BRB No. 93-985

CHARLES LUCAS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LOUISIANA INSURANCE GUARANTY ASSOCIATION	)	DATE ISSUED:
	)	
Insurer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Granting Claimant's Motion for Summary Decision and Director's Motion to Dismiss and Decision on Motion for Reconsideration of C. Richard Avery, Administrative Law Judge, United States Department of Labor.

Deborah B. Rouen and Gano D. Lemoine, III (Adams and Reese), New Orleans, Louisiana, for claimant.

Collins C. Rossi (Bailey, Rossi & Kincade), Metairie, Louisiana, for the Louisiana Insurance Guaranty Association.

Joshua T. Gillelan II (Thomas S. Williamson, Jr., Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

The Louisiana Insurance Guaranty Association (LIGA) appeals the Decision and Order Granting Claimant's Motion for Summary Decision and Director's Motion to Dismiss and Decision on Motion for Reconsideration (82-LHC-675) of Administrative Law Judge C. Richard Avery rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq*. (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3). The Board held oral argument in this case on January 13, 1994, in New Orleans, Louisiana.

The present appeal involves a denial of a request for modification pursuant to Section 22 of the Act, 33 U.S.C. §922. Claimant was injured on June 6, 1980, while working as a freight handler/forklift driver. He sustained a ruptured disc, and Dr. Epps performed a lumbar discectomy on July 7, 1980. Claimant did not return to work. In a Decision and Order dated August 10, 1982, Administrative Law Judge Ben H. Walley accepted claimant and employer's stipulation that claimant was permanently totally disabled as a result of the work injury. The administrative law judge did not, however, accept their stipulation that claimant's disability was not due solely to the injury but rather was due to the combination of that injury and a pre-existing degenerative back condition, as it affected the liability of the Special Fund under Section 8(f) of the Act, 33 U.S.C. §908(f). He denied employer Section 8(f) relief, based on his review of the record. Employer appealed the denial of Section 8(f) relief to the Board. The Board affirmed the denial on the ground that employer did not establish that claimant had a manifest pre-existing permanent partial disability. *Lucas v. TTT Stevedores*, BRB No. 83-521 (Nov. 17, 1986)(unpublished).

Claimant's compensation was paid by Midland Insurance Company (Midland), employer's carrier at the time, until Midland's liquidation on August 3, 1986.[1] After Midland's liquidation, LIGA, an entity created by the Louisiana Legislature to pay claims when the primary insurer is insolvent, continued paying claimant. *See* La. Rev. Stat. §22:1375 *et seq.* (1992); *Weaver v. Kitchens*, 556 So. 2d 120, 122 (La. App. 5th Cir. 1990), *writ denied* 573 So. 2d 1123 (La. 1991).

[1]In its appellate brief, LIGA sets out the following sequence of events: during April 1986, Midland was placed in liquidation by the Supreme Court of New York State. At approximately the same time the Department of Insurance of Florida was appointed ancillary receiver of Midland for purposes of liquidation, by a court in that state. At this time, claimant's employer, TTT Stevedores, began doing business under the name Coastwide Marine Services of Louisiana, Inc., and ceased doing business shortly thereafter.

On September 9, 1991, LIGA filed a Form LS-18 to initiate a Section 22 modification proceeding for modification under Section 22 of the Act, 33 U.S.C. §922, alleging a mistake in a determination of fact. LIGA then filed a Supplemental Request for Modification and a Second Supplemental and Amending Memorandum in Support of Request for Modification and/or Application for Limitation of Liability Under Section 8(f). LIGA sought modification on the ground of change in economic condition, asserting claimant is no longer totally disabled, and also alleged mistakes in determinations of fact in prior findings that claimant did not have a manifest pre-existing permanent disability, that timely notice of injury was given and that claimant was totally disabled. LIGA's request for modification was denied by the Office of Workers' Compensation Programs on October 16, 1991.

On March 19, 1992, prior to the scheduled hearing on the modification issue, claimant filed a motion for summary decision, requesting affirmance of Judge Walley's August 10, 1986, Decision and Order granting claimant permanent total disability benefits, on the ground that the stipulation was not subject to modification. The Director, Office of Workers' Compensation Programs (the Director), at about the same time, moved to dismiss LIGA's modification application for limitation of liability under Section 8(f). LIGA opposed claimant's motion for summary decision on the ground that at the time the parties entered into the stipulations, they knew that claimant had a residual wage-earning capacity; thus, a mistake of fact existed as to the extent of claimant's disability. LIGA filed an Opposition to Claimant's Motion for Summary Decision and a Supplemental Opposition to claimant's motion for summary decision. LIGA also opposed the Director's motion to dismiss its Section 8(f) application.

In a Decision and Order issued May 6, 1992, Administrative Law Judge C. Richard Avery granted claimant's motion for summary decision and Director's motion to dismiss, indicating that the hearing scheduled on the modification issue would not be held. LIGA moved for reconsideration of the administrative law judge's Decision and Order, and claimant objected to LIGA's Motion. In a Decision on Motion for Reconsideration, Administrative Law Judge Avery denied LIGA's motions. The Decision and Order granting claimant's motion for summary decision and Director's motion to dismiss and the Decision on Motion for Reconsideration are the subjects of LIGA's current appeal. In response to the appeal, claimant urges that LIGA's arguments should be rejected. By letter dated December 21, 1993, the Director responds that although several of LIGA's contentions are "blatantly contrary to law," he agrees with LIGA that the administrative law judge erred in summarily denying LIGA's modification request.

SECTION 12

LIGA initially argues that claimant did not provide timely notice of the injury under Section 12 of the Act, 33 U.S.C. §912. LIGA maintains that it is clear from this record that employer waived any defenses with regard to improper notice under Section 12 in exchange for the stipulations which were supposed to entitle employer to Section 8(f) relief. LIGA asserts that at the hearing on modification, it had hoped to introduce evidence that claimant did not provide timely notice of the injury under Section 12 through the testimony of claimant's co-worker, and that such testimony

would have established that claimant knew almost immediately that he was injured and that the injury was related to his employment. LIGA argues that the administrative law judge did not allow modification on this issue because he erroneously found that the parties never stipulated to timely notice. In his response brief, claimant argues that as LIGA did not raise the issue of Section 12 notice in its Opposition to Claimant's Motion for Summary Decision or its Motion for Reconsideration upon the administrative law judge's granting of the motion, it has waived review of the issue. The Director also responds, asserting that as the issue of Section 12 notice was not raised in the initial 1982 proceedings, it has been waived by express statutory provision.

Under Section 12(a), 33 U.S.C. §912(a), an employee in a traumatic injury case is required to notify the employer of his work-related injury within 30 days after the date of injury or the time when the employee was aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the injury and the employment. *See Sheek v. General Dynamics Corp.*, 18 BRBS 1 (1985), *decision on reconsideration*, 18 BRBS 151 (1986). In the absence of evidence to the contrary, it is presumed pursuant to Section 20(b) of the Act, 33 U.S.C. §920(b), that employer has been given sufficient notice under Section 12. *See Shaller v. Cramp Shipbuilding & Dry Dock Co.*, 23 BRBS 140 (1989). Section 12(d)(3)(ii), 33 U.S.C. §912(d)(3)(ii)(1988), explicitly requires that employer raise a Section 12 defense at the first hearing on a claim. *Alexander v. Ryan Walsh Stevedoring Co., Inc.*, 23 BRBS 185, 187 (1990), *vacated and remanded mem.* 90-4670 (5th Cir. Feb. 14, 1991).[2]

In this case, LIGA admits that the issue of notice was not raised in the initial proceeding, but argues that it "was denied [the right] to seek modification with regard to the issue of timely notification ostensibly due to the fact that the parties stipulated to this issue." Original Brief in Support of Petition for Review at 20. Administrative Law Judge Avery did not, however, address the issue of Section 12 notice in either his Decision and Order or Decision on Motion for Reconsideration. Although LIGA may be referring to the administrative law judge's statement that "[p]rior to the original hearing, Claimant and Employer/Carrier stipulated to essentially all the facts," Decision and Order at 2, it would be far-fetched to infer from this statement that the parties specifically agreed that notice was timely given under Section 12.

[2]The court remanded for a causation determination, but affirmed the Board's Section 12 determination. Slip. op. at 11.

As the Director states, the statute explicitly requires that objections based on failure to give timely notice be raised at the first hearing on the claim. As this issue was not raised in the initial proceedings in this case, LIGA is precluded from raising it on modification. Accordingly, LIGA's argument with regard to Section 12 notice is rejected. *See* 33 U.S.C. §912(d)(3)(ii)(1988); *Bukovi v. Albina Engine/Dillingham*, 22 BRBS 97 (1988).[3]

STIPULATIONS

LIGA next argues that the administrative law judge improperly determined that it was precluded from challenging claimant and employer's stipulation that claimant was permanently totally disabled. LIGA asserts that pursuant to La. Rev. Stat. §22:1382, LIGA "steps into the shoes" of Midland as if Midland had not become insolvent and cites various subsequent provisions of the Louisiana statute which it contends allow it to review and contest settlements and judgments.[4] We need not address LIGA's contentions with regard to the Louisiana statute, however, inasmuch as we

[3]In any event, even if the issue of Section 12 notice could be raised on modification, the only evidence LIGA proposed to present was the deposition testimony of one of claimant's co-workers which was intended to show that claimant knew of the employment-related nature of the June 9 injury by June 12. A claimant cannot be charged with awareness for purposes of the Section 12 statutory limitation period, however, until he is aware that he has sustained a compensable injury. *See, e.g., Pryor v. James McHugh Construction Co.*, 27 BRBS 47 (1993). As the aforementioned evidence does not indicate that claimant did not give proper notice, it is insufficient to rebut the Section 20(b) presumption.

[4]The portion of the statute which delineates the powers and duties of LIGA states that LIGA shall:

> Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent; however, when the liability of the association under this Part has been exhausted by payment, the obligation of the association to provide a defense to the insured of an insolvent insurer shall cease.

La. Rev. Stat. §22:1382(A)(2)(1992). LIGA relies on the following portion of the Louisiana statute, subsequently amended, which provides that LIGA shall:

> Investigate claims brought against the association and adjust, compromise, settle and pay covered claims to the extent of the association's obligation and deny all other claims, *and may review settlements, releases and judgments to which the insolvent insurer or its insured were parties to determine the extent to which such settlements, releases and judgments may be properly contested*.

La. Rev. Stat. §22:1382(5)(d). Acts 1970, No. 81, §1. Amended by Acts 1975, No. 234, §1 (emphasis added).

conclude for the reasons set forth below that on the facts presented, Midland could have sought modification of the permanent total disability award pursuant to Section 22, and that accordingly the administrative law judge erred in failing to afford LIGA the opportunity to do so also.

While Section 22 modification is unavailable to alter settlements approved pursuant to Section 8(i), 33 U.S.C. §908(i), *Downs v. Director, OWCP*, 803 F.2d 193, 19 BRBS 36 (CRT)(5th Cir. 1986); *Lambert v. Atlantic & Gulf Stevedores*, 17 BRBS 68 (1985), an award based upon the agreements and stipulations of the parties is subject to Section 22 modification. *See Madrid v. Coast Marine Construction Co.*, 22 BRBS 148, 152 (1989); *Finch v. Newport News Shipbuilding & Dry Dock Co.*, 22 BRBS 196, 200 (1989).[5] The award rendered by Judge Walley in this case was based on stipulations; it is not a Section 8(i) settlement. The award is thus subject to modification if the requirements of Section 22 are met. Accordingly, we reverse the administrative law judge's finding that inasmuch as LIGA had stepped "into the shoes" of Midland, LIGA was bound by Midland's stipulation that claimant is permanently totally disabled. While the administrative law judge was correct in finding that LIGA replaces Midland as the insurer with all its rights and obligations, the result of this finding is that LIGA, as the successor of Midland, has the right to seek modification of the prior award.

MODIFICATION OF DISABILITY

Section 22 provides that an administrative law judge may issue a new compensation order where a party establishes either a change of condition since the prior award or a mistake in a determination of fact. 33 U.S.C. §922 (1988). In its Supplemental Request for Modification, LIGA alleged that Judge Walley's Decision and Order should be modified on the basis of a change in economic condition as well as a mistake in a determination of fact made by the administrative law judge, *i.e.*, that claimant was permanently totally disabled. LIGA cited the job openings identified by Kerry Jambon, a vocational expert, which it alleged would meet the standard for establishing suitable alternate employment set out by the United States Court of Appeals for the Fifth Circuit, from which the present case arises, in *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 14 BRBS 156 (5th Cir. 1981), and *P & M Crane Co. v. Hayes*, 930 F.2d 424, 24 BRBS 116 (CRT)(5th Cir. 1991). On appeal, LIGA also alleges that rehabilitation reports were available to employer/carrier to demonstrate that claimant was not totally disabled and had a residual wage-earning capacity.[6]

[5]The cases cited by the administrative law judge in support of his finding that the stipulations here are binding, *Brown v. Maryland Shipbuilding & Dry Dock Co.*, 18 BRBS 104 (1986), and *Lyles v. American Hoist & Derrick Co.*, 614 F.2d 691 (10th Cir. 1980), are not inconsistent with the concept that a determination based on stipulations is subject to modification in cases where there has been a change in conditions or a mistake in a determination of fact, the requirements for Section 22 modification.

[6]LIGA asserts throughout all its pleadings that employer/carrier waived its defenses with regard to notice and extent of disability in exchange for a stipulation which would supposedly entitle it to Section 8(f), 33 U.S.C. §908(f), relief. Even if correct, this theory is not relevant to the current

As previously stated, the administrative law judge erroneously found that modification was not appropriate on the basis of a mistake of fact because LIGA was bound by Midland's stipulations. The administrative law judge additionally observed that LIGA did not rely on new evidence to show a change in claimant's circumstances. On reconsideration, the administrative law judge reiterated that he had found modification inappropriate because LIGA did not rely on any new evidence to show a change in claimant's circumstances. The administrative law judge also noted that LIGA never alleged that it had more recent vocational evidence to demonstrate alternative employment, and despite LIGA's assertion in its Motion for Reconsideration, the administrative law judge's second review of the entire file still revealed no such evidence. Decision and Order on Motion for Reconsideration.

Contrary to the administrative law judge's determination, however, LIGA did introduce new evidence on modification relevant to the extent of claimant's disability.[7] Attached as Exhibits 2, 6 and 7 to LIGA's Second Supplemental and Amending Memorandum in Support of Modification are several rehabilitation reports by Kerry Jambon, M.S., C.R.C., rehabilitation consultant, listing various positions which Mr. Jambon considered suitable for claimant, based on his physical limitations, education and work experience. Although the administrative law judge assumed that Mr. Jambon's reports were in existence at the time of the initial hearing, these reports are dated between October 26, 1982 and January 31, 1983, which is after Judge Walley's Decision and Order was issued on August 10, 1982. In preparation for the hearing on LIGA's motion for modification scheduled for April 2, 1992, which did not take place, LIGA also submitted a witness list, listing Nancy Favaloro, another vocational expert, and a list of exhibits it planned to introduce at the hearing, which included rehabilitation reports from Rehabilitation Consultants, Inc., and a rehabilitation report from Crawford Health and Rehabilitation.[8] LIGA's September 9, 1991, LS-18 pre-hearing statement also lists these potential witnesses and exhibits.[9]

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proceedings. Moreover, we note that an administrative law judge may hold claimant and employer bound by stipulations as to the award. Such stipulations, however, are not binding upon the Special Fund, and the administrative law judge must weigh the evidence relevant to granting Section 8(f) relief. *See, e.g., Phelps v. Newport News Shipbuilding & Dry Dock Co.,* 16 BRBS 325 (1984).

[7]We note that in the first proceeding, no evidence of suitable alternate employment was submitted.

[8]These lists appear to be in response to Administrative Law Judge Avery's Notice of Hearing and Pre-Hearing Order dated January 24, 1992. In LIGA's Motion for Reconsideration on Decision and Order Granting Claimant's Motion for Summary Decision, Nancy Favaloro is identified as representing Crawford Health & Rehabilitation Services and LIGA claims her report indicates the existence of suitable employment opportunities available to claimant; this report allegedly dates from August 19, 1991.

[9]In the original Decision and Order, Judge Walley found that claimant's condition stabilized on January 1, 1981, and this finding has not been challenged by any party. Thus, claimant reached maximum medical improvement and his condition became permanent on that date.

The Board has held that a change in claimant's economic condition may provide justification for Section 22 modification. *Fleetwood v. Newport News Shipbuilding & Dry Dock Co.*, 16 BRBS 282 (1984), *aff'd*, 776 F.2d 1225, 18 BRBS 12 (CRT)(4th Cir. 1985); *Moore v. Washington Metropolitan Area Transit Authority*, 23 BRBS 49 (1989); *see also Avondale Shipyards, Inc. v. Guidry*, 967 F.2d 1039, 1042 n.6, 26 BRBS 30, 32 n.6 (CRT)(5th Cir. 1992). An employer may attempt to modify a total disability award pursuant to Section 22 by offering to establish the availability of suitable alternate employment. *Moore*, 23 BRBS at 52; *Blake v. Ceres, Inc.*, 19 BRBS 219 (1987). Disability determinations may also be modified based on a mistake of fact. In determining whether to grant modification based on a mistake of fact, the administrative law judge must also consider whether modification would render justice under the Act. *Duran v. Interport Maintenance Corp.*, 27 BRBS 8 (1993); *Craig v. United Church of Christ*, 13 BRBS 567, 571-572 (1981).

In the present case, LIGA alleged a mistake of fact or change in condition relating to the issue of the extent of disability and produced relevant evidence in support of its contention. It is well established that modification may be based on newly submitted evidence, cumulative evidence or further reflection upon the evidence previously submitted. *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971), *reh'g denied*, 404 U.S. 1053 (1972); *Jourdan v. Equitable Equipment Co.*, 25 BRBS 317 (1992)(Dolder, J., dissenting). Under these circumstances, Judge Avery erred in summarily denying LIGA's motion for modification. *See Duran*, 27 BRBS at 15; *Moore*, 23 BRBS at 53. Accordingly, the administrative law judge's Decision and Order granting claimant's motion for summary decision with regard to extent of disability is vacated. The case is remanded for the administrative law judge to admit relevant evidence and conduct a modification proceeding under Section 22 in accordance with this opinion. *See Duran*, 27 BRBS at 14; *Dobson v. Todd Pacific Shipyards Corp.*, 21 BRBS 174, 176 (1988).

SECTION 8(f)

LIGA next argues that the administrative law judge erred in denying its request for modification and granting Director's motion to dismiss on the issue of Section 8(f) relief. Judge Avery denied modification because he found that LIGA's allegation of a mistake in a determination of fact was merely an attempt to find a back door route to retry this issue. Decision and Order at 3. The administrative law judge noted that in seeking modification, LIGA was relying on the deposition testimony of Dr. Epps and a May 23, 1980 x-ray report. In denying modification, the administrative law judge reasoned that Dr. Epps' deposition testimony was submitted into evidence and fully considered by Administrative Law Judge Walley in the previous proceeding, and that although the x-ray report was not previously submitted into evidence, it was available to the parties at the time of the initial hearing. The administrative law judge concluded that employer had an opportunity to litigate the Section 8(f) issue and could have submitted the x-ray report previously if it thought the report would benefit its position. The administrative law judge further found that any problems claimant had were not manifest to employer, because the physicians who were treating claimant were not doing so at employer's request and there was no evidence that employer was aware of their opinions. Accordingly, the administrative law judge denied employer Section 8(f) relief.

On appeal, LIGA asserts that it intended to introduce a May 23, 1980 x-ray report which was not introduced in the original proceeding on modification. In addition, LIGA argues that in denying modification, Judge Avery never discussed whether the arthritic changes found on the May 23, 1980 x-ray report constituted a pre-existing permanent partial disability under Section 8(f) under the test laid out in *C & P Telephone v. Director, OWCP*, 564 F.2d 503 (D.C. Cir. 1977), and *Equitable Equipment Co. Inc. v. Hardy*, 558 F.2d 1192 (5th Cir. 1977). LIGA further asserts that modification should also be granted due to an intervening change in the case law of the United States Court of Appeals for the Fifth Circuit regarding the manifest requirement of Section 8(f).[10] LIGA also states that the parties' stipulation that claimant was permanently totally disabled indirectly affected the liability of the Special Fund, arguing that an award of permanent total disability compensation would have obligated the Special Fund to pay Section 10(f), 33 U.S.C. §910(f), adjustments. The Director initially responded that the parties' stipulation at the initial hearing that claimant was permanently totally disabled has no effect on the liability of the Special Fund for Section 10(f) adjustments

[10]LIGA asserts that in *Eymard & Sons Shipyard v. Smith*, 862 F.2d 1220, 22 BRBS 11 (CRT) (5th Cir. 1989), which was decided after the Board affirmed the administrative law judge's denial of Section 8(f) relief, the Fifth Circuit relaxed the manifest requirement of Section 8(f) so that employer's actual knowledge of claimant's pre-existing condition was no longer required. This holding, however, does not reflect a change in legal interpretation as constructive knowledge has long been recognized as sufficient to satisfy the Section 8(f) manifest requirement. *See, e.g., Director, OWCP v. Universal Terminal & Stevedoring Corp.*, 575 F.2d 452, 8 BRBS 498 (3d Cir. 1978); *Delinski v. Pragnot Air Flex Corp.*, 9 BRBS 206 (1978). To the extent the administrative law judge denied Section 8(f) relief based on employer's lack of knowledge of the treating physician's opinions, he erred as a matter of law.

because the Special Fund is only liable for such adjustments in pre-1972 injury cases. The Director also initially asserted that there has been no change in law and that even if there were such a change, a change in law does not provide a proper basis for granting modification. At the oral argument, however, the Director conceded that LIGA is entitled to consideration of the Section 8(f) issue on modification, noting that the concept of a mistake in the determination of fact under Section 22 is to be broadly construed. Tr. at 22-25, 28-29, 33. *See O'Keeffe*, 404 U.S. at 254.

Because the Director, as the administrator of the Special Fund, now concedes that employer is entitled to a hearing on modification regarding its request for Section 8(f) relief, we vacate the administrative law judge's Decision and Order granting the Director's motion to dismiss and remand the case for the administrative law judge to consider employer's eligibility for Section 8(f) relief. *See, e.g., Director, OWCP v. General Dynamics Corp. (Bergeron)*, 982 F.2d 790, 26 BRBS 139 (CRT)(2d Cir. 1992); *Eymard & Sons Shipyard v. Smith*, 862 F.2d 122, 22 BRBS 11 (CRT)(5th Cir. 1989); *see generally Director, OWCP v. Donzi Marine, Inc.*, 586 F.2d 377, 9 BRBS 404 (5th Cir. 1978); *Hitt v. Newport News Shipbuilding & Dry Dock Co.*, 16 BRBS 353 (1984). Accordingly, we need not address LIGA's specific arguments in favor of allowing modification of the denial of Section 8(f) relief.

Accordingly, the administrative law judge's Decision and Order Granting Claimant's Motion for Summary Decision and Director's Motion to Dismiss and Decision on Motion for Reconsideration are vacated, and the case is remanded for additional proceedings in accordance with this opinion. LIGA's assertion that it should be afforded the opportunity to seek modification with regard to whether employer received timely notice of the claim under Section 12 is rejected for the reasons stated in this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge