁴ The Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5; Hearing Transcript at 31.

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work.⁵ 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 consider all relevant evidence and weigh the evidence supporting total disability against the 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). Employer challenges the ALJ's finding that Claimant established total disability based on the medical opinion evidence.⁶ Decision and Order at 21; Employer's Brief at 3-10.

The ALJ considered the opinions of Drs. Celko, Go, and Sood that Claimant is totally disabled and those of Drs. Rosenberg and Basheda that he is not. Decision and Order at 19-20; Director's Exhibits 14, 19; Claimant's Exhibits 5, 5a, 7, 7a; Employer's Exhibits 2, 2a, 4, 4a, 8-10. She found the opinions of Drs. Celko, Go, and Sood are reasoned and documented, but found Dr. Rosenberg's opinion is equivocal and Dr. Basheda's opinion is not well-reasoned, and thus that they are not credible. Decision and Order at 19-20.

⁵ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant's usual coal mine work as a general inside laborer required heavy labor. *Skrack*, 6 BLR at 1-711; Decision and Order at 5.

⁶ The ALJ found the pulmonary function and arterial blood gas studies do not establish total disability and there is no evidence that Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 7 n.7, 9-10.

Employer argues the ALJ erred in crediting Dr. Celko's opinion because it is contrary to her finding that the objective testing is non-qualifying.⁷ Employer's Brief at 5. We disagree. A physician may conclude a miner is totally disabled even if the objective studies are non-qualifying. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); 20 C.F.R. §718.204(b)(2)(iv).

We also are not persuaded by Employer's argument that the ALJ erred in crediting Dr. Celko's opinion. Employer's Brief at 5. Discussing the results of Claimant's September 18, 2018 pulmonary function study, Dr. Celko stated he is aware the study is overall non-qualifying, but opined the pre-bronchodilator FEV1 value is qualifying and the pre-bronchodilator FVC and post-bronchodilator FEV1 values are close to qualifying. Director's Exhibits 14, 19; Employer's Exhibit 8 at 34-35, 46-47. He observed Claimant worked as a shuttle car operator or any other jobs as needed, and that his usual coal mine employment required considerable heavy labor. Director's Exhibits 14, 19. Thus, he opined Claimant would not be able to perform his usual coal mine employment given the moderate obstructive lung disease seen on his pulmonary function study. *Id.*; Employer's Exhibit 8 at 44-45. Contrary to Employer's contentions, the ALJ permissibly found Dr. Celko adequately explained that Claimant's non-qualifying pulmonary function study reveals a moderate obstructive lung disease that renders him unable to perform the heavy labor required by his usual coal mine employment. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*; 788 F.2d 158, 163 (3d Cir. 1986); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 19.

Employer next argues the ALJ erred in crediting the opinions of Drs. Go and Sood. Employer's Brief at 8-9. Both noted Claimant's work as a shuttle car operator required heavy labor including lifting concrete blocks and timbers, rock dusting, dragging cables and moving heavy supplies, and carrying thirty to forty pounds a distance of thirty feet up to forty times per day. Claimant's Exhibits 5, 7. Dr. Sood opined that all of Claimant's pre-bronchodilator FEV1 values on pulmonary function testing from September 18, 2018 onwards were qualifying and that the value from the October 1, 2019 pulmonary function study met the criteria for a class II impairment under the American Medical Association (AMA) guidelines. Claimant's Exhibit 7 at 21. Dr. Go likewise opined Claimant's pulmonary function study values meet the AMA criteria for a class II pulmonary impairment. Claimant's Exhibit 5. Dr. Sood furthered opined Claimant's six-minute walk

⁷ A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. See 20 C.F.R. §718.204(b)(2)(i), (ii).

test results correspond with a class IV impairment which is the most severe impairment category under the AMA guidelines. Claimant's Exhibit 7. Both Drs. Go and Sood opined Claimant would not be able to perform his usual coal mining job, which required heavy labor, at this level of impairment. Claimant's Exhibits 5, 7.

