BRB No. 06-0105 BLA

IDA LUCILLE POWERS (Widow of SHELVA POWERS)	)	
Claimant-Respondent	)	
v.	)	
SEWELL COAL COMPANY	)	DATE ISSUED: 10/04/2006
Employer-Petitioner	)	
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 Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

William D. Turner (Pyles, Haviland, Turner & Smith, LLP), Lewisburg, West Virginia, for claimant.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

Sarah M. Hurley (Howard M. Radzely, Solicitor of Labor; Rae Ellen Frank James, Deputy 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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (03-BLA-5564) of Administrative Law Judge Daniel L. Leland on a survivor's claim[1] filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act). Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that the miner worked in qualifying coal mine employment[2] for thirty-six years and three months. The administrative law judge raised *sua sponte* the issue of whether to apply the doctrine of collateral estoppel[3] to the prior determination in the miner's claim regarding the existence of pneumoconiosis and determined that employer was collaterally estopped from raising the issues of the existence of pneumoconiosis and whether the miner's pneumoconiosis arose out of coal mine employment. Next, the administrative law judge found that claimant established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were awarded commencing as of June 1, 2001, the month in which the survivor's claim was filed.

On appeal, employer contends that the administrative law judge erred in applying the doctrine of collateral estoppel to bar the relitigation of the existence of pneumoconiosis in this survivor's claim. Employer argues further that the administrative law judge erred in his analysis of the medical evidence when he found that the miner's death was due to pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The

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[1] Claimant, Ida Lucille Powers, is the surviving spouse of the miner, Shelva Powers, who died on May 15, 2001. Director's Exhibit 16. The miner filed an application for benefits on May 3, 1985, which was awarded by Administrative Law Judge Ben L. O'Brien in a Decision and Order dated February 1, 1989. Director's Exhibit 1. Employer did not appeal this award; consequently, the miner was receiving benefits until his death. After the miner's death, claimant filed a survivor's claim on June 6, 2001, which is the subject of the instant appeal. Director's Exhibit 3.

[2] The record indicates that the miner's coal mine employment occurred in West Virginia. Director's Exhibits 1, 3. 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*).

[3] Collateral estoppel forecloses "the relitigation of issues of fact or law that are identical to issues which have actually been determined and necessarily decided in prior litigation in which the party against whom [issue preclusion] is asserted had a full and fair opportunity to litigate." *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999) (*en banc*), *citing Ramsey v. INS*, 14 F.3d 206 (4th Cir. 1994); *see Sedlack v. Braswell Services Group, Inc.*, 134 F.3d 219 (4th Cir. 1998); *Collins v. Pond Creek Mining Co.*, 22 BLR 1-229, 1-232-233 n.2 (2003).

Director, Office of Workers' Compensation Programs, (the Director), as party-in-interest, has filed a limited response letter, arguing that, based upon the particular facts of this case, the administrative law judge reasonably applied the doctrine of collateral estoppel to preclude employer from relitigating the issue of the existence of pneumoconiosis. As an additional matter, in the event the Board affirms the award of benefits, the Director urges the Board to modify the administrative law judge's assignment of the commencement date of benefits to May 2001, the month in which the miner died, instead of June 2001, the month in which claimant filed her claim.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Citing *Collins v. Pond Creek Mining Co.*, 22 BLR 1-229 (2003) and *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134 (1999) (*en banc*), employer argues that the administrative law judge erred in applying collateral estoppel to bar the relitigation of the existence of pneumoconiosis in this survivor's claim because the holding in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000) (all evidence set forth at Section 718.202(a)(1)-(4) must be weighed together), constitutes a change in the law. Employer contends, therefore, that the issue of the existence of pneumoconiosis in the survivor's claim was not identical to the issue of pneumoconiosis in the miner's claim. Employer further contends that the administrative law judge's speculative reasoning in determining how current law would have affected Administrative Law Judge Ben L. O'Brien's pneumoconiosis determination in the miner's claim contravenes Board precedent. Employer also asserts that the administrative law judge further compounded his error because Judge O'Brien's pneumoconiosis determination "appears to be based on the [now-overruled] true doubt rule." Employer's Petition for Review and Supporting Brief at 7.

Claimant and the Director urge the Board to affirm the administrative law judge's application of the doctrine of collateral estoppel based on the unique facts of this case. Specifically, the Director avers that the administrative law judge rationally concluded that "the miner met *Compton's* burden of proof" since Judge O'Brien had determined that pneumoconiosis was established by both the x-ray and medical opinion evidence. Director's Letter Brief at 2.

For collateral estoppel to apply in this case, claimant must establish that: (1) the issue sought to be precluded is identical to one previously litigated; (2) the issue was actually determined in the prior proceeding; (3) the issue was a critical and necessary part of the judgment in the prior proceeding; (4) the prior judgment is final and valid; and (5) the party against whom estoppel is asserted had a full and fair opportunity to litigate the

issue in the previous forum. *Sedlack v. Braswell Services Group, Inc.*, 134 F.3d 219, 224 (4th Cir. 1998); *Hughes*, 21 BLR at 1-137. In *Collins*, the Board held that, in a survivor's claim where no autopsy evidence was obtained and entitlement to benefits was established in the living miner's claim, the doctrine of collateral estoppel is not applicable to preclude litigation of the issue of the existence of pneumoconiosis because the decision by the United States Court of Appeals for the Fourth Circuit in *Compton* constituted a change in the law with respect to the standard for establishing the existence of pneumoconiosis under Section 718.202(a) and, therefore, created a difference in the substantive legal standards applicable to the two proceedings. *Collins*, 22 BLR at 1-232-233; *accord Howard v. Valley Camp Coal Co.*, No. 03-1706 (4th Cir. Apr. 14, 2003) (unpub.).[4] The Board further held, "…relitigation of an issue is not barred when there is a difference in the allocation of the burdens of proof and production, or a difference in the substantive legal standards pertaining to the two proceedings." *Collins*, 22 BLR at 1-232.[5]

We agree with the Director that the finding of pneumoconiosis in the miner's claim should be accorded preclusive effect in the survivor's claim and the administrative law judge did not err in determining that the change in law rendered by *Compton* did not require relitigation of the pneumoconiosis issue in this case. Based on 30 U.S.C. §923(b), which requires that all relevant evidence be considered, the Fourth Circuit court held in *Compton* that all types of evidence submitted under Section 718.202(a)(1)-(a)(4) must be weighed together to determine whether a preponderance of the evidence establishes the existence of pneumoconiosis. *Compton*, 211 F.3d at 208-11, 22 BLR at 2-169-74. The court explained that "absent contrary evidence, evidence relevant to any one of the four subsections may establish pneumoconiosis. However, whether or not a particular piece or type of evidence actually *is* a sufficient basis for a finding of pneumoconiosis will depend on the evidence in each case." *Compton*, 211 F.3d at 209, 22 BLR at 2-171 [emphasis in original]. In 1989, Judge O'Brien conducted a comparative analysis of the conflicting x-ray interpretations and the divergent medical opinions and found that the x-ray and medical opinion evidence affirmatively established the existence of pneumoconiosis under both Sections 718.202(a)(1) and 718.202(a)(4). Director's Exhibit

[4] We disagree with the Director's further contention that *Compton* did not change the law. *See Collins v. Pond Creek Mining Co.*, 22 BLR 1-229 (2003); Director's Letter Brief at 3.

[5] The Director states that the Board's decision in *Collins* is on appeal before the United States Court of Appeals for the Fourth Circuit. *Collins v. Pond Creek Mining Co.*, No. 05-1832 (4th Cir., filed Jul. 29, 2005, argued Mar. 2006). At the time of the issuance of this decision, however, the court had not rendered its decision.

1.[6] Consequently, in the instant case, the administrative law judge concluded that the intervening change in law wrought by *Compton* was not "sufficiently significant to warrant a refusal to apply the doctrine of collateral estoppel" because "if Judge O'Brien had weighed all types of evidence he nevertheless would have found that the miner had pneumoconiosis as the existence of pneumoconiosis had been established under both of the available methods." Decision and Order at 5. Because the existence of pneumoconiosis was found under both available means, the administrative law judge reasonably concluded that Judge O'Brien's pneumoconiosis determination comported with *Compton* inasmuch as a weighing of both types of evidence together would result in an affirmative finding of pneumoconiosis. *Ibid.* This finding was reasonable and complies with the holding in *Compton* that all evidence relevant to the existence of pneumoconiosis must be considered and weighed together. Accordingly, we hold that based on the facts of this particular case, the administrative law judge properly determined that the issue of the existence of pneumoconiosis in the survivor's claim was identical to the issue previously litigated and affirm the administrative law judge's determination to give preclusive effect to the finding that pneumoconiosis arising out of coal mine employment was established in the miner's claim. *See Collins*, 22 BLR at 1-232; *Hughes*, 21 BLR at 1-137; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (*en banc*) (where there is conflicting evidence on an issue, administrative law judge's function is to make a determination of the relative credibility of the evidence relevant to that issue and such determinations must be upheld unless they are inherently incredible or patently unreasonable); *Calfee v. Director, OWCP*, 8 BLR 1-7, 1-10 (1985); *cf. Sturgill v. Old Ben Coal Co*., 22 BLR 1-314 (2003) (Board disapproved application of collateral estoppel because the finding of pneumoconiosis in miner's claim was made without weighing together contrary evidence at Section 718.202(a)).

Likewise, we reject employer's argument that the administrative law judge erred in applying collateral estoppel because Judge O'Brien relied on the now-overruled true doubt rule to find the existence of pneumoconiosis. A review of Judge O'Brien's Decision and Order reveals that, after conducting a comparative analysis and weighing of the conflicting x-ray interpretations and the divergent medical opinions, Judge O'Brien found that the x-ray and medical opinion evidence affirmatively established the existence of pneumoconiosis under both Sections 718.202(a)(1) and 718.202(a)(4). Director's Exhibit 1. The Supreme Court's invalidation of the true doubt rule in *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), subsequent to the administrative law judge's decision in the miner's claim, did not result in a change in the

[6] Judge O'Brien found that pneumoconiosis could not be established under Section 718.202(a)(2) as there was no biopsy evidence, nor under Section 718.202(a)(3), as none of the presumptions therein was applicable. Director's Exhibit 1.

burden of proof between the decisions in the miner's and survivor's claims in this case because Judge O'Brien had placed the burden on the miner to establish the existence of pneumoconiosis. Hence, we reject employer's contention that the administrative law judge erred in applying collateral estoppel. Because the administrative law judge properly applied collateral estoppel to preclude employer from relitigating the issue of the presence of pneumoconiosis, we need not address employer's contention that a preponderance of the evidence submitted in the survivor's claim fails to establish the existence of pneumoconiosis.

Employer argues that the administrative law judge erred in finding that pneumoconiosis contributed to the miner's death pursuant to Section 718.205(c), based on his faulty application of collateral estoppel and his improper discounting of the opinions of Drs. Zaldivar and Castle that the miner's death was unrelated to pneumoconiosis. Citing *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995), for the proposition that an administrative law judge may not discount a physician's causation opinion for failure to diagnose pneumoconiosis unless the opinion is premised on an erroneous finding contrary to that of the administrative law judge, employer avers that the opinions of Drs. Zaldivar and Castle were not premised on an erroneous finding contrary to the administrative law judge's conclusion because both physicians opined that the miner's final hospital course would have been the same in the presence or absence of pneumoconiosis.

In *Ballard*, the Fourth Circuit court held that reliance on a physician's opinion that does not contain a diagnosis of coal workers' pneumoconiosis as to the cause of the miner's total disability may be appropriate because the physician's opinion that the miner did not have pneumoconiosis may not necessarily contradict an administrative law judge's determination that the miner has legal pneumoconiosis, a condition which is significantly broader than the medical definition. *Ballard*, 65 F.3d at 1195, 19 BLR at 2-318; *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 821, 19 BLR 2-86, 2-91-92 (4th Cir. 1995). By contrast however, neither Dr. Zaldivar nor Dr. Castle diagnosed the existence of coal workers' pneumoconiosis or the presence of legal pneumoconiosis as defined in Section 718.201. While Dr. Zaldivar diagnosed asthma and emphysema, he attributed these conditions to the miner's cigarette smoking; similarly, Dr. Castle diagnosed chronic obstructive pulmonary disease but opined that it was related entirely to the miner's long, excessive, and ongoing tobacco abuse habit. Employer's Exhibits 1, 2, 6, 7, 10. Because Drs. Zaldivar and Castle each opined that the miner did not have either clinical or legal pneumoconiosis, the administrative law judge rationally discounted their opinions as to the cause of the miner's death. *Scott v. Mason Coal Co.*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995).

Employer avers that this case is distinguishable from *Scott*, because the physicians in *Scott* stated merely that their opinions would not change even if the miner had pneumoconiosis, whereas here, Dr. Zaldivar actually considered the effect coal workers' pneumoconiosis would have had on the miner's death and fully explained why his opinion remained unchanged by a finding of pneumoconiosis. Employer's contention is unmeritorious.

In *Scott*, the doctors' assurance that their opinions would not change, even if they assumed the miner had pneumoconiosis, carried no weight with the court. Because the doctors had opined that Scott "did not have legal or medical pneumoconiosis, did not diagnose any condition aggravated by coal dust, and found no symptoms related to coal dust exposure," the court found that "their opinions were in direct contradiction to the administrative law judge's finding that Scott suffered from pneumoconiosis arising out of coal mine employment," and as such, were entitled to little, if any, weight. *Scott*, 289 F.3d at 269-270, 22 BLR at 2-382-383; *Toler*, 43 F.3d at 116, 19 BLR at 2-83. Consequently, the administrative law judge "could only give weight to those opinions if he provided specific and persuasive reasons for doing so, and those opinions could carry little weight, at the most." *Scott*, 289 F.3d at 269, 22 BLR at 2-384.

In the instant case, the administrative law judge properly applied *Scott* and, in so doing, permissibly accorded "little weight" to the opinions of Drs. Zaldivar and Scott because they did not diagnose either legal or medical pneumoconiosis or a condition aggravated by coal dust exposure, and found no symptomotology related to coal dust. *See Scott*, 289 F.3d at 269-270, 22 BLR at 2-382-383; *Toler*, 43 F.3d at 116, 19 BLR at 2-83; *accord Soubik v. Director, OWCP*, 366 F.3d 226, 234, 23 BLR 2-82, 2-99 (3d Cir. 2004) (even where the physician assumes the miner has pneumoconiosis, this assumption results in a "superficial hypothetical" that is insufficient to reconcile the physician's opinion with the administrative law judge's ultimate conclusion that pneumoconiosis is present); Decision and Order at 5.

Employer contends that the administrative law judge erred in granting an automatic preference to the opinion of Dr. Mistry, the miner's treating physician, and in failing to consider her opinion in light of the factors set forth in Section 718.104(d), the regulation that governs consideration of the opinions of treating physicians. Employer specifically argues that the administrative law judge improperly found Dr. Mistry's opinion entitled to deference as that of a treating physician because: the duration of her relationship with the miner was brief as she examined him only once; her diagnosis of coal workers' pneumoconiosis was unsupported by the objective medical evidence; and she is neither a pulmonologist nor a pathologist specializing in lung disease.

It is incumbent upon the administrative law judge to consider and assess the relative credibility of a treating physician's opinion in light of the factors articulated in

Section 718.104(d)(1)-(5). 20 C.F.R. §718.105(d)(1)-(5). In finding Dr. Mistry's opinion worthy of determinative weight because she "treated the miner during his final hospitalization," the administrative law judge did not discuss the factors set forth in Section 718.104(d)(1)-(5) and assess the credibility of Dr. Mistry's opinion considered as a whole, in light of the physician's reasoning and documentation. Decision and Order at 5. We, therefore, vacate the administrative law judge's weighing of Dr. Mistry's opinion and remand the case for the administrative law judge to reconsider Dr. Mistry's opinion in light of the factors articulated in Section 718.104(d)(1)-(5). 20 C.F.R. §718.104(d)(1)-(5); *see Consolidation Coal Co. v. Held*, 314 F.3d 184, 187-188, 22 BLR 2-564, 2-571 (4th Cir. 2002); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1997); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 1097, 17 BLR 2-123, 2-128-129 (4th Cir. 1993); *accord Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); Decision and Order at 5.

Employer's remaining allegations of error regarding the administrative law judge's consideration of Dr. Mistry's opinion lack merit. A review of the medical records from claimant's final hospitalization at Summersville Memorial Hospital demonstrates that Dr. Mistry's treatment of the miner commenced on May 12, 2001 and, attending to the miner throughout his hospitalization until his death, she performed daily physical examinations, administered chest x-rays, arterial blood gas studies, electrocardiograms, and other diagnostic tests. Director's Exhibit 17. While Dr. Mistry's relationship with the miner could be characterized as "brief," as employer avers, since their relationship lasted three days, a review of Dr. Mistry's physician notes and the May 15, 2001 hospital report, where she thoroughly delineated the progressive deterioration of the miner's physical condition and recorded her observations, adequately demonstrates her attentive treatment of the miner. Director's Exhibit 17. Finally, while the Fourth Circuit court has held that respective qualifications of the physicians are important indicators of the reliability of their opinions, *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998), there is no requirement set forth in Section 718.104(d) that a treating physician be either a pulmonologist or pathologist specializing in lung disease for his/her opinion to be afforded deferential weight. 20 C.F.R. §718.104(a)-(d).

Employer additionally asserts that the administrative law judge erred in crediting Dr. Mistry's opinion that pneumoconiosis hastened the miner's death because her opinion, contained in the death certificate, is unreasoned. Implicit in employer's argument is the assumption that the administrative law judge predicated his finding of death due to pneumoconiosis exclusively on the death certificate. The record belies that contention. Relying on both Dr. Mistry's May 15, 2001 report as well as the death certificate,[7] the

[7] After the miner's demise on May 15, 2001, Dr. Mistry described the course of tests administered to the miner and delineated the circumstances surrounding his gradual decline that ultimately resulted in his death:

administrative law judge found, "Dr. Mistry, who treated the miner during his final hospitalization, stated that his end stage COPD and coal workers' pneumoconiosis 'caught up with him,' and … cited coal workers' pneumoconiosis as a cause of death in the death certificate." Decision and Order at 5. It is that opinion, considered in the context of the doctor's hospital notes, which the administrative law judge held was reasoned. Such determinations are matters for the administrative law judge and, if rational and supported by substantial evidence, shall not be disturbed. *Hicks*, 138 F.3d at 532 n.9, 21 BLR at 2-335 n.9; *Underwood v. Elkay Mining Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997) (administrative law judge may weigh medical evidence and draw his own conclusions); *Fagg*, 12 BLR at 1-77; *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); *Calfee*, 8 BLR at 1-10. As an additional matter, the Fourth Circuit court has held, "[a]n ALJ's duty of explanation is fully satisfied '[i]f a reviewing court can discern what the ALJ did and why he did it'." *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10, 21 BLR 2-587, 2-603 n.10 (4th Cir. 1999), *citing Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803, 21 BLR 2-302, 2-311 (4th Cir. 1998) (an administrative law judge's brevity can foster clarity). Accordingly, we affirm the administrative law judge's credibility determinations with respect to the opinions of Drs. Zaldivar and Castle but vacate his weighing of Dr. Mistry's opinion in accordance with Section 718.104(d).[8]

> … Unfortunately, on the early morning hours of the 15th [the miner] developed bradycardia and then junctional rhythm and did expire. … Autopsy was offered but [family members] did not wish to have any autopsy. I believe that ultimately his end stage COPD and coal workers' pneumoconiosis caught up with him and the CO2 retention was too much for him to handle.

Director's Exhibit 17. In the final diagnosis portion of that same report, Dr. Mistry listed end-stage chronic obstructive pulmonary disease with oxygen dependence and coal workers' pneumoconiosis. *Ibid.* On the death certificate, Dr. Mistry listed carbon dioxide narcosis as the immediate cause of the miner's death, with end-stage oxygen, dependent chronic obstructive pulmonary disease, and coal workers' pneumoconiosis as underlying causes. Director's Exhibit 16.

[8] The administrative law judge discounted Dr. Rasmussen's opinion that pneumoconiosis hastened the miner's death as "poorly supported and highly speculative." Decision and Order at 5; Claimant's Exhibit 1.

Based on the foregoing, we remand the case for the administrative law judge to reconsider Dr. Mistry's opinion pursuant to Section 718.104(d) and to evaluate the medical evidence to determine whether the evidence of record is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *See Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). If, on remand, the administrative law judge finds that claimant is entitled to benefits, he must determine the commencement date of the survivor's benefits pursuant to Section 725.503(c), which states that benefits awarded on a survivor's claim begin from the month of the miner's demise. 20 C.F.R. §725.503(c).

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge