BRB No. 12-0370 BLA

WALTER R. JOHNSON, JR. Claimant-Respondent v. SQUIRES CREEK COAL COMPANY and THE WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	DATE ISSUED: 03/28/2013 DECISION and ORDER

Appeal of the Decision and Order – Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

William S. Mattingly and Amy Jo Holley (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Jonathan Rolfe (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Awarding Benefits (2009-BLA-5398) of Administrative Law Judge Michael P. Lesniak with respect to a subsequent claim filed on May 14, 2008, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act).[1] Following the hearing in this case, the administrative law judge issued an Order in which he redesignated certain evidence and excluded the deposition of Dr. Oesterling. In the administrative law judge's Decision and Order, he acknowledged employer's concession that claimant has at least fifteen years of underground coal mine employment and found that claimant established total disability at 20 C.F.R. §718.204(b)(2). The administrative law judge further found, therefore, that claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309 and invoked the rebuttable presumption of total disability due to pneumoconiosis set forth in amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] The administrative law judge determined that employer did not rebut the presumption and awarded benefits accordingly.

On appeal, employer argues that the administrative law judge erred in admitting Dr. Perper's deposition testimony as an affirmative medical report, and in excluding Dr. Oesterling's deposition from the record. In addition, employer contends that the administrative law judge erred in applying amended Section 411(c)(4), as doing so violated several principles of constitutional law. Employer also asserts that the rebuttal methods set forth in amended Section 411(c)(4) are not applicable to responsible operators and that the amendments cannot be applied until the Department of Labor has

---

[1] Claimant has filed nine claims for benefits. Relevant to the present case, the district director denied claimant's sixth claim, filed on February 11, 2002, for failure to establish total disability at 20 C.F.R. §718.204(b)(2). Director's Exhibit 1-F. Claimant's seventh and eighth claims, filed on July 15, 2004 and December 1, 2006, were withdrawn. Director's Exhibits 1-G, 1-H. No additional action was taken by claimant until he filed the current claim. Director's Exhibit 2.

[2] On March 23, 2010, Congress enacted amendments to the Act, that affect claims filed after January 1, 2005, that were pending on or after March 23, 2010. *See* Section 1556 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §1556, 124 Stat. 119, 260 (2010) (codified at 30 U.S.C. §§921(c)(4) and 932(*l*)). In pertinent part, the amendments reinstated Section 411(c)(4), 30 U.S.C. §921(c)(4), which provides claimant with a rebuttable presumption that his disabling respiratory impairment is due to pneumoconiosis if he establishes that he suffers from a totally disabling respiratory or pulmonary impairment and has fifteen or more years of underground, or substantially similar, coal mine employment.

promulgated implementing regulations. Employer further argues that the administrative law judge did not properly weigh the evidence in determining that employer failed to rebut the amended Section 411(c)(4) presumption.

Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs, filed a limited brief in which he urges the Board to reject employer's constitutional arguments, and its assertions concerning the applicability of the rebuttal provisions to responsible operators and the need for implementing regulations.[3]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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 Associates, Inc.*, 380 U.S. 359 (1965).

I. Evidentiary Issues

On appeal, employer challenges the administrative law judge's admission of Dr. Perper's deposition and his exclusion of Dr. Oesterling's deposition. With respect to Dr. Perper, claimant initially obtained a report containing Dr. Perper's review of lung biopsy slides. Claimant's Exhibit 1. Prior to the hearing, claimant designated this report as an affirmative biopsy report on his Evidence Summary Form. Employer obtained a biopsy review report from Dr. Oesterling and deposed him. Employer's Exhibits 10, 22. Employer designated Dr. Oesterling's written report and deposition testimony as an affirmative biopsy report on its Evidence Summary Form.

Shortly before the hearing, which was held on September 28, 2010, the administrative law judge granted claimant leave to obtain Dr. Perper's deposition, which

---

[3] We affirm, as unchallenged on appeal, the administrative law judge's crediting of claimant with at least fifteen years of underground coal mine employment and his determination that claimant established the presence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2), and, therefore, established a change in an applicable condition of entitlement at 20 C.F.R. §725.309 and invoked the rebuttable presumption at amended Section 411(c)(4). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[4] The record indicates that claimant's coal mine employment was in West Virginia. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP,* 12 BLR 1-200, 1-202 (1989)(en banc).

claimant conducted on October 25, 2010. When claimant questioned Dr. Perper about additional medical evidence that he reviewed after he submitted his biopsy report, employer objected on the ground that Dr. Perper's responses transformed his biopsy report into an affirmative medical report. Claimant's Exhibit 5 at 12. On November 18, 2011, the administrative law judge issued an Order Designating/Excluding Medical Evidence and Granting Time for Submission of Supplemental Medical Records (Order), in which he admitted Dr. Perper's deposition as claimant's second affirmative medical report and excluded Dr. Oesterling's deposition. Order at 2. Employer filed a Motion for Reconsideration, which the administrative law judge denied in his Decision and Order. Decision and Order at 4 n.7, 8, 9 n.21.

Employer contends on appeal that the administrative law judge erred in admitting Dr. Perper's deposition as an affirmative medical report, as it constituted "surprise evidence." Employer's Brief at 7. In support of this argument, employer maintains that it was not aware that Dr. Perper had reviewed additional information until the day of his deposition, which employer states was "nearly one month after the hearing and a month-and-a-half after the twenty-day deadline for the submission of evidence." *Id*. Employer avers that, because the administrative law judge reclassified Dr. Perper's deposition *sua sponte*, claimant did not establish good cause for its late submission and, to the extent claimant provided any rationale during the deposition, employer argues that it did not constitute good cause. Employer also contends that the admission of Dr. Perper's testimony constitutes prejudicial error because it was used by the administrative law judge "to outweigh Dr. Spagnolo's findings regarding disability causation on rebuttal." *Id*. at 8. In addition, employer argues that the administrative law judge's decision to exclude Dr. Oesterling's deposition from the record was in error, as it "should be deemed an oral supplemental biopsy report and should be admitted for good cause, as Dr. Oesterling's testimony was taken to clarify his earlier report." *Id*. at 9.

The administrative law judge is granted broad discretion in resolving procedural issues, including the admission of evidence into the record. *See Consolidation Coal Co. v. Williams*, 453 F.3d 609, 23 BLR 2-345 (4th Cir. 2006). A party seeking to overturn an administrative law judge's resolution of an evidentiary issue must prove that the administrative law judge's action represented an abuse of his or her discretion. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006)(en banc)(McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, 24 BLR 1-13 (2007)(en banc)(McGranery & Hall, JJ., concurring and dissenting); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); *Cochran v. Consolidation Coal Co.*, 12 BLR 1-137 (1989). Employer has not met its burden in this case.

With respect to the redesignation and admission of Dr. Perper's deposition, the administrative law judge noted correctly that, although claimant was entitled to submit two affirmative medical reports under 20 C.F.R. §725.414(a)(2)(i), he had submitted only

one. Order at 2; Decision and Order at 4 n.7. The administrative law judge further stated correctly that "the underlying documents on which Dr. Perper relied had already been admitted into evidence." Order at 2; Director's Exhibit 16; Claimant's Exhibit 2; Employer's Exhibits 2, 4, 5, 8, 10, 12, 15, 17, 19. The administrative law judge then rationally determined that Dr. Perper's deposition testimony on the matters unrelated to his review of claimant's lung biopsy met the definition of a medical report set forth in 20 C.F.R. §725.414(a)(1).[5] *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47 (2004)(en banc); Order at 2. In addition, contrary to employer's assertion, the administrative law provided adequate protection of employer's due process rights in his Order by giving the parties the opportunity to submit a supplemental medical report by any physician who prepared an affirmative medical report. *See Clark*, 12 BLR at 1-153; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon*, 9 BLR 1-236 (1987)(en banc). Employer did not submit a supplemental report. Accordingly, the administrative law judge acted within his discretion in redesignating and admitting Dr. Perper's deposition as claimant's second affirmative medical report, "in the interest of considering all probative evidence developed in compliance with the evidentiary limitations." Order at 2; *see Williams*, 453 F.3d at 621, 23 BLR at 2-355.

The administrative law judge's exclusion of Dr. Oesterling's deposition testimony also represented a reasonable exercise of his discretion. *See Williams*, 453 F.3d at 621, 23 BLR at 2-355. The administrative law judge explained correctly that the regulations state that only physicians who prepare medical reports may testify concerning the claim, and if a physician who did not prepare a medical report testifies, that testimony constitutes a medical report. *See* 20 C.F.R. §§725.414(c), 725.457(c)(2); Decision and Order at 8. As employer had already submitted two affirmative medical reports, by Drs. Spagnolo and Bellotte, the administrative properly found that Dr. Oesterling's deposition exceeded the evidentiary limitations. 20 C.F.R. §725.414(a)(3)(i). The administrative law judge also rationally found that employer did not establish good cause for admitting Dr. Oesterling's deposition, as "good cause is not established where the party offering the evidence merely argues that it supports a 'true disclosure of the facts'" and employer had

---

[5] Under 20 C.F.R. §725.414(a)(1):

> [A] medical report shall consist of a physician's written assessment of the miner's respiratory or pulmonary condition. A medical report may be prepared by a physician who examined the miner and/or reviewed the available admissible evidence. A physician's written assessment of a single objective test, such as a chest X-ray or a pulmonary function test, shall not be considered a medical report for purposes of this section.

20 C.F.R. §725.414(a)(1).

the opportunity to designate Dr. Oesterling's deposition as an affirmative medical report but did not do so.[6] Decision and Order at 8, *quoting* Employer's Response to Order at 2; *see Bethlehem Mines Corp. v. Henderson*, 939 F.2d 143, 16 BLR 2-1 (4th Cir. 1991); *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 23 BLR 2-430 (4th Cir. 2007). Consequently, we affirm the administrative law judge's exclusion of Dr. Oesterling's deposition. *See Williams*, 453 F.3d at 620, 23 BLR at 2-369; *Clark*, 12 BLR at 1-153.

II. Application of the Amendments

Employer argues that retroactive application of the amendments to claims filed after January 1, 2005 constitutes a due process violation and an unconstitutional taking of private property. Because these contentions are substantially similar to those the Board rejected in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-200 (2010), we also reject them here. *See also Stacy v. Olga Coal Corp.*, 24 BLR 1-207 (2010), *aff'd sub nom. W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-69 (4th Cir. 2011), *cert. denied*, 568 U.S.   (2012); *B & G Constr. Co. v. Director, OWCP* [*Campbell*], 662 F.3d 233, 25 BLR 2-13 (3d Cir. 2011); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011). Further, for the reasons set forth in *Owens v. Mingo Logan Coal Co.*, 25 BLR 1-1 (2011), *appeal docketed*, No. 11-2418 (4th Cir. Dec. 29, 2011), we reject employer's argument that the rebuttal provisions at amended Section 411(c)(4) do not apply to a claim brought against a responsible operator is it is without merit. *See also Usery v. Turner-Elkhorn Mining Co.*, 428 U.S. 1, 37-38, 3 BLR 2-36, 2-58-59 (1976); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 25 BLR 2-1 (6th Cir. 2011); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 2 BLR 2-38 (4th Cir. 1980). There is also no merit to employer's assertion that application of amended Section 411(c)(4) is barred, pending promulgation of regulations implementing the amendments. *See Rose*, 614 F.2d at 939; 2 BLR at 2-43; *Mathews*, 24 BLR at 1-201. We affirm, therefore, the administrative law judge's application of the amended Section 411(c)(4) presumption to this claim.

III. Rebuttal of the Presumption

The administrative law judge determined employer failed to establish either that claimant does not have clinical or legal pneumoconiosis, or that claimant's disability did

---

[6] Employer asserted that Dr. Oesterling's deposition "should be deemed an oral supplemental biopsy report." Employer's Brief at 9. However, under the terms of 20 C.F.R. §725.414(c), the testimony of any physician who did not prepare a medical report, as defined in 20 C.F.R. §725.414(a)(1), is treated as a medical report that counts against the total of two affirmative reports that employer is allowed under 20 C.F.R. §725.414(a)(3)(i).

not arise out of or in connection with coal mine employment.[7] Decision and Order at 19-23. Employer challenges the administrative law judge's determination, rendered under both rebuttal methods, that employer was unable to prove that coal dust exposure was not a contributing cause of claimant's totally disabling respiratory impairment. However, because employer has not challenged the administrative law judge's finding that it did not disprove the existence of clinical pneumoconiosis, we affirm that finding and will address employer's contentions relevant to the issue of disability causation *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 22.

In considering whether employer disproved a causal connection between coal dust exposure and claimant's totally disabling respiratory impairment, the administrative law judge weighed the opinions of Drs. Oesterling, Crouch, Spagnolo, Perper, Schaaf and Bellotte. The administrative law judge found that, because Drs. Oesterling, Crouch and Spagnolo did not offer definitive opinions as to whether coal dust exposure was a contributing cause of claimant's impairment, their opinions were insufficient to establish that claimant does not have legal pneumoconiosis or that his totally disabling impairment is not due to pneumoconiosis. Decision and Order at 22-23. Further, the administrative law judge determined that the opinions of Drs. Perper and Schaaf were insufficient to rebut the amended Section 411(c)(4) presumption, as they attributed claimant's respiratory impairment, in part, to coal dust exposure. *Id*. at 22.

The administrative law judge found that Dr. Bellotte opined that claimant's chronic obstructive pulmonary disease and chronic bronchitis were due to smoking "because of the length of exposure and [Dr. Bellotte's] understanding that smoking is 'three times more harmful' than coal dust exposure." *Id*. at 23, *quoting* Employer's Exhibit 20. The administrative law judge determined that Dr. Bellotte's opinion was not

[7] Pursuant to 20 C.F.R. §718.201(a)(1):

> "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1). "Legal pneumoconiosis" is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition also includes "any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." *Id*.

well-reasoned, as the Department of Labor explicitly disapproved of such a "blanket rule" as to the relative effects of smoking and coal dust exposure and Dr. Bellotte ignored the presence of claimant's emphysema. Decision and Order at 23; *see* 65 Fed. Reg. 79,941 (Dec. 21, 2000)("Whether a particular miner's disability is due to his coal mine employment or smoking habit must be resolved on a claim-by-claim basis."). Based on these findings, the administrative law judge concluded that employer did not rebut the presumed facts that claimant has legal pneumoconiosis and is totally disabled by it. Decision and Order at 23.

Employer contends that, contrary to the administrative law judge's finding, Dr. Spagnolo offered a definitive opinion as to the existence of legal pneumoconiosis and the cause of claimant's totally disabling impairment. In addition, employer argues that, in crediting Dr. Perper's opinion over that of Dr. Spagnolo, the administrative law judge did not acknowledge that the biopsy findings of Drs. Crouch and Oesterling supported Dr. Spagnolo's opinion. Further, employer asserts that the administrative law judge did not consider the flaws in Dr. Perper's opinion. Lastly, employer contends that, contrary to the administrative law judge's findings, Dr. Bellotte: acknowledged claimant's emphysema; based his causation opinion on more than claimant's smoking history; and provided a thorough analysis of the evidence in determining that coal dust exposure did not contribute to claimant's respiratory impairment.

Employer's contentions have merit, in part. As an initial matter, we reject employer's arguments regarding the administrative law judge's weighing of Dr. Perper's opinion, that coal dust exposure was a contributing cause of claimant's totally disabling impairment. The credibility of claimant's evidence is not at issue on rebuttal of the amended Section 411(c)(4) presumption, as the burden of proof is on employer. *See Barber v. Director, OWCP*, 43 F.3d 899, 19 BLR 2-61 (4th Cir. 1995); *Rose*, 614 F.2d at 939, 2 BLR at 2-43.

Nevertheless, employer is correct in alleging that the administrative law judge did not adequately consider the opinions of Drs. Spagnolo, Oesterling and Bellotte. Although the administrative law judge rationally determined that Dr. Spagnolo used equivocal language in identifying the precise cause of claimant's respiratory impairment,[8] he did not address Dr. Spagnolo's statement that, "it is my opinion that none of [claimant's] symptoms, complaints, or medical conditions is related to his coal dust exposure or coal [] mine employment." Employer's Exhibit 18; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); *Justice v. Island Creek*

[8] Dr. Spagnolo stated that claimant's "respiratory condition appears to be a combination of smoker's bronchiolitis and diastolic heart failure." Employer's Exhibit 18.

Coal Co., 11 BLR 1-91 (1988); Decision and Order at 20. In addition, the administrative law judge did not consider all relevant evidence in discrediting Dr. Spagnolo's determination that the degree of coal workers' pneumoconiosis observed on biopsy was too minimal to cause any impairment. The administrative law judge stated that Dr. Spagnolo's conclusion was outweighed by the contrary biopsy findings of Dr. Perper, a Board-certified pathologist, as "Dr. Perper is more qualified than Dr. Spagnolo to interpret pathological results. . . ." Decision and Order at 21. The administrative law judge further noted that Dr. Crouch, who is also a Board-certified pathologist, reached the same conclusion as Dr. Spagnolo, but determined that, because "Dr. Perper [is] at least as qualified as Dr. Crouch," his opinion "cannot outweigh Dr. Perper's contrary opinion . . . ." *Id*. at 21 n.43. In rendering this finding, however, the administrative law judge did not address the opinion of Dr. Oesterling, a Board-certified pathologist, who also determined that the degree of coal workers' pneumoconiosis observed on biopsy did not cause any impairment. Employer's Exhibit 10.

The administrative law judge discredited the conclusions set forth in Dr. Oesterling's biopsy report because he "did not suggest a cause of [claimant's] pulmonary impairment, if any." Decision and Order at 20. In rendering this finding, however, the administrative law judge did not address Dr. Oesterling's statement that, if claimant had a respiratory or pulmonary impairment, it is not "attributable to coal dust [but would be due] to a failing left ventricle and . . . the areas of infiltrating tumor which are obviously beginning to spread though this gentleman's lung tissues." Employer's Exhibit 10. Similarly, employer notes correctly that, contrary to the administrative law judge's assertion, Dr. Bellotte did not omit claimant's emphysema from consideration but, rather, included it in the diagnoses listed in his report dated July 19, 2010. Employer's Exhibit 20. In addition, as employer maintains, Dr. Bellotte cited factors independent of claimant's smoking history in ruling out a causal connection between coal dust exposure and claimant's respiratory impairment.[9] *Id*. Dr. Bellotte also stated that claimant's "increased problems with a moderate obstructive ventilatory impairment" was "not the gradual progression of a pulmonary impairment due to pneumoconiosis, but it is the abrupt changes in pulmonary impairment which we would associate with patient[s] who have problems with cardiac disease." *Id*.

---

[9] However, the administrative law judge rationally discredited Dr. Bellotte's statement that claimant's impairment is not related to coal dust exposure because "in the federal registry [sic] it states that cigarette smoking is [three] times more harmful than being exposed to coal dust," as it conflicts with the scientific view cited by the Department of Labor in the preamble to the amended regulations. 65 Fed. Reg. 79,943 (Dec. 21, 2000)(Medical literature "support[s] the theory that dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms."); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 25 BLR 2-115 (4th Cir. 2012); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 117 (2009); Decision and Order at 23.

Based on the administrative law judge's errors in weighing the biopsy report of Dr. Oesterling and the medical reports of Drs. Spagnolo and Bellotte, we must vacate his finding that employer did not rebut the amended Section 411(c)(4) presumption and remand the case for further consideration. *See Schoenecker v. Allegheny River Mining Co.*, 8 BLR 1-501 (1986); *Hunley v. Director, OWCP*, 8 BLR 1-323 (1985). On remand, the administrative law judge must determine whether the opinions of Drs. Spagnolo, Oesterling and Bellotte are sufficient to rebut the presumed fact that claimant's total disability arose out of, or in connection with, his coal mine employment. When weighing these opinions, the administrative law judge must address the physicians' explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). Lastly, the administrative law judge must set forth his findings in detail, including the underlying rationale, as required by the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d), 30 U.S.C. §932(a). *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Accordingly, the administrative law judge's Decision and Order – Awarding Benefits is affirmed in part, and vacated in part, and this case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

____

NANCY S. DOLDER, Chief
Administrative Appeals Judge

____

ROY P. SMITH
Administrative Appeals Judge

____

BETTY JEAN HALL
Administrative Appeals Judge