The ALJ found Dr. Go's opinion is reasoned because he considered the exertional requirements of Claimant's usual coal mine employment and adequately explained how the obstructive defect seen on Claimant's pulmonary function study, although non-qualifying, renders him totally disabled. Decision and Order at 20. She found Dr. Sood's opinion is reasoned because he considered medical literature and the exertional requirements of Claimant's usual coal mine work and explained how the objective data shows Claimant cannot perform the heavy labor required of that work. *Id.* Further, she found their opinions that Claimant has a class II impairment under the AMA guidelines is consistent with Dr. Basheda's assessment that he has a class II impairment. *Id.*; Employer's Exhibit 2. Thus, contrary to Employer's contention, the ALJ permissibly found Drs. Go and Sood adequately explained why Claimant is totally disabled despite the non-qualifying pulmonary function and blood gas studies. See *Balsavage*, 295 F.3d at 396; *Kertesz*; 788 F.2d at 163; *Clark*, 12 BLR at 1-155; Decision and Order at 20.

Employer further asserts the ALJ erred in discrediting Dr. Basheda's opinion. Employer's Brief at 6. We disagree.

Dr. Basheda opined the post-bronchodilator results of Claimant's October 1, 2019 pulmonary function study showed he has a class II obstructive impairment under the AMA guidelines, but that it is not a significant pulmonary impairment and he is not totally disabled from the heavy labor required by his usual coal mine employment. Employer's Exhibits 2 at 24, 2a, 9 at 11, 15-16, 22-23. He further opined, however, that "it would be inaccurate to assess any impairment at this time" because Claimant first needs to be appropriately treated for his asthma. Employer's Exhibits 2 at 24, 2a.

The ALJ found Dr. Basheda's opinion is not credible because he "provides conflicting opinions that assessing disability would be inaccurate without Claimant being treated, but also assesses whether [C]laimant is disabled, opining that he has a class II pulmonary impairment that is not disabling." Decision and Order at 19-20. Thus, contrary to Employer's contention, the ALJ permissibly found Dr. Basheda's opinion is not well-reasoned because he offered conflicting opinions.⁸ See *Balsavage*, 295 F.3d at 396; *Kertesz*; 788 F.2d at 163; *Clark*, 12 BLR at 1-155; Decision and Order at 19-20.

⁸ Moreover, in opining Claimant has a class II impairment that is not totally disabling, Dr. Basheda cited exclusively to the post-bronchodilator FEV1, FVC, and FEV1/FVC results from the October 1, 2019 pulmonary function study. Director's Exhibit

Finally, Employer argues the ALJ mischaracterized Dr. Rosenberg's opinion in finding him equivocal. Employer's Brief at 7-8. Dr. Rosenberg opined Claimant's most recent pulmonary function studies were qualifying and that he had worsening lung function and reduced lung volumes. Employer's Exhibits 4, 4a. He further opined Claimant would not be totally disabled from a pulmonary perspective if he received appropriate treatment for his asthma, but he repeatedly refused to say Claimant's current condition is not totally disabling. Employer's Exhibits 4, 4a, 10 at 22-23. Because Dr. Rosenberg's opinion is ambiguous as to whether Claimant is totally disabled, the ALJ permissibly discredited it as equivocal. *See Balsavage*, 295 F.3d at 396; *see also Kertesz*, 788 F.2d at 163; *Clark*, 12 BLR at 1-155; Decision and Order at 20.

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability based on the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv).

Legal Pneumoconiosis

Employer also challenges the ALJ's finding Claimant established he has legal pneumoconiosis. Employer's Brief at 14-22. To establish legal pneumoconiosis Claimant must demonstrate he has a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.202(a), 718.201(b)(2), (c).

The ALJ considered the medical opinions of Drs. Celko, Go, Sood, Basheda, and Rosenberg. Decision and Order at 25-27. Drs. Celko and Go diagnosed legal pneumoconiosis in the form of obstructive lung disease and chronic bronchitis arising out of coal mine employment. Director's Exhibits 14, 19; Claimant's Exhibits 5, 5a; Employer's Exhibit 8. Dr. Sood opined Claimant has legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) with mixed chronic bronchitis and emphysema arising out of coal mine employment. Claimant's Exhibits 7, 7a. Drs. Basheda and Rosenberg opined Claimant does not have legal pneumoconiosis, but has asthma unrelated to coal mine dust exposure. Employer's Exhibits 2, 2a, 4, 4a, 9-10. The ALJ discredited the opinions of Drs. Basheda and Rosenberg as contrary to the regulations, and found the opinions of Drs. Celko, Sood, and Go credible because they are reasoned and

2. The Department of Labor has cautioned against reliance on post-bronchodilator results in determining total disability, stating "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." *See* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980).

documented. Decision and Order at 25-27. She thus concluded the medical opinions establish legal pneumoconiosis. *Id.* at 29.

Employer argues the ALJ erred in crediting Dr. Celko's diagnosis of legal pneumoconiosis. Employer's Brief at 16. We disagree.

Dr. Celko examined Claimant and reviewed his personal and medical histories. Director's Exhibit 14, 19. He opined Claimant's pulmonary function studies show moderate obstructive lung disease caused by both coal mine dust exposure and smoking. *Id.* In addition, he diagnosed chronic bronchitis based on the pulmonary function studies and Claimant's symptoms of a daily productive cough for at least the past ten years, which is also significantly related to his coal mine dust exposure. Director's Exhibit 14; Employer's Exhibit 8 at 41.

At his deposition, Dr. Celko explained Claimant's pulmonary function study showed "obstructive lung volumes based upon his increased RV and RV2LC ratio and [a] moderate obstructive ventilator pattern with an excellent bronchodilator response." Employer's Exhibit 8 at 33. When asked whether he would expect someone with a coal mine dust induced impairment to have an "excellent" bronchodilator response, he opined that there can be a bronchodilator response. *Id.* He further recognized Claimant's FEV1/FVC ratio was eighty-six percent but that he diagnosed an obstructive impairment because Claimant's FVC improved substantially and his obesity may have increased his FEV1/FVC ratio. *Id.* at 36-37. Finally, Dr. Celko considered that Claimant is obese, and obesity could affect an individual's respiratory condition but maintained that Claimant's coal dust exposure is a significant contributor to his obstructive impairment and chronic bronchitis. Director's Exhibit 14; Employer's Exhibit 8 at 27.

The ALJ observed Dr. Celko discussed the latent and progressive nature of pneumoconiosis and addressed Claimant's bronchodilator response and varying pulmonary function study results in diagnosing a moderate obstructive lung disease and chronic bronchitis caused by coal mine dust exposure. Decision and Order at 25. Thus, she permissibly found Dr. Celko's opinion is reasoned and documented because he adequately explained how the objective medical studies and Claimant's symptoms support his diagnosis of legal pneumoconiosis. *See Balsavage*, 295 F.3d at 396; *Kertesz*; 788 F.2d at 163; *Clark*, 12 BLR at 1-155; Decision and Order at 25.

Employer next asserts the ALJ erred in crediting Dr. Go's opinion. Employer's Brief at 22.

Dr. Go opined Claimant has obstructive lung disease in the form of chronic bronchitis caused by coal mine dust exposure based on the pulmonary function testing, his chronic cough with daily sputum production, dyspnea and wheezing, scientific studies, and the lack of other occupational or environmental exposures that would explain his condition.

Claimant's Exhibit 5. He opined Claimant's "markedly abnormal" FEV1, normal FEV1/FVC ratio, and normal total lung capacity on his pulmonary function study is consistent with obstruction according to the American Thoracic Society guidelines. *Id.* Further, he opined Claimant's lung volume measurements demonstrate air trapping which is a feature of obstructive lung disease that is inconsistent with obesity being the primary cause of Claimant's pulmonary function abnormality. *Id.* Dr. Go addressed Dr. Basheda's opinion that Claimant's bronchodilator response, air trapping, and hyperinflation are consistent with asthma, but opined "these are nonspecific findings and are found in any obstructive lung disease, including chronic bronchitis." *Id.* Contrary to Employer's contentions, the ALJ permissibly found Dr. Go persuasively explained how the objective data and Claimant's symptoms support his diagnosis of legal pneumoconiosis. *See Balsavage*, 295 F.3d at 396; *Kertesz*; 788 F.2d at 163; *Clark*, 12 BLR at 1-155; Decision and Order at 26-27.

Employer also argues the ALJ erred in crediting Dr. Sood's opinion.⁹ Employer's Brief at 20-21. Dr. Sood opined Claimant's coal mine dust exposure and smoking history are both substantially contributing factors to his COPD with mixed chronic bronchitis and asthma, and he could not scientifically apportion the contribution of each. Claimant's Exhibit 7. The ALJ observed Dr. Sood based his diagnosis on Claimant's pulmonary function studies showing obstruction with an FEV1/FVC ratio below seventy percent, a lung volume measurement showing air trapping, and reduced diffusing capacity, his reduced six-minute walk test distance, chronic progressive respiratory symptoms, and scientific studies. *Id.* Thus, we see no error in her permissible finding that Dr. Sood's opinion is well-reasoned and documented. *See Balsavage*, 295 F.3d at 396; *Kertesz*; 788 F.2d at 163; *Clark*, 12 BLR at 1-155; Decision and Order at 27.

Finally, Employer argues the ALJ erred in discrediting the opinions of Drs. Basheda and Rosenberg for being contrary to the regulations. Employer's Brief at 18-19. We disagree. The ALJ accurately noted both physicians excluded coal mine dust exposure as a cause of Claimant's obstructive defect because he left the mines in 2002 or 2003, and his symptoms would have ended when he left the mines if they were caused by coal mine dust exposure. Decision and Order at 26; Employer's Exhibits 2, 4, 4a, 9 at 20. She permissibly found their opinions not credible because they are inconsistent with the regulations which

⁹ Employer asserts Dr. Sood is not credible, in part, because "no physician, exercising sound medical advice, can diagnose a patient with emphysema when it was not detected or described on the chest x-rays." Employer's Brief at 20. Because Employer does not point to any evidence to support its assertion, nor challenge any of the ALJ's specific findings, we decline to address its argument as it is inadequately briefed. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446 (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).

recognize pneumoconiosis as “a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.”¹⁰ 20 C.F.R. §718.201(c); see *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 209-10 (3d Cir. 2002); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); Decision and Order at 26.

Employer’s remaining argument that the ALJ should have found Dr. Basheda’s opinion credible because he “cited a number of different factors” supporting his opinion is a request to reweigh the evidence, which we are not empowered to do. Employer’s Brief at 18; see *Anderson*, 12 BLR at 1-113.

As it is supported by substantial evidence, we affirm the ALJ’s determination that Claimant established the existence of legal pneumoconiosis.¹¹ 20 C.F.R. §§718.201(a)(2), 718.202(a)(4).

Disability Causation

To establish disability causation, Claimant must prove his legal pneumoconiosis is a “substantially contributing cause” of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has “a material adverse effect on the miner’s respiratory or pulmonary condition,” or if it “[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.” 20 C.F.R. §718.204(c)(1)(i), (ii); *Gross v. Dominion Coal Co.*, 23 BLR 1-8, 1-17 (2003).

The ALJ considered the opinions of Drs. Celko, Go, Sood, Basheda, and Rosenberg. Decision and Order at 30-31. The ALJ found Drs. Celko, Go, and Sood adequately addressed “the other factors that could contribute to Claimant’s impairment and concluded that [pneumoconiosis] significantly contributes to his impairment,” and adequately explained why. Decision and Order at 31. She thus permissibly found their opinions

¹⁰ As the ALJ gave valid reasons for discrediting the opinions of Drs. Basheda and Rosenberg, we need not address Employer’s arguments regarding the additional reasons the ALJ gave for rejecting their opinions. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

¹¹ We affirm, as unchallenged on appeal, the ALJ’s finding Claimant’s legal pneumoconiosis arose out of his coal mine employment. See *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.203(b); Decision and Order at 29-30.

reasoned and credible. *See Balsavage*, 295 F.3d at 396; *Kertesz*; 788 F.2d at 163; *Clark*, 12 BLR at 1-155; Decision and Order at 31.

She further permissibly found Dr. Basheda's opinion that Claimant does not have a respiratory or pulmonary disability and does not have pneumoconiosis is not probative of whether Claimant's disability is caused by pneumoconiosis. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004) (ALJ may permissibly reject a physician's causation opinion because its underlying premise, that the miner does not have pneumoconiosis, is inaccurate); *see also Epling*, 783 F.3d at 504-05; *Big Branch Resources, Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013; Decision and Order at 31. Finally, she rejected Dr. Rosenberg's opinion on disability causation for the same reasons she discredited his opinion regarding whether Claimant's obstructive impairment constituted legal pneumoconiosis. Decision and Order at 31. This was rational. *Soubik*, 366 F.3d at 234.

Because Employer raises no specific arguments regarding the ALJ's total disability causation findings, we affirm her determination that Claimant's total disability is due to legal pneumoconiosis at 20 C.F.R. §718.204(c).¹²

¹² Employer also challenges the ALJ's finding Claimant has clinical pneumoconiosis. Employer's Brief at 10-14. We need not address Employer's arguments because we affirm the ALJ's finding that Claimant is totally disabled due to legal pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge