U.S. Department of Labor

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

BRB Nos. 17-0441 BLA
and 17-0441 BLA-A

CECIL E. BRISTOW	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
EMERY MINING CORPORATION	)	
	)	
and	)	
	)	
ENERGY WEST MINING COMPANY, INCORPORATED	)	DATE ISSUED: 10/19/2018
	)	
Employer/Carrier-Respondents	)	
Cross-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, and employer/carrier (employer) cross-appeals, the Decision and Order Denying Benefits (2014-BLA-05797) of Administrative Law Judge Colleen A. Geraghty rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on September 3, 2013.

Based on her determination that claimant worked for six and one-half years in qualifying coal mine employment, the administrative law judge found that claimant was unable to invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[1] The administrative law judge next considered whether the evidence is sufficient to establish entitlement to benefits without the aid of the Section 411(c)(4) presumption. She found that claimant established the existence of clinical and legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203(b), and total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge further found, however, that claimant failed to establish that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c) and she denied benefits accordingly.

On appeal, claimant argues that the administrative law judge erred in finding that the medical evidence is insufficient to establish that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Employer responds, urging affirmance of the denial of benefits. Employer has also filed a cross-appeal, arguing that the administrative law judge erred in finding that claimant established the existence of clinical and legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203. Claimant has filed a single brief in response to

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the claimant establishes at least fifteen years of underground coal mine employment, or surface mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

employer's brief on cross-appeal and in reply to employer's response brief. The Director, Office of Workers' Compensation Programs, has not filed a response to these appeals.[2]

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

To be entitled to benefits under the Act, claimant must establish that he has pneumoconiosis, his pneumoconiosis arose out of coal mine employment, he has a totally disabling respiratory or pulmonary impairment, and his totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 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).

Legal Pneumoconiosis

We first address employer's argument, raised on cross-appeal, that the administrative law judge erred in finding that the medical opinion evidence establishes the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Legal pneumoconiosis includes any chronic lung disease or impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b).

The administrative law judge considered the opinions of Drs. Chavda, Sood, Selby, and Castle. Dr. Chavda diagnosed moderate restrictive airways disease and severe smoking-related[4] chronic obstructive pulmonary disease (COPD), but opined that claimant

[2] We affirm, as unchallenged on appeal, the administrative law judge's determinations that claimant established six and one-half years of qualifying coal mine employment and total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 30.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[4] The administrative law judge noted claimant's testimony that he smoked about a pack a day from 1974 until a few months before the hearing in 2016, a history of

suffers from legal pneumoconiosis because coal mine dust exposure was a contributing factor to both his restriction and his COPD. Director's Exhibit 10; Employer's Exhibit 4 at 14-17, 26-27, 29-30. Dr. Sood also diagnosed legal pneumoconiosis in the form of moderately severe COPD due to both smoking and coal mine dust exposure. Claimant's Exhibit 8; Employer's Exhibit 7 at 16-17. Dr. Selby concluded that claimant does not have legal pneumoconiosis, but suffers from COPD due solely to smoking, with an asthmatic component unrelated to coal mine dust exposure. Employer's Exhibits 1; 8 at 18-20. Dr. Castle similarly concluded that claimant does not have legal pneumoconiosis but has COPD due to smoking. Employer's Exhibits 3; 5 at 32-33.

The administrative law judge credited the opinions of Drs. Chavda and Sood, finding them to be based on claimant's symptoms, exposure histories and the results of claimant's pulmonary function studies. Decision and Order at 25-26. In contrast, the administrative law judge found the opinions of Drs. Selby and Castle unpersuasive. *Id*. at 26-27. The administrative law judge therefore found that the weight of the medical opinion evidence establishes that claimant has legal pneumoconiosis. *Id*. at 27.

Employer contends that the administrative law judge erred in finding the opinions of Drs. Chavda and Sood to be sufficient to meet claimant's burden to establish legal pneumoconiosis. Employer's Brief at 24-29. Employer asserts that Dr. Chavda's opinion that coal mine dust was not a significant cause or substantial aggravator of his COPD is legally insufficient to establish the existence of legal pneumoconiosis. *Id*. at 28-29. Employer's argument lacks merit.

Dr. Chavda stated in his medical report that claimant's impairment was "substantially caused and aggravated by working in the mines and exposure to coal dust for about 6 1/2 years." Director's Exhibit 10. At his deposition, as employer notes, he stated that claimant's severe COPD was primarily caused by smoking and that coal mine dust was not a significant cause but was the second or "minor" etiology. Employer's Exhibit 4 at 16-17, 29-30. He also stated that the effects of smoking and coal mine dust exposure were additive. Employer's Exhibit 4 at 15. Contrary to employer's assertion, however, the administrative law judge correctly found that because Dr. Chavda stated that claimant's COPD is due in part to coal mine dust exposure, his opinion is sufficient to establish the existence of legal pneumoconiosis under the law of the United States Court of Appeals for the Sixth Circuit.[5] Decision and Order at 25, *citing Arch on the Green, Inc.*

---

approximately 42 pack-years. Decision and Order at 4-5, *referencing* Hearing Transcript at. 28-32.

[5] We reject employer's additional argument that the administrative law judge failed to explain how Dr. Chavda's opinion establishes that claimant's legal pneumoconiosis

v. Groves, 761 F.3d 594, 598-599 25 BLR 2-615, 2-624 (6th Cir. 2014) (claimant can satisfy his burden to prove that his impairment was "significantly related to, or aggravated by, exposure to coal dust" by showing that his disease was caused "in part" by coal mine employment); Employer's Brief at 28-29.

Employer also challenges the administrative law judge's reliance on Dr. Sood's opinion, asserting that it is both unreasoned and legally insufficient to constitute a diagnosis of legal pneumoconiosis. Employer's Brief at 24-28. The administrative law judge noted that Dr. Sood based his diagnosis of legal pneumoconiosis on a review of claimant's work and medical histories and pulmonary function testing and supported his conclusions with reference to medical literature. Decision and Order at 10-15; Claimant's Exhibit 8; Employer's Exhibit 4. Dr. Sood acknowledged that claimant's significant smoking history of over forty years was the dominant cause of his COPD and that claimant would still be disabled if he had never worked as a miner. Employer's Exhibit 7 at 15-16. Contrary to employer's contention, however, Dr. Sood emphasized that while claimant had only six and one-half years of coal mine dust exposure, because he worked underground at the face where the dust exposure was heavy, his exposure was of adequate duration and intensity to be a "substantial contributory factor" to his COPD. Claimant's Exhibit 8 at 9; Employer's Exhibit 8 at 16-17.

Dr. Sood set forth the rationale for his findings based on his interpretation of the medical evidence of record, and explained why he concluded within a reasonable degree of medical certainty that claimant's coal mine dust exposure was a substantially contributing cause of his COPD. Thus, contrary to employer's contention, the administrative law judge permissibly credited his opinion as sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[6] *See Peabody*

---

arose out of coal mine employment. Employer's Brief at 28. Having found that Dr. Chavda's opinion established the existence of legal pneumoconiosis, the administrative law judge was not required to separately determine the cause of the pneumoconiosis at 20 C.F.R. §718.203(b), as her finding at 20 C.F.R. §718.202(a)(4) necessarily subsumed that inquiry. *Henley v. Cowan & Co.*, 21 BLR 1-147, 1-151 (1999); Decision and Order at 27.

[6] The administrative law judge acknowledged Dr. Sood's testimony that he held himself to a higher, near absolute, level of certainty when treating patients, but she permissibly relied on his conclusions in this case which were given within a reasonable degree of medical certainty. *See* 20 C.F.R. §718.202(a)(4) (pneumoconiosis may be established by a reasoned medical opinion from a physician exercising sound medical judgment); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *see also Blevins v. Peabody Coal Co.*, 6 BLR 1-750 (1983) (not even a "reasonable

Coal Co. v. Groves, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 25. We, therefore, affirm the administrative law judge's finding that the opinions of Drs. Chavda and Sood diagnosing legal pneumoconiosis are sufficient to satisfy claimant's burden of proof. Decision and Order at 27.

Employer also argues that the administrative law judge provided invalid reasons for discrediting the opinions of Drs. Selby and Castle that claimant's obstructive lung disease is due solely to smoking. Employer's Brief at 19-20, 23-24. We disagree. The administrative law judge correctly noted that Dr. Selby opined that claimant does not have legal pneumoconiosis in part because only an "extremely susceptible host" would develop coal mine dust-related lung disease after only five to seven years of exposure. Decision and Order at 17, 26; Employer's Exhibit 7 at 18. The administrative law judge permissibly found that Dr. Selby did not adequately explain why claimant could not be one of the susceptible miners who develops significant obstructive lung disease from relatively short coal mine dust exposure, or explain why claimant's years of coal mine dust exposure did not contribute to his obstructive impairment. *See* 20 C.F.R. §718.201(b); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *see also Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103-04 (7th Cir. 2008); Decision and Order at 26. Further, the administrative law judge noted that while Dr. Selby acknowledged that coal mine dust can aggravate asthma, he did not explain his conclusion that, in this case, there is no reason to believe that coal mine dust aggravated the asthmatic component of claimant's disease.[7] Decision and Order at 26.

With regard to Dr. Castle's opinion, the administrative law judge correctly noted that he concluded that claimant does not have legal pneumoconiosis based, in part, on his view that claimant's markedly decreased FEV1 and severely reduced FEV1/FVC ratio

---

degree of medical certainty" is required as a doctor's opinion regarding the cause of miner's impairment is sufficient if it constitutes a reasoned medical judgment).

[7] We further reject employer's argument that the administrative law judge applied an improper standard by requiring Dr. Selby to "rule out" the possibility that coal dust contributed to claimant's obstructive lung disease. Employer's Brief at 23. As set forth above, the administrative law judge found that Dr. Selby failed to credibly explain how *he ruled out* coal dust exposure as a contributing or aggravating cause of claimant's obstructive impairment. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); Decision and Order at 26; Employer's Brief at 23.

constituted a pattern of impairment that is characteristic of obstruction related to cigarette smoking, not coal dust exposure. Decision and Order at 18; Director's Exhibits 3; 5 at 13-14, 29-31. The administrative law judge permissibly discounted this aspect of Dr. Castle's opinion as inconsistent with the regulations and the Department of Labor's recognition that a reduced FEV1/FVC ratio may support a finding that a miner's respiratory impairment is related to coal mine dust exposure. 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *see* 20 C.F.R. §718.204(b)(2)(i)(C); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491, 25 BLR 2-633, 2-645 (6th Cir. 2014); Decision and Order at 27.

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions based on the explanations given by the experts for their diagnoses, and to assign those opinions appropriate weight. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73, 25 BLR 2-431, 2-446-47 (6th Cir. 2013); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson*, 12 BLR at 1-113; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). As substantial evidence supports the administrative law judge's credibility determinations, we affirm her finding that the medical opinion evidence establishes that claimant has legal pneumoconiosis, in the form of COPD due, in part, to coal mine dust exposure. *See Martin v. Ligon Preparation Co*., 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); Decision and Order at 27-28.

Total Disability Due to Pneumoconiosis

Claimant argues that the administrative law judge failed to apply the proper standard for rendering her disability causation determination at 20 C.F.R. §718.204(c). Claimant's Brief at 18-20. We agree.

Prior to evaluating the medical opinions pursuant to 20 C.F.R §718.204(c), the administrative law judge, citing *Groves*, 761 F.3d 594, 599, 25 BLR 2-615, 2-624 (6th Cir. 2014), articulated the proper standard under the regulations for establishing disability causation, i.e., claimant must establish that pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment.[8] 20 C.F.R.

[8] In *Groves*, the Sixth Circuit held that the administrative law judge erred in stating that the miner need only establish that legal pneumoconiosis was a contributing cause of his totally disabling respiratory or pulmonary impairment, when the regulatory standard requires that pneumoconiosis be a substantially contributing cause. *See Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 599, 25 BLR 2-615, 2-624 (6th Cir. 2014).

§718.204(c); Decision and Order at 30. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially 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); *Tenn. Consol. Coal Co. v. Kirk*, 264 F.3d 602, 611, 22 BLR 2-228, 2-303 (6th Cir. 2001); Decision and Order at 31.

Contrary to employer's contention, the administrative law judge permissibly discredited the opinions of Drs. Selby and Castle on the cause of claimant's disabling impairment because the physicians failed to diagnose legal pneumoconiosis, contrary to the administrative law judge's finding that claimant has the disease. *See Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vac'd sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *see also Ogle*, 737 F.3d at 1070, 25 BLR at 2-444; *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-473 (6th Cir. 2013); Decision and Order at 31; Employer's Brief at 19-20.

As claimant correctly assets, however, the administrative law judge applied an erroneous standard in her analysis of whether the opinions of Drs. Chavda and Sood met claimant's burden on this issue. Instead of focusing on the contribution that legal pneumoconiosis makes to claimant's total respiratory disability at 20 C.F.R. §718.204(c)(1), the administrative law judge revisited the question of the extent to which claimant's respiratory impairment is attributable to coal mine dust exposure, which is the relevant inquiry in establishing the existence of legal pneumoconiosis pursuant to 20 C.F.R. §§718.201(a)(2), 718.202(a)(4). Decision and Order at 31-32.

Specifically, the administrative law judge acknowledged that "at one point Dr. Chavda answered 'yes' when asked whether pneumoconiosis had a material adverse effect on respiratory or pulmonary impairment, and materially worsened a totally disabling respiratory or pulmonary impairment caused by cigarette smoking." Decision and Order at 31 n.6. Nonetheless, she found Dr. Chavda's opinion insufficient to establish disability causation in part because "Dr. Chavda has been clear on more than one occasion that the [c]laimant's *coal dust exposure* was not a substantial or significant contributing factor in his COPD, or his disability." Decision and Order at 31 (emphasis added). The

administrative law judge similarly found Dr. Sood's opinion insufficient to establish disability causation because "[w]hile Dr. Sood found that [c]laimant's *coal dust exposure* materially worsened a totally disabling respiratory impairment, [she did] not find his opinion to be persuasive given his testimony that [c]laimant's cigarette smoking was the dominant cause in his obstructive impairment, and that if [c]laimant was a non-coal miner, he would still have a disabling impairment from smoking alone."[9] Decision and Order at 31 (emphasis added). Thus the administrative law judge found that the opinions of Drs. Chavda and Sood are not sufficient to establish that pneumoconiosis was a substantially contributing cause of claimant's disabling respiratory impairment. This was error. Having determined that legal pneumoconiosis was established, in the form of claimant's COPD, the administrative law judge should have limited her inquiry to whether that condition is a "substantially contributing cause" of claimant's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1); *see Groves*, 761 F.3d at 599, 25 BLR at 2-624; *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 490, 25 BLR 2-135, 2-154-55 (6th Cir. 2012); *Kirk*, 264 F.3d at 611, 22 BLR at 2-303; 20 C.F.R. §718.204(c)(1).

Notwithstanding the administrative law judge's error in the application of an incorrect legal standard, the facts of this case do not mandate a remand for application of the correct standard. While factual determinations are the province of the administrative law judge, reversal is warranted where no factual issues remain to be determined and no further factual development is necessary. *See Collins v. Pond Creek Mining Co*., 751 F.3d 180, 187, 25 BLR 2-601, 2-614 (4th Cir. 2014) (reversing denial, with directions to award benefits without further administrative proceedings); *Adams v. Director, OWCP*, 886 F.2d 818, 826, 13 BLR 2-52, 2-63-64 (6th Cir. 1989) (same).

The findings essential to our consideration have been rendered by the administrative law judge in this case. She found, and all of the physicians diagnosing a disabling respiratory impairment agree, that claimant is totally disabled by COPD.[10] Director's Exhibit 8; Claimant's Exhibit 1; Employer's Exhibits 3, 6. All of the physicians also agree that claimant's extensive smoking history was the primary cause of his COPD, but disagree

[9] We note that Dr. Sood also specifically opined that legal pneumoconiosis materially worsened claimant's respiratory impairment. Employer's Exhibit 7 at 55-56.

[10] Based on claimant's variable pulmonary function studies consistent with asthma, Dr. Selby stated that he was uncertain whether claimant's chronic obstructive pulmonary disease was disabling because it could be reversible. Employer's Exhibits 1; 8 at 16-18. The administrative law judge discredited Dr. Selby's opinion, however, as "entirely speculative" and relied on the opinions of Drs. Chavda, Sood, and Fino to find total disability established. Decision and Order at 30.

as to whether claimant's six and one-half years of coal mine dust exposure also played a role in its development. As discussed *supra*, the administrative law judge credited the opinions of Drs. Chavda and Sood over those of Drs. Selby and Castle as establishing that claimant's COPD was significantly related to, or substantially aggravated by, claimant's coal mine dust exposure. Decision and Order at 18.

In sum, there is no dispute between Drs. Chavda, Sood, Selby, and Castle that claimant's respiratory impairment is due to COPD, and the administrative law judge found that claimant's COPD is both totally disabling and constituted legal pneumoconiosis. As the record reveals no other condition that could have caused claimant's disabling respiratory impairment other than his COPD, and the administrative law judge found that claimant's disabling COPD is legal pneumoconiosis, the opinions of Drs. Chavda and Sood establish disability causation at 20 C.F.R. §718.204(c). *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 820 F.3d 833, 847, 25 BLR 2-799, 2-816-18 (6th Cir. 2016); *Groves*, 761 F.3d at 599, 25 BLR at 2-624; *Kirk*, 264 F.3d at 611, 22 BLR at 2-303; *Adams*, 886 F.2d at 826, 13 BLR at 2-63-64. Consequently, we agree with claimant that the facts of this case warrant reversal of the administrative law judge's denial of benefits.[11]

[11] In light of our holdings that claimant established the existence of legal pneumoconiosis, and total disability due to legal pneumoconiosis, pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(b), (c), we need not address employer's contentions of error regarding the administrative law judge's finding that claimant also suffers from clinical pneumoconiosis. *See* 20 C.F.R. §718.201(a); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and reversed in part, and this case is remanded for entry of an award of benefits.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge