U.S. Department of Labor

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

BRB No. 23-0318 BLA

JOHNNY L. WALLACE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 07/15/2024
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 Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

BUZZARD and JONES, Administrative Appeals Judges:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2020-BLA-06000) rendered on a subsequent claim[1] filed August 6, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 13.44 years of coal mine employment and thus found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established he has a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b), and both clinical and legal pneumoconiosis. 20 C.F.R. §718.201. The ALJ thus found Claimant established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309. She further found Claimant established his pneumoconiosis is a substantially contributing cause of his total disability, and awarded benefits. 20 C.F.R. §718.204(c).

On appeal, Employer argues the ALJ erred in finding Claimant established he has a totally disabling respiratory or pulmonary impairment and pneumoconiosis. It further argues the ALJ erred in finding Claimant's pneumoconiosis is a substantially contributing cause of his total disability. Claimant responds in support of the award of benefits. The

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[1] Claimant filed one prior claim for benefits on October 12, 2010. Director's Exhibit 1; Employer's Exhibit 5. The district director denied the claim on April 28, 2011, for failure to establish pneumoconiosis. Employer's Exhibit 5 at 76-77.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if they have at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c)(1); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied Claimant's prior claim for failure to establish pneumoconiosis, he had to submit new evidence establishing this element of entitlement to obtain review of the merits of the current claim. *Id.*; *see White*, 23 BLR at 1-3.

Director, Office of Workers' Compensation Programs, declined to file a response unless specifically requested.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 280 U.S. 359 (1965).

Entitlement Under 20 C.F.R. Part 718

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

Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A miner may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

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[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 51; Director's Exhibits 4, 8.

The ALJ found Claimant established total disability based on the pulmonary function studies, medical opinions, and in consideration of the evidence as a whole.[5] Decision and Order at 9-27. Employer argues the ALJ erred in making those findings. Employer's Brief at 3-11. We disagree.

Pulmonary Function Studies

The ALJ considered the results of five pulmonary function studies. Decision and Order at 10. She accurately noted the December 28, 2019, October 11, 2021, and December 14, 2021 studies produced qualifying[6] values both pre- and post-bronchodilator, while the May 20, 2020 and December 7, 2021 studies produced non-qualifying values before bronchodilation but qualifying values after administration of a bronchodilator. Decision and Order at 10; Director's Exhibit 13 at 11; Employer's Exhibits 1 at 11, 4 at 6; Claimant's Exhibits 1 at 4, 2 at 4.

The ALJ then considered evidence concerning the reliability of the individual studies to determine whether they are in substantial compliance with the quality standards.[7] 20 C.F.R. §§718.101(b), 718103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). "In the absence of evidence to the contrary, compliance with the [regulatory quality standards] shall be presumed." 20 C.F.R. §718.103(c). Thus, the party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

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[5] The ALJ found the arterial blood gas studies do not establish total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 19.

[6] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[7] An ALJ must consider a reviewing physician's opinion regarding a miner's effort in performing a pulmonary function study and whether the study is valid and reliable. *See Revnack v. Director, OWCP*, 7 BLR 1-771, 1-773 (1985). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

Considering the opinions of Drs. McSharry, Sargent, and Habre, the ALJ found the results of the December 28, 2019, May 20, 2020, October 11, 2021, and December 7, 2021 studies unreliable and entitled to little probative weight, but found the qualifying results of the December 14, 2021 study reliable and entitled to full probative weight. Decision and Order at 18. She therefore found the pulmonary function studies support finding total disability based on the results of the December 14, 2021 study. *Id.*

Employer argues the ALJ erred in finding the results of the December 14, 2021 pulmonary function study are valid and reliable based upon Dr. Habre's opinion. Employer's Brief at 7-8. We disagree.

Dr. Habre observed Claimant perform the December 14, 2021 pulmonary function study. He stated "fair effort was noted" during the study and opined it produced valid results based on the American Thoracic Society's guidelines for reproducibility and adequate exhalation time. Claimant's Exhibits 2 at 3; 5 at 14-15, 35-36.

On the other hand, Dr. Sargent considered the results of the study and opined "the flow-volume loops show extremely poor effort" because they "show that his expiratory effort is very variable, and he doesn't have a nice smooth peak." Employer's Exhibit 8 at 17, 28. He acknowledged the study produced reproducible values between trials, but opined Claimant was not giving full effort and the lab was having trouble generating reproducible results based on the large number of trials conducted. *Id.* at 28. Similarly, Dr. McSharry noted it took ten trials to produce results in the December 14 study and opined it demonstrated "poor validity." Employer's Exhibit 9 at 16.

The ALJ found Dr. Habre's opinion regarding the validity of the study entitled to more weight than the contrary opinions of Drs. Sargent and McSharry. Decision and Order at 18. She permissibly gave greater weight to Dr. Habre's opinion as he conducted and observed the study, while Drs. Sargent and McSharry only reviewed tracings. *See Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985); *Street v. Consolidation Coal Co.*, 7 BLR 1-65 (1984). She further permissibly declined to credit Drs. Sargent's and McSharry's opinions that "the results [are] unreliable based on the many trials required to obtain reproducibility." *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 12, 18, *quoting* 20 C.F.R. Part 718, Appendix B(2)(ii)(G). The ALJ noted the quality standards set forth in Appendix B permit tests with "excessive variability" between volume-time curves to "still be submitted for consideration in support of a claim" because "individuals with obstructive disease or rapid decline in lung function will be less likely to achieve [the requisite] degree of reproducibility." Decision and Order at 18. She also found neither Dr. Sargent nor Dr. McSharry "explained why the variation in Claimant's spirometric curves . . . was attributable to poor effort, rather than obstruction." *Id.* Finally,

she found Dr. Sargent did not adequately explain why the aspects of the flow-volume loops he identified indicated invalid results. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; *Siegel*, 8 BLR at 1-157; Decision and Order at 18.

Employer alternatively argues the ALJ should have found the December 14, 2021 pulmonary function study invalid on the grounds that Claimant did not exhale for at least seven seconds or attain a plateau of at least two seconds on the volume-time curve. Employer's Brief at 7; *see* 20 C.F.R. Part 718, Appendix B(2)(ii)(C). Employer contends "Dr. Sargent and Dr. McSharry notes in their review [sic] of the PFT that the flow volume loops showed poor effort as the claimant did not exhale for 7 seconds or reach a plateau." Employer's Brief at 7. However, Employer does not identify where either physician provided such an opinion, and upon our review of the record we are unable to find such an opinion. As the party challenging the validity of the study, it is Employer's burden to identify the medical evidence calling the study's validity into question. *See Vivian*, 7 BLR at 1-361; *Siegel*, 8 BLR at 1-157; *Schetroma v. Director, OWCP*, 18 BLR 1-19, 1-22 (1993); *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987). Because Employer has not met its burden to provide medical evidence in support of its assertion, and the ALJ permissibly relied upon Dr. Habre's validation of the study, we reject Employer's alternative argument.

The ALJ's finding the results of the December 14, 2021 pulmonary function study are valid and reliable is supported by substantial evidence. We thus affirm it. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order at 18. As Employer raises no further argument concerning the pulmonary function study evidence, we affirm the ALJ's finding it supports total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 18.

Medical Opinions

The ALJ next considered the opinions of Drs. Habre and Mabe that Claimant is totally disabled and the contrary opinions of Drs. Sargent and McSharry. Decision and Order at 19-26. The ALJ found the opinions of Drs. Habre and Mabe reasoned, documented, and entitled to probative weight; she found those of Drs. Sargent and McSharry entitled to lesser and limited probative weight, respectively. *Id.* She therefore found the opinions of Drs. Habre and Mabe support finding total disability. *Id.* at 26.

Employer initially argues the ALJ should have credited the opinions of Drs. Sargent and McSharry, and discredited the opinion of Dr. Habre, based on the physicians' consideration of pulmonary function study evidence they contend is invalid. Employer's Brief at 10. Because we affirm the ALJ's findings regarding the validity of the pulmonary function study evidence, we need not address Employer's arguments again.

We also reject Employer's argument that the ALJ should have discredited Dr. Mabe's opinion on the grounds the physician was not able to consider all of the medical evidence of record. Employer's Brief at 9-10. The ALJ noted Dr. Mabe did not consider the most recent testing of record but permissibly credited the physician's opinion as she found "the recent test results . . . are consistent with those he did review." *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; *Minnich v. Pagnotti Enters., Inc.*, 9 BLR 1-89, 1-90 n.1 (1986) (physician's opinion need not be discounted merely because the physician did not consider additional medical evidence of record). Thus, we affirm the ALJ's determination that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 26. We further affirm the ALJ's finding that Claimant established total disability in consideration of the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 27.

Pneumoconiosis

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate he has a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

The ALJ considered the opinions of Drs. Forehand, Habre, and Mabe that Claimant has legal pneumoconiosis and the contrary opinions of Drs. Sargent and McSharry. Decision and Order at 30-39. She assigned no weight to the opinion of Dr. Forehand as he rendered it in 2010 and didn't consider more recent information; she assigned reduced weight to Dr. Mabe's opinion as he was not aware of more recent pulmonary function testing or Claimant's smoking history. *Id*. at 31, 39. Considering the remaining opinions, the ALJ found those of Drs. Sargent and McSharry not reasoned or documented, and therefore entitled to little weight. Contrarily, she found Dr. Habre's opinion reasoned, documented, and entitled to dispositive weight. *Id*. at 31-39. She therefore found Claimant established legal pneumoconiosis based upon the opinion of Dr. Habre. *Id*. at 39.

As Employer does not challenge the ALJ's discrediting of the opinions of Drs. Sargent and McSharry, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 39. Employer argues the ALJ erred in crediting Dr. Habre's opinion.[8] Employer's Brief at 17-22. We disagree.

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[8] We need not consider Employer's argument that the ALJ erred in crediting Dr. Mabe's opinion. Contrary to its contention, the ALJ assigned reduced weight to Dr. Mabe's opinion and ultimately found legal pneumoconiosis established based upon the

Employer initially argues the ALJ should have discredited Dr. Habre's opinion on the grounds it was based on an inaccurate account of Claimant's coal mine employment. Employer's Brief at 20-21. Employer contends Dr. Habre based his opinion on sixteen years of coal mine employment, contrary to the ALJ's finding Claimant established 13.44 years, and speculates the difference may have affected the physician's opinion concerning legal pneumoconiosis. *Id.* Contrary to Employer's argument, however, the ALJ accurately noted Dr. Habre was informed Claimant had only thirteen years of coal mine employment and opined this history was "sufficient to diagnose coal mine dust [induced] lung disease." Decision and Order at 36; Claimant's Exhibit 5 at 7.

Employer additionally argues the ALJ should have discredited Dr. Habre's opinion as his initial opinion was based on an inaccurate account of Claimant's smoking history, and further argues Dr. Habre did not explain how smoking and coal dust exposure both contribute to Claimant's impairment. Employer's Brief at 20-22. Again, we disagree.

In his reports, Dr. Habre indicated Claimant had never smoked. Claimant's Exhibits 1 at 1, 2 at 1. After considering additional records, however, Dr. Habre testified he believed Claimant to be an ongoing smoker based on carboxyhemoglobin measurements reported by other physicians. Claimant's Exhibit 5 at 10-11. When informed Claimant may have had up to a forty-five pack-year smoking history, Dr. Habre opined Claimant's smoking history was sufficient to be clinically relevant and causative of chronic obstructive pulmonary disease (COPD) and lung impairment. *Id.* at 11-12. He ultimately diagnosed Claimant with COPD in the form of emphysema and chronic bronchitis. He opined both coal dust exposure and smoking contributed to the diseases, explaining the two exposures have a synergistic negative effect on the diffusing capacity of the lungs. *Id.* at 20-24, 28.

Thus, contrary to Employer's argument, Dr. Habre considered Claimant's smoking history of forty-five pack years and explicitly explained why he believed both smoking and coal dust exposure contributed to Claimant's disease. To the extent Employer generally argues the ALJ should have found Dr. Habre's opinion inadequately reasoned and documented, Employer's Brief at 20-22, its argument amounts to a request to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

As substantial evidence supports the ALJ's finding Dr. Habre's opinion reasoned, documented, and entitled to dispositive weight, we affirm it. *See Compton*, 211 F.3d at

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opinion of Dr. Habre. Decision and Order at 39. Any error in the ALJ's consideration of Dr. Mabe's opinion is therefore harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

207-08; Decision and Order at 38. We therefore affirm her finding Claimant established legal pneumoconiosis based upon Dr. Habre's opinion, and therefore established a change in an applicable condition of entitlement. 20 C.F.R. §§718.201(b), 725.309(c); Decision and Order at 38-39.

Disability Causation

To establish total disability due to pneumoconiosis, Claimant must prove pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

The ALJ rationally discredited the opinions of Drs. Sargent and McSharry on disability causation as they failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding Claimant established the presence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 40. The ALJ then considered the opinions of Drs. Mabe and Habre, noting both physicians opined "exposure to coal mine dust substantially contributed to Claimant's totally disabling lung disease[,]" and found the medical opinion evidence establishes disability causation. Decision and Order at 40-41.

Employer argues the ALJ's crediting of the opinions of Drs. Habre and Mabe does not satisfy the explanatory requirements of the Administrative Procedure Act (APA).[9] 5 U.S.C. §557 (c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); Employer's Brief at 22-24. We disagree.

Both Drs. Habre and Mabe opined Claimant's COPD is totally disabling and attributed the disease in part to Claimant's coal dust exposure, identifying it as legal pneumoconiosis.[10] Director's Exhibit 13 at 4-5; Claimant's Exhibits 1 at 2-3; 2 at 2-3; 5

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[9] Employer additionally restates its argument that the ALJ should have discredited the opinion of Dr. Habre based on his consideration of Claimant's coal mine employment and smoking histories. Employer's Brief at 22-24. As we have already rejected these arguments in the context of the ALJ's finding Claimant established legal pneumoconiosis, we need not reconsider them on disability causation.

[10] Dr. Mabe listed COPD as one of Claimant's pulmonary diagnoses. Director's Exhibit at 3. Although Dr. Mabe did not explicitly label Claimant's COPD as "legal

at 21-23, 25. Because the ALJ permissibly relied upon Drs. Mabe's and Habre's opinions to find Claimant established total disability and legal pneumoconiosis, it necessarily follows that their opinions further credibly establish disability causation at 20 C.F.R. §718.204(c). *See Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); *see also Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 820 F.3d 833, 847 (6th Cir. 2016) (physician's opinion that a miner has a totally disabling pulmonary impairment supports disability causation if that impairment is found to be legal pneumoconiosis).

Because we can discern the ALJ's basis for crediting the disability causation opinions of Drs. Habre and Mabe, her findings satisfy the APA. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) ("[T]he APA does not impose a 'duty of long-windedness' on an ALJ"; to the contrary, "if a reviewing court can discern what the ALJ did and why [she] did it, the duty of explanation [under the APA] is satisfied.") (citations omitted); *Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the APA is satisfied as long as the reviewing court can discern what the ALJ did and why she did it).

We therefore see no error in the ALJ's finding that Claimant established disability causation based upon the medical opinions of Drs. Mabe and Habre that exposure to coal mine dust throughout his coal mine employment substantially contributed to his totally disabling COPD. 20 C.F.R. §718.204(c); *see Looney*, 678 F.3d at 316; *Owens*, 724 F.3d at 557; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 (4th Cir. 1999). We therefore affirm the ALJ's finding Claimant established total disability due to pneumoconiosis and the award of benefits.

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pneumoconiosis," he opined Claimant's years of coal mine employment with heavy exposure to coal dust was a major contributing and aggravating factor in the development of all his listed pulmonary diagnoses. Director's Exhibit 13 at 4; *see* 20 C.F.R. §718.201(a)(2).

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring.

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge