U.S. Department of Labor

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

BRB No. 24-0239 BLA

CARTER L. HARRISON Claimant-Petitioner v. CLINCHFIELD COAL COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/31/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Dierdra M. Howard, Administrative Law Judge, United States Department of Labor.

Carter L. Harrison, Clinchco, Virginia.

Timothy W. Gresham (Penn, Stuart, & Eskridge), Abingdon, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Denying Benefits (2022-BLA-05228) rendered on a claim filed on February 25, 2021,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant did not establish complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); *see* 20 C.F.R. §718.304. She credited Claimant with twenty-seven years of qualifying coal mine employment based on the parties' stipulations, but found Claimant did not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, she found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018), or establish entitlement to benefits under 20 C.F.R. Part 718. Thus, she denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.[4]

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[1] On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the administrative law judge's (ALJ's) decision, but she is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co*., 19 BLR 1-88 (1995) (Order).

[2] The ALJ mistakenly relied on the date Claimant signed his claim form, January 30, 2021, for the date this claim was filed, rather than the date the office of the district director received it, February 25, 2021. *See* 20 C.F.R. §725.303(a)(1) ("A claim shall be considered filed on the day it is received by the office in which it is first filed."); Decision and Order at 2; Director's Exhibit 2.

[3] Section 411(c)(4) provides a rebuttable presumption that a miner is total disabled due to pneumoconiosis if he has 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.

[4] We affirm, as unchallenged, the ALJ's finding that Claimant has twenty-seven years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4. The ALJ noted Claimant's testimony that his work was performed primarily underground, but she did not reach a determination as to whether

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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 element 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).

Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

Claimant had at least fifteen years of qualifying coal mine employment under Section 411(c)(4) of the Act.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 12.

The ALJ found the x-rays, medical opinions, and computed tomography (CT) scans do not support a finding of complicated pneumoconiosis.[6] 20 C.F.R. §718.304(a), (c); Decision and Order at 6-13. Weighing all the evidence together, she determined Claimant did not establish the disease. 20 C.F.R. §718.304; Decision and Order at 13.

20 C.F.R. §718.304(a) – X-ray Evidence

The ALJ considered seven interpretations of four x-rays dated April 24, 2019, May 11, 2021, July 6, 2022, and August 22, 2022. Decision and Order at 6-7. She correctly noted that all of the interpreting physicians are dually-qualified as B readers and Board-certified radiologists. *Id.* at 6.

Dr. DePonte read the April 24, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read the x-ray as positive for simple pneumoconiosis and negative for complicated pneumoconiosis. Director's Exhibit 20; Employer's Exhibit 2. The ALJ found the April 24, 2019 x-ray readings in equipoise because an equal number of dually-qualified radiologists read it as positive and negative for the disease. Decision and Order at 6-7.

Dr. DePonte read the May 11, 2021 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Seaman and Ramakrishnan read the x-ray as positive for simple pneumoconiosis and negative for complicated pneumoconiosis.[7] Director's Exhibit 15; Claimant's Exhibit 2; Employer's Exhibit 1. The ALJ found the May 11, 2021 x-ray negative for complicated pneumoconiosis based on the greater overall weight of the negative readings of the x-ray by dually-qualified radiologists. Decision and Order at 7.

Dr. Adcock read the July 6, 2022 x-ray as positive for simple pneumoconiosis and negative for complicated pneumoconiosis. Employer's Exhibit 3. As there are no other readings of this x-ray, the ALJ found it does not support a finding of complicated pneumoconiosis. Decision and Order at 7.

Dr. Crum provided the sole reading of the August 22, 2022 x-ray as positive for simple pneumoconiosis and negative for complicated pneumoconiosis. Claimant's Exhibit 1. The ALJ erroneously referred to the August 22, 2022 x-ray as being read by Dr. Seaman

[6] The ALJ accurately found there is no biopsy or autopsy evidence of record. 20 C.F.R. §718.304(b); Decision and Order at 5, 12.

[7] Dr. Gaziano reviewed the May 11, 2021 x-ray for quality purposes only. Director's Exhibit 18.

rather than by Dr. Crum. Decision and Order at 6-7. However, we consider this error to be harmless as Dr. Crum did not identify any large opacities of complicated pneumoconiosis, which is consistent with the ALJ's conclusion that the sole reading of the August 22, 2022 x-ray does not support a finding of complicated pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 7; Claimant's Exhibit 1.

Weighing the x-ray evidence together, the ALJ found three x-rays positive for simple pneumoconiosis but not complicated pneumoconiosis, and the readings of one x-ray in equipoise. She therefore determined the preponderance of the x-ray evidence does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 7.

Because the ALJ performed both a quantitative and qualitative evaluation of the x-ray readings, we affirm as supported by substantial evidence her finding that Claimant failed to establish complicated pneumoconiosis at 20 C.F.R. §718.304(a). *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order at 7.

20 C.F.R. §718.304(c) – Other Medical Evidence

Medical Opinions

The ALJ considered the opinions of Drs. Harris, Fino, and McSharry. Decision and Order at 10-12. Dr. Harris diagnosed Claimant with coal workers' pneumoconiosis and progressive massive fibrosis based on Dr. DePonte's reading of the May 11, 2021 x-ray and opined Claimant's history of coal mine dust exposure supported the diagnosis. Director's Exhibit 15 at 12-13. Drs. Fino and McSharry opined Claimant has simple pneumoconiosis but not complicated pneumoconiosis. Employer's Exhibits 3 at 9-10; 4 at 2.

The ALJ permissibly found Dr. Harris's opinion entitled to little weight because it was based on Dr. DePonte's May 11, 2021 positive x-ray reading, which the ALJ found outweighed by the negative readings of that film and contrary to her conclusion that the x-ray evidence as a whole does not support a finding of complicated pneumoconiosis. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000) (medical opinion based on a discredited x-ray is not probative evidence); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 12. Consequently, we see no error in the ALJ's determination that the medical opinion evidence does not support a finding of complicated pneumoconiosis. Decision and Order at 9-12.

CT scans

The ALJ considered three interpretations of two CT scans dated April 13, 2022, and November 9, 2022. Decision and Order at 13. Dr. Ramakrishnan interpreted the April 13, 2022 scan as showing "[s]table mild nodular interstitial fibrosis." Claimant's Exhibit 3. Dr. Adcock interpreted the April 13, 2022 scan as positive for simple pneumoconiosis but did not identify any large opacities. Employer's Exhibit 5. Dr. Ramakrishnan interpreted the November 9, 2022 scan as showing nodular interstitial fibrosis that was consistent with his interpretation of the April 13, 2022 scan. Claimant's Exhibit 4.

As neither physician described the size or shape of the abnormalities they identified and did not otherwise indicate their findings were consistent with complicated pneumoconiosis, we see no error in the ALJ's determination that the CT scan evidence supports a finding that Claimant has some lung abnormalities but does not support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(c). Decision and Order at 13. *See Scarbro*, 220 F.3d at 255-56; *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243-44 (4th Cir. 1999). Consequently, we affirm the ALJ's determination that Claimant failed to establish complicated pneumoconiosis at 20 C.F.R. §718.304(c) based on the medical opinion and CT scan evidence. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Decision and Order at 12-13.

As the ALJ permissibly found Claimant did not establish complicated pneumoconiosis by any method, we affirm her determination that, in weighing all of the evidence together, Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304. Decision and Order at 13; *see Melnick*, 16 BLR at 1-33-34. Consequently, we affirm her finding that Claimant did not invoke the irrebuttable presumption at Section 411(c)(3) of the Act.

Section 411(c)(4) Presumption - Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[8] 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

[8] A "qualifying" pulmonary function study or arterial blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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).

The ALJ determined the pulmonary function studies, arterial blood gas studies, and medical opinions do not support a finding of total disability.[9] Decision and Order at 8-12, 14-16.

Pulmonary Function Studies

The ALJ considered three pulmonary function studies dated May 11, 2021, July 6, 2022, and August 22, 2022. Decision and Order at 8, 15; Director's Exhibit 15; Employer's Exhibits 3, 4. She observed the studies reported conflicting heights for Claimant and stated that she found an average height of 66.3 inches. Decision and Order at 8 n.41. Because 66.3 inches does not appear in the table values at Appendix B of 20 C.F.R. Part 718, the ALJ used the closest greater table height of 66.5 inches. *Id*. Then, using table values for a 71-year-old male, she determined that none of the studies are qualifying. *Id*.

While "averaging" a miner's height is a permissible method of resolving differences in the recorded heights among the pulmonary function studies of record, the ALJ did not adequately explain how she reached an average height of 66.3 inches. Specifically, the studies report varying heights from 67.75 to sixty-nine inches and an average of those heights would be 68.25 inches and not 66.3 inches as the ALJ stated. *See K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Director's Exhibit 15; Employer's Exhibits 3, 4. Additionally, the ALJ used table values in Appendix B of 20 C.F.R. Part 718 for a 71-year-old male to determine whether the studies were qualifying, despite Claimant being sixty-six and sixty-seven years old during the testing. Decision and Order at 8 n.41; Director's Exhibit 15; Employer's Exhibits 3, 4. Nevertheless, we consider the ALJ's error to be harmless because all of Claimant's pulmonary function study results would remain non-qualifying even had the ALJ used Claimant's correct ages and accurately averaged his height.[10] *See*

[9] The ALJ correctly found there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 15. Thus, we affirm her determination that Claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(iii).

[10] Total disability may be established based on pulmonary function studies showing an FEV1 value that is equal to or less than those listed in Table B1 (Males), Appendix B to 20 C.F.R. Part 718, for claimant's age and height, if the studies also show either: an FVC or MVV value that is equal to or less than those listed in the table "for an individual

Larioni, 6 BLR at 1-1278; Director's Exhibit 15; Employer's Exhibits 3, 4. We therefore affirm her determination that Claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(i).

Arterial Blood Gas Studies

The ALJ correctly found the three blood gas studies of record, dated May 11, 2021, July 6, 2022, and August 22, 2022, are non-qualifying for total disability. Decision and Order at 9, 15; Director's Exhibit 15; Employer's Exhibit 3, 4. We therefore affirm her finding that Claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(ii).

Medical Opinions

The ALJ considered the medical opinions of Drs. Harris, Fino, and McSharry. Decision and Order at 10-13, 15-16. Dr. Harris conducted the Department of Labor-sponsored complete pulmonary evaluation of Claimant and obtained non-qualifying pulmonary function and blood gas studies. Director's Exhibit 15. He diagnosed Claimant with a restriction and diffusion impairment based on his objective testing results. *Id.* at 12-13. In addition, Dr. Harris opined Claimant is totally disabled and has a "significant impairment . . . evidenced by his symptoms of dyspnea on exertion and cough . . . [and] his markedly reduced lung function[,] including FVC 72% and DLCO 69%" on pulmonary function testing. *Id.* at 13.

Dr. Fino examined Claimant and opined he is not totally disabled from continuing his usual coal mine employment and has no pulmonary or respiratory impairment based on the objective testing. Employer's Exhibit 3 at 7, 10. Dr. McSharry examined Claimant and diagnosed him with a mild restrictive disease and noted his moderate-to-severe shortness of breath, wheezing, and sputum production. Employer's Exhibit 4 at 2-3. He opined Claimant's mild impairment would not prevent him from performing his last coal mine job. Employer's Exhibit 4 at 2.

The ALJ gave little weight to Dr. Harris's opinion because it was "inconsistent with the diagnostic medical evidence[,] including x-ray, PFT, ABG, and CT studies[,] demonstrating the [C]laimant's diagnosis of simple rather than complex [sic] pneumoconiosis." Decision and Order at 16. In addition, the ALJ discredited Dr. Harris's

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of the miner's age, sex, and height"; or an FEV1/FVC ratio equal to or less than 55 percent. 20 C.F.R. §718.204(b)(2)(i). Claimant's respective FEV1 values for each of the three studies exceed the qualifying values for an FEV1 based on Claimant's age and either the correct averaged height (68.25 inches) or the actual heights recorded at the time of the respective testing.

opinion on total disability because he could not distinguish between the effects of Claimant's coal dust exposure and smoking history. *Id.* The ALJ gave greater weight to Drs. Fino and McSharry's opinions because their diagnoses of simple and not complicated pneumoconiosis were supported by the "PFT, ABG and CT studies[,] as well as [the] x-ray interpretations" and their clinical observations. *Id.*

We cannot affirm the ALJ's weighing of the medical opinion evidence. Total disability can be established with a reasoned medical opinion even "[w]here total disability cannot be shown" by qualifying objective testing, as a non-qualifying impairment may still render a miner incapable of performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc*., 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment). Additionally, in determining whether a miner is totally disabled, the ALJ must compare the exertional requirements of a miner's usual coal mine work with the physicians' descriptions of the miner's pulmonary impairment and physical limitations. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991).

Here, the ALJ's analysis focused on whether the physicians' opinions were consistent "with the diagnostic medical evidence . . . demonstrating the [C]laimant's diagnosis of simple rather than complex [sic] pneumoconiosis[,]" which is not relevant to the question of whether Claimant can establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 16. Moreover, the ALJ did not consider whether the physicians credibly diagnosed an impairment, or identified respiratory limitations, that would preclude the performance of his usual coal mine work. *Id.*; *see* 20 C.F.R. §718.204(b)(2)(iv). The ALJ also failed to make a finding regarding Claimant's usual coal mine work or the exertional requirements of such work and thus did not compare those requirements with the physicians' assessments to determine whether the opinions support a finding of total disability. *See Lane*, 105 F.3d at 172; *Eagle*, 943 F.2d at 512 n.4; *see also Cornett*, 227 F.3d at 578; *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988) (medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably conclude that a miner is unable to do his last coal mine job); Decision and Order at 16.

As the ALJ did not conduct the proper analysis at 20 C.F.R. §718.204(b)(2)(iv), we vacate her conclusion that Claimant did not establish total disability based on the medical opinion evidence and in consideration of the evidence as a whole. Decision and Order at 16. Thus, we also vacate the ALJ's conclusion that Claimant failed to invoke the Section 411(c)(4) presumption and the denial of benefits.

Remand Instructions

On remand, the ALJ must reweigh the medical opinions and determine whether the physicians have identified an impairment or any physical limitations that would preclude Claimant from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv). In doing so, she must first determine the exertional requirements of Claimant's usual coal mine work and consider the medical opinions given those requirements. *See Lane*, 105 F.3d at 172; *Eagle*, 943 F.2d at 512 n.4. Further, in weighing the medical opinions, the ALJ must consider the qualifications of the respective physicians, the explanations for their opinions, the documentation underlying their medical judgments, and the sophistication of and bases for their diagnoses. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

The ALJ must then weigh all relevant evidence together to determine whether Claimant is totally disabled. 20 C.F.R. §718.204(b)(2); *see Shedlock*, 9 BLR at 1-198. If Claimant fails to establish total disability, an essential element of entitlement, the ALJ may reinstate the denial of benefits. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

If Claimant establishes total disability, the ALJ must determine whether Claimant has at least fifteen years of qualifying coal mine employment and can thereby invoke the Section 411(c)(4) presumption. If the presumption is invoked, the ALJ must determine whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1). If the presumption is not invoked, the ALJ must determine Claimant's entitlement to benefits under 20 C.F.R. Part 718. 20 C.F.R. §§718.202(a), 718204(b)(2), (c). In rendering her determinations on remand, the ALJ must explain her rationale and conclusions as the Administrative Procedure Act requires.[11] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[11] The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge