



BRB No. 15-0015 BLA

ORA DIALS ¹)	
(o/b/o the Estate of PAUL R. DIALS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARTIN COUNTY COAL)	
CORPORATION)	
)	
and)	DATE ISSUED: 08/28/2015
)	
A.T. MASSEY c/o WELLS FARGO)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

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

¹ Claimant is the miner's widow who is pursuing the miner's claim on his behalf. At the hearing, the administrative law judge granted claimant's motion to reform the caption to substitute her name for that of the miner. Hearing Tr. at 6. The miner died on August 2, 2013. Claimant's Exhibit 4.

Barry H. Joyner (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order (2011-BLA-05571) of Administrative Law Judge Larry S. Merck denying benefits 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 request for modification of the denial of a miner's subsequent claim filed on December 12, 2006.²

Initially, in a Decision and Order dated March 2, 2009, the administrative law judge credited the miner with seventeen years of coal mine employment, and found that the new evidence established the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), and legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and, thus, established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(d). The administrative law judge also found that the miner's pneumoconiosis arose out of coal mine employment, pursuant to 20 C.F.R. §718.203(b). The administrative law judge further found, however, that the evidence failed to establish the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b). Accordingly, the administrative law judge denied benefits. On appeal, the Board affirmed the administrative law judge's denial of benefits. *Dials v. Martin County Coal Corp.*, BRB No. 09-0485 BLA (Apr. 23, 2004) (unpub.).

The miner timely requested modification.³ In a Decision and Order dated October 15, 2014, the administrative law judge again credited the miner with seventeen years of coal mine employment, all underground, and found that the evidence established that the

² The miner's first claim, filed on April 10, 1991, was deemed abandoned on January 29, 1992. Director's Exhibit 1 at 2. A denial by reason of abandonment is a finding that the miner did not establish any element of entitlement. 20 C.F.R. §725.409(c).

³ A hearing on modification was held on August 8, 2013, at which additional medical evidence was admitted into the record.

miner had both clinical and legal pneumoconiosis,⁴ arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a), 718.203(b). However, the administrative law judge found that the evidence did not establish total disability, pursuant to 20 C.F.R. §718.204(b)(2). Because the evidence did not establish total disability, the administrative law judge found that claimant could not establish entitlement to benefits under 20 C.F.R. Part 718 or pursuant to Section 411(c)(4) of the Act.⁵ Accordingly, the administrative law judge denied the miner's request to modify the prior denial of benefits.

On appeal, claimant argues that the administrative law judge erred in his evaluation of the blood gas study and medical opinion evidence in finding that it did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv). Employer/carrier (employer) responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a response brief, agreeing with claimant that the administrative law judge erred in weighing the blood gas study and medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv).⁶

⁴ "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

⁵ As part of the Patient Protection and Affordable Care Act, Public Law No. 111-148, Congress enacted amendments to the Black Lung Benefits Act (the Act), which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725 (2014).

⁶ Because they are unchallenged on appeal, we affirm the administrative law judge's determination to credit the miner with seventeen years of underground coal mine employment, and his findings that claimant did not establish total disability based on

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.⁷ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, a claimant must prove that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that the miner was totally disabled, and that his total disability was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

A party may request modification of an award or denial of benefits within one year, on the grounds that a change in conditions has occurred or because a mistake in a determination of fact was made in the prior decision. 20 C.F.R. §725.310. Pursuant to a modification request, the administrative law judge has the authority to reconsider all the evidence for any change in conditions or mistake of fact. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230, 18 BLR 2-290, 2-296 (6th Cir. 1994).

20 C.F.R. §718.204(b)(2)(ii)-Total Disability-Blood Gas Studies

Claimant first argues that the administrative law judge erred in finding that the blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). The administrative law judge considered the results of three blood gas studies performed in 2007.⁸ The administrative law judge found that Dr. Rasmussen

pulmonary function studies pursuant to 20 C.F.R. §718.204(b)(2)(i), or by establishing that the miner had complicated pneumoconiosis, pursuant to 20 C.F.R. §§718.204(b)(1), 718.304, or cor pulmonale with right-sided congestive heart failure, pursuant to 20 C.F.R. §718.204(b)(2)(iii). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7, 25.

⁷ The record indicates that the miner's coal mine employment was in Kentucky. Director's Exhibit 1 at 145, 147; Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

⁸ The administrative law judge also considered the blood gas study evidence dating from 1991, submitted with the prior claim. The administrative law judge permissibly accorded this evidence little weight, however, as it did not address the relevant inquiry of whether the miner was disabled at the time of the hearing. *See Cooley*

conducted a study on March 12, 2007 that produced qualifying results⁹ both at rest and during exercise.¹⁰ Decision and Order at 26; Director's Exhibit 20. The administrative law judge found that Drs. Jarboe and Dahhan conducted studies on June 12, 2007 and September 27, 2007, respectively, that produced non-qualifying results at rest, but that neither physician performed a valid exercise blood gas study.¹¹ Decision and Order at 26-27; Director's Exhibit 13 at 12; Director's Exhibit 69 at 23.

v. Island Creek Coal Co., 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *Parsons v. Wolf Creek Coal Co.*, 23 BLR 1-29, 1-35 (2004); Decision and Order at 23; Director's Exhibit 1 at 39, 69, 93, 128a, b.

⁹ A "qualifying" arterial blood gas study meets the values specified in the tables found in Appendix C to Part 718. 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study exceeds those values. See 20 C.F.R. §718.204(b)(2)(ii).

¹⁰ Dr. Mettu reviewed Dr. Rasmussen's March 12, 2007 blood gas studies on behalf of the Department of Labor and confirmed that the results were technically acceptable. Director's Exhibit 11 at 13.

¹¹ The administrative law judge correctly noted that Dr. Dahhan also attempted to administer an exercise blood gas study, but the study was terminated due to the miner's fatigue. Decision and Order at 26; Director's Exhibit 13 at 12. The administrative law judge further noted that Dr. Jarboe had administered an exercise blood gas study, but that Drs. Rasmussen and Castle had questioned the reliability and accuracy of the results, based on Dr. Jarboe's acknowledgment that the blood sample was obtained "approximately 30 seconds after the treadmill was stopped," rather than during exercise. Decision and Order at 26-27; Claimant's Exhibit 1 at 37-38; Employer's Exhibit 2 at 24. As the administrative law judge observed, the regulations state that "[i]f an exercise blood-gas test is administered, blood shall be drawn during exercise." 20 C.F.R. §718.105(b); Decision and Order at 27. Because both Drs. Rasmussen and Castle expressed concerns as to the reliability of the June 12, 2007 exercise blood gas results, and based on the evidence in the record that the test was administered in a manner contrary to the regulations, the administrative law judge permissibly accorded these results "no probative weight." See *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005); *Schetroma v. Director, OWCP*, 18 BLR 1-19, 1-22 (1993); *Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27, 1-29 (1991); Decision and Order at 27. Employer concedes that Dr. Jarboe's exercise blood gas study was performed in a manner "inconsistent with the . . . regulations," and does not challenge the administrative law judge's determination to credit the opinions of Drs. Rasmussen and Castle regarding the reliability of Dr. Jarboe's exercise results. Employer's Response

Evaluating the blood gas study results, the administrative law judge initially considered, and rejected, Dr. Rasmussen's testimony that a resting arterial blood gas study is "meaningless" and is not a valid measurement of whether a pulmonary impairment is present. Decision and Order at 27; Claimant's Exhibit 1 at 42-43. The administrative law judge noted that the regulations provide that a miner may establish total disability with either resting or exercise blood gas studies that meet the values specified in the tables found in Appendix C to Part 718, and do not provide that exercise studies are more probative. Decision and Order at 27, *citing* 20 C.F.R. §718.204(b)(2)(ii). The administrative law judge further noted that the regulations also do not require that an exercise study be performed, but only require that an exercise study be offered to a miner if his resting blood gas study is non-qualifying. Decision and Order at 27, *citing* 20 C.F.R. §718.105(b). Thus, the administrative law judge found that "a resting [arterial blood gas study] is a valid measurement of disability." Decision and Order at 27. According "the most weight to the Miner's two most recent [arterial blood gas studies], which did not result in qualifying values," the administrative law judge "conclude[d] that the [arterial blood gas study] evidence does not support a finding of total disability pursuant to [20 C.F.R.] §718.204(b)(2)(ii)." Decision and Order at 27.

Claimant and the Director assert that, in weighing the blood gas study results, the administrative law judge erred in failing to adequately consider Dr. Rasmussen's medical opinion regarding the relative probative value of exercise blood gas studies. Claimant's Brief at 20-23; Director's Brief at 3. The Director further asserts that the administrative law judge misapplied the most recent evidence rule to find that the June 12, 2007 and September 27, 2007 non-qualifying resting blood gas studies performed by Drs. Jarboe and Dahhan are more probative than Dr. Rasmussen's March 12, 2007 qualifying test. The assertions of claimant and the Director have merit.

Brief at 9. Rather, employer asserts that, while "harmless," it was error for the administrative law judge to evaluate the reliability of Dr. Jarboe's exercise study for the first time on modification, as the "defect [in Dr. Jarboe's exercise study] was known when the case was initially referred to [the administrative law judge] in 2007." Employer's Response Brief at 9. Contrary to employer's contention, "[o]nce a request for modification is filed, no matter the grounds stated, if any, the [administrative law judge] has the authority, if not the duty, to reconsider all the evidence for any mistake of fact or change in conditions." *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230, 18 BLR 2-290, 2-296 (6th Cir. 1994). We therefore reject employer's contention and affirm the administrative law judge's determination to discredit Dr. Jarboe's June 12, 2007 exercise blood gas study results. *See Martin*, 400 F.3d at 305, 23 BLR at 2-283; *Worrell*, 27 F.3d at 230, 18 BLR at 2-296.

At his July 26, 2013 deposition, Dr. Rasmussen testified that exercise blood gas studies are “the gold standard,” in determining whether a pulmonary impairment is present. Claimant’s Exhibit 1 at 43. Dr. Rasmussen noted that the miner’s last coal mine work as a shuttle car operator, which included shoveling coal, setting timbers, rock dusting and hanging cable, required very heavy manual labor. Claimant’s Exhibit 1 at 24-25. Dr. Rasmussen opined that the miner did not retain the pulmonary capacity to perform his coal mine work, based on a “moderate to marked impairment in oxygen transfer during exercise,” as demonstrated by his exercise blood gas studies. Claimant’s Exhibit 1 at 24. Specifically, Dr. Rasmussen explained that the miner’s demonstrated oxygen consumption rate of 17 milliliters per kilogram per minute, was less than the 30 milliliters per kilogram per minute needed to perform the exertional requirements of his usual coal mine work. Claimant’s Exhibit 1 at 25. Dr. Rasmussen further explained that the worsening in oxygen transfer during the exercise portion of the blood gas study established that the miner’s gas exchange impairment was not caused by obesity.¹² Claimant’s Exhibit 1 at 15-17, 42-44.

Although the administrative law judge considered, and permissibly discounted, Dr. Rasmussen’s opinion that resting blood gas studies are “meaningless,” *see* 20 C.F.R. §718.204(b)(2)(ii), as claimant and the Director assert, the administrative law judge did not specifically address Dr. Rasmussen’s contention that exercise blood gas studies are “the gold standard.”¹³ Decision and Order at 27; Claimant’s Brief at 21-23; Director’s Brief at 3. Rather, the administrative law judge mechanically accorded determinative weight to the most recent, non-qualifying, resting studies without explaining why they were more reliable than Dr. Rasmussen’s March 12, 2007 qualifying exercise results obtained only three to six months earlier. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 306, 23 BLR 2-261, 2-284 (6th Cir. 2005). Moreover, the United States Court of Appeals for the Sixth Circuit has held that it is rational to credit more recent evidence,

¹² Dr. Rasmussen acknowledged that obesity can cause resting hypoxia, because of the compression of the abdomen on the lower lung units while a person is seated, but explained that the hypoxia will diminish when a person stands up. Claimant’s Exhibit 1 at 15-16. Dr. Rasmussen noted that this was exemplified in the miner’s case, because while his resting PO₂ was quite low, his PO₂ rose significantly when he stood on the treadmill, prior to starting the exercise portion of the blood gas test. *Id.* at 16. Dr. Rasmussen explained, however, that when the miner began to exercise, his PO₂ again dropped significantly, which was a pattern of impairment that was consistent with coal mine dust-induced disease, and not obesity. *Id.* at 16-17.

¹³ We note that the administrative law judge also did not address the criticisms of Dr. Rasmussen’s blood gas study results by the other physicians and Dr. Rasmussen’s response to those criticisms.

solely on the basis of recency, only if that evidence shows that the miner's condition has progressed or worsened. See *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20, 17 BLR 2-77, 2-84-85 (6th Cir. 1993) (a case involving x-rays), citing *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); see also *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 18 BLR 2-16 (4th Cir. 1993) (applying *Adkins* to medical opinions). The court reasoned that, because pneumoconiosis is a progressive disease and claimants cannot get better, it is impossible to reconcile conflicting evidence based on its chronological order if the evidence shows that a miner's condition has improved. *Woodward*, 991 F.2d at 319, 17 BLR at 2-84 (holding that "[e]ither the earlier or the later result must be wrong, and it is just as likely that the later evidence is faulty as the earlier"). Under the facts of this case, where the administrative law judge has found that the miner suffered from both clinical pneumoconiosis, and legal pneumoconiosis, the administrative law judge failed to provide a valid reason for according controlling weight to the non-qualifying June 12, 2007 and September 27, 2007 blood gas studies. We, therefore, vacate the administrative law judge's finding that the arterial blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), and remand the case for further consideration of all of the relevant evidence. See 30 U.S.C. §923(b); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-10 (6th Cir. 2011); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 508, 22 BLR 2-625, 2-638 (6th Cir. 2003).

20 C.F.R. §718.204(b)(2)(iv)-Total Disability-Medical Opinions

Claimant and the Director next argue that the administrative law judge erred in his weighing of the medical opinion evidence. Claimant's Brief at 23-30; Director's Brief at 4. In finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Castle, Dahhan, Jarboe, and Rasmussen. While Drs. Castle, Dahhan, and Jarboe stated that the miner did not have a totally disabling respiratory impairment, Dr. Rasmussen stated that the miner was unable to return to his usual coal mine employment from a pulmonary standpoint. Director's Exhibit 11 at 7; Director's Exhibit 13 at 3; Director's Exhibit 69 at 10; Director's Exhibit 72 at 18-19; Director's Exhibit 75 at 30-31; Claimant's Exhibit 1 at 24; Employer's Exhibit 1 at 18; Employer's Exhibit 2 at 27; Employer's Exhibit 4 at 3. Dr. Rasmussen based his opinion of total disability on the marked impairment in oxygen transfer shown on the exercise blood gas study that he performed. Claimant's Exhibit 1 at 24.

The administrative law judge discounted Dr. Rasmussen's opinion of total disability as not well-reasoned. Specifically, the administrative law judge found that Dr. Rasmussen erroneously disregarded the two most recent non-qualifying resting blood gas studies based on his opinion that resting blood gas studies "are not a valid measurement of pulmonary impairment," despite the regulations providing for a finding of total disability based on a resting blood gas study. Decision and Order at 28-29; Claimant's

Exhibit 1 at 42. The administrative law judge also found that Dr. Rasmussen’s diagnosis of total disability was “inconsistent with the [m]iner’s most recent objective testing,” which was non-qualifying. Decision and Order at 28-29. Because no other physician opined that the miner was totally disabled, the administrative law judge found that total disability was not established based on the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv).

As the Director correctly asserts, “the conclusions of the various physicians are intertwined with the blood-gas-study results,”¹⁴ and “the [administrative law judge] based his evaluation of the medical opinions to a large extent on his findings regarding the blood-gas studies.” Director’s Brief at 4. Therefore, to the extent the administrative law judge’s findings with regard to the credibility of the blood gas study evidence influenced the weight he accorded to the medical opinion evidence, we vacate his finding at 20 C.F.R. §718.204(b)(2)(iv), and his concomitant finding that claimant failed to establish that the miner’s total disability was due to pneumoconiosis, pursuant to 20 C.F.R. §718.204(c). On remand, when reconsidering whether the medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge must consider the entirety of each physician’s opinion, in light of the physician’s reasoning and documentation, the reliability of the objective studies upon which they rely, and the other evidence of record, and must explain his findings. *See Tenn. 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 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *see also Director, OWCP v. Siwiec*, 894 F.2d 635, 638, 13 BLR 2-259, 2-267 (3d Cir. 1990). If, on remand, the administrative law judge finds that the blood gas study or medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv), he must weigh all of the relevant evidence together, both like and unlike, to determine whether the miner’s pulmonary impairment precluded him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(2); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff’d on recon.* 9 BLR 1-236 (1987) (en banc).

If claimant fails to establish total disability, an essential element of entitlement, benefits are precluded. *See Anderson*, 12 BLR at 1-112. However, if the administrative

¹⁴ Specifically, the Director, Office of Workers’ Compensation Programs, asserts that Dr. Rasmussen diagnosed total disability based on his valid, qualifying, exercise blood gas study results. Decision and Order at 4. In contrast, Drs. Castle, Dahhan, and Jarboe relied, at least in part, on Dr. Jarboe’s invalid exercise study results to conclude that the miner did not have a totally disabling respiratory impairment. *Id.*

law judge finds that the miner was totally disabled, the administrative law judge must determine whether claimant is entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis set forth in amended Section 411(c)(4), and if so, whether employer has rebutted the presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305. If, on remand, the administrative law judge finds entitlement established, he must consider whether granting modification of the prior denial of benefits would render justice under the Act. See *Banks v. Chi. Grain Trimmers Ass'n*, 390 U.S. 459, 464 (1968) (holding that the purpose of modification is to “render justice”); *Sharpe v. Director, OWCP*, 495 F.3d 125, 128, 24 BLR 2-56, 2-66 (4th Cir. 2007); *Old Ben Coal Co. v. Director, OWCP [Hilliard]*, 292 F.3d 533, 22 BLR 2-429 (7th Cir. 2002); *Blevins v. Director, OWCP*, 683 F.2d 139, 142, 4 BLR 2-104, 2-106 (6th Cir. 1982).

Accordingly, the administrative law judge’s Decision and Order denying benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge