

OPINION ENTERED: January 20, 2012

CLAIM NO. 200772699

BRENDA K. ELKINS

PETITIONER

VS.

APPEAL FROM HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

LKLP CAC, INC.
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. Brenda Elkins ("Elkins") seeks review of the opinion and award rendered August 17, 2011, by Hon. John C. Coleman, Administrative Law Judge ("ALJ"), awarding temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits and medical benefits for Elkins' lumbar injuries and dismissing Elkins' claim for cervical and emotional injuries as noncompensable.

Elkins also appeals from the September 12, 2011 order denying her petition for reconsideration.

On appeal, Elkins argues the ALJ erred in rejecting the opinion of a university evaluator pursuant to KRS 342.315 who found the work-related accident caused Elkins' cervical injury. Elkins also argues the ALJ erred by rejecting the opinion of her treating psychologist, and accepting the opinion of a psychiatrist concerning causation of her alleged psychological injury. We affirm.

Elkins is a high school graduate and is certified in CPR, first aid, AED, HIV Aids, babysitting and disaster relief. At all relevant times, Elkins was a non-emergency medical transport driver for LKLP CAC, Inc. ("LKLP"). Her job entailed driving patients to and from various locations and assisting patients in getting in and out of the vehicle. On September 27, 2007, while transporting two patients for LKLP, a utility truck reared-ended Elkins' van. Elkins listed injuries to her back, leg, neck and head on the "injured employee information form" dated October 24, 2007, and later included psychological injuries on the Form 101. Only Elkins' cervical and psychological injuries are in dispute, and therefore, only evidence relevant thereto will be addressed.

Following the motor vehicle accident on September 27, 2007, Elkins switched vans and submitted to a mandatory drug screening. Thereafter, Elkins drove herself to her family physician, Summit Medical Group, where she was seen by Dr. Willoby. At that time, she complained primarily of low back and leg pain. It is disputed whether Elkins complained of neck pain on the day of the accident. Medical records dated September 27, 2007, note low back pain, leg pain and "SO-L TTP over upper back." Summit Medical Group continued to treat Elkins for her low back and leg pain with lumbar x-ray and MRI, medication and physical therapy until August of 2009. Except for the September 27, 2007 notation, there appears to be no reference to cervical problems or treatment in the Summit Medical Group's records.

Summit Medical Group referred Elkins to Dr. Kelly who continued to treat her low back and leg injuries with physical therapy and three lumbar epidural injections from December 2007 to June 2008 which provided no relief. Dr. Kelly then recommended surgery. Dr. Kelly's medical records reflect no cervical problems or treatment.

Elkins was then referred to Dr. Rohmiller who performed a posterior spinal fusion on January 5, 2009. On her January 30, 2009 post-surgery follow up, Dr. Rohmiller

noted Elkins was doing "phenomenally well and has no complaints . . . She says that her lower extremity pain has completely resolved." On her second follow-up dated March 6, 2009, Dr. Rohmiller noted Elkins was doing great but had mentioned restriction in her cervical spine. After continued complaints of neck pain, Dr. Rohmiller ordered a cervical MRI, and subsequently diagnosed Elkins with C6 and C7 radiculopathy. On April 19, 2010, Dr. Rohmiller noted the cervical injuries were due to the September 27, 2007 accident.

Dr. Rohmiller referred Elkins to Dr. Kelly for evaluation of the neck pain on August 8, 2010. Dr. Kelly noted he had no records to confirm Elkins had any complaints of neck pain at the time of the original injury. He further noted the neck symptoms were due to spondylosis, a degenerative disease, which may have been aggravated by the motor vehicle accident. However, he could not conclusively state this was so because did not have enough documentation to determine causation. Regardless of the cause, Dr. Kelly recommended cervical traction, physical therapy and steroid injections.

Elkins requested a university evaluation be performed pursuant to KRS 342.315. Upon approval by the ALJ, she was evaluated by Dr. Roberts, a university

evaluator, on March 31, 2011. A Form 107-I university evaluation report was filed into evidence noting Elkins' history, results of the evaluation and a review of diagnostic testing. Dr. Roberts also indicated he reviewed medical records; however, he made no reference of the records of the Summit Medical Group and specifically Dr. Kelly.

Dr. Roberts diagnosed Elkins with cervical spondylosis, foraminal stenosis C6-7 with left C6 and C7 radiculopathy, and status post lumbar interbody fusion at L4-5. He opined the injuries were the cause of Elkins' complaints. Dr. Roberts assessed a 32% whole body impairment pursuant to the American Medical Association Guides to the Evaluation of Impairment, 5th Edition ("AMA Guides"), which he apportioned 21% for the lumbar spine and 15% for the cervical spine. Dr. Roberts noted Elkins did not retain the physical capacity to return to the type of work she performed at the time of the injury. Dr. Roberts recommended permanent restrictions including no lifting greater than 20 pounds occasionally, and less than 5 pounds on a frequent basis. He further restricted Elkins' ability to lift, bend, walk, stand, sit, climb, reach, grasp and operation of machinery.

Elkins submitted into evidence a report rendered by Dr. Rohmiller dated January 5, 2011, regarding the causation of her cervical injuries. Dr. Rohmiller noted Elkins complained primarily of low back and leg pain upon her initial visit on April 17, 2008, and he subsequently performed a posterior spinal fusion with TLIF on January 15, 2009. Elkins did relatively well post-operatively, but started to have cervical complaints. Dr. Rohmiller waited six months before dealing with her cervical spine. He then ordered an MRI due to Elkins' continued cervical complaints. Dr. Rohmiller diagnosed her with disc bulge at C5-6, bilateral foraminal stenosis and disc protrusion. Dr. Rohmiller opined:

It is more likely than not that Ms. Elkins' cervical spine disc herniation and subsequent cervical radiculopathy is directly and causally related to her motor vehicle accident that occurred on September 27, 2007.

Dr. Rohmiller further opined Elkins' low back and leg pain were distracting injuries and were so significant she was unable to appreciate the extent of her cervical problem. Once her back and leg pain improved, she began reporting the neck pain.

LKLP filed the report of Dr. Joseph Zerga, a neurologist, who evaluated Elkins on February 3, 2011. Dr.

Zerga also testified by deposition March 28, 2011. After evaluation and medical history review, Dr. Zerga opined Elkins' cervical complaints are not related to the motor vehicle accident of September 27, 2007. Dr. Zerga noted Elkins reported no neck problems to Summit Medical Group. He further noted Dr. Rohmiller's records noted no neck problems until June 6, 2009, despite several appointments and the surgery. Therefore, almost two years passed from the day of the accident before Elkins mentioned any neck problems. Dr. Zerga further opined the changes seen on the cervical MRI taken on January 26, 2010 are due to degenerative spondylosis. Dr. Zerga testified his opinion on causation does not change despite Elkins listing injuries to her back, leg, neck and head on the injured employee form dated October 24, 2007, and initially complaining of pain all over her body. Dr. Zerga testified if Elkins sustained a cervical injury due to the motor vehicle accident, it would have manifested in significant enough pain for her to notice it.

Elkins testified by deposition on February 24, 2011 and again at the hearing held on June 27, 2011. Elkins explained why she did not specifically complain of neck pain as follows:

Q: Did you make any complaints to Dr. Willoby after the first day of the accident that your neck was bothering you?

A: Not specifically, I don't believe.

Q: When was - Okay. Who was the next physician that you complained of with regard to your neck?

A: I didn't say my neck, I said my back because to me it is my back. It's up between my shoulder blades up to my neck so when they say does your back hurt, my back hurts. . . .

Q: I mean I guess what I'm asking is, you know, if you hurt your neck - -

A: It's not just my neck - -

Q: Do you classify that as your whole back?

A: Well, it's not just my neck that's hurting. The pains, if you have, this is my back, this is my spine and this is my neck and my head's sitting up here above it. My arms are over here on the sides. The pain draws up between by shoulder blades and it goes up into the neck sometimes and it's in the neck and it goes down the arm. Now it ain't always up in the neck.

As, from the time I had my surgery on the lumbar and I started telling Dr. Rohmiller that this is hurting me, it's getting worse. And his comments to me were let's deal with the lumbar, we, we felt maybe it's because I was favoring the lowest part of my back . . . I was in a body brace so I was trying to use other parts of my body in the brace,

and the pain in my upper body such as my back and neck and shoulders became more and more apparent.

At the hearing held June 27, 2011, Elkins again explained why she did not complain of neck pain until seeing Dr. Rohmiller.

A: It - - it's pain. It's a nuisance. It's irritating and aggravating, But, at the time it didn't really much matter what was happening in my neck, because what was happening in my lower back and leg had my -- 100 percent of my attention So, whatever I could do to try to get things done with my back, trying to - - the rest of it, you just kind of suffer through it. But, it never went away.

On September 3, 2010, almost three years following the accident, Elkins began counseling with Peter Ganshirt, Psy.D., a licensed clinical psychologist, for emotional problems stemming from the accident including chronic pain, fear of driving, anxiety, depression, isolation and loss of sleep. Elkins testified she didn't seek treatment until then because she was told she was not allowed to do so. Elkins filed the June 1, 2011 report of Dr. Ganshirt. His deposition was also taken on June 8, 2011. After interviewing Elkins and administering psychological tests, Dr. Ganshirt diagnosed Elkins with

post-traumatic stress disorder, major depression and cognitive disorder. Dr. Ganshirt concluded,

It is my professional opinion within reasonable psychological certainty that Brenda's current psychological and cognitive impairments are directly related to the accident she experienced on September 27, 2007.

Dr. Ganshirt assessed a 45% impairment rating based upon the AMA Guides, second and fifth editions. Dr. Ganshirt noted Elkins is unable to work in stressful environments that trigger symptoms of post-traumatic stress disorder and depression, is unable to multi-task and problem solve efficiently. Dr. Ganshirt noted the impairment rating was based on the fact it is unlikely Elkins is able to hold or maintain a job.

Dr. Shraberg, a psychiatrist, evaluated Elkins on May 3, 2011 at LKLP's request, and testified by deposition on June 2, 2011. After reviewing Elkins' records and performing an examination, Dr. Shraberg found no evidence of post-traumatic stress disorder, but found she does suffer from adjustment disorder of adult life. Dr. Shraberg found some elements of depression, not due to her work-related injury, but to situational stressors. Dr. Shraberg assessed a 0% psychiatric impairment rating pursuant to the AMA Guides and noted Elkins needed no

psychiatric treatment. Dr. Shraberg noted Elkins had no major physical restrictions rendering her incapable of returning to work. He further noted with appropriate counseling, Elkins can return to a variety of jobs. Dr. Shraberg reiterated in his deposition Elkins does not have any psychiatric impairment resulting from the work-related injury.

After considering the evidence, the ALJ rendered a decision on the merits granting Elkins PPD benefits and medical benefits for her lumbar injury, but dismissing her claim for income and medical benefits for her cervical spine and psychological injuries. In so ruling, pertinent to this appeal, the ALJ reasoned as follows:

The first issue to be discussed by the Administrative Law Judge is the issue of work relatedness and causation in regards[sic] to the cervical spine complaints. This is an interesting issue as the plaintiff clearly made her first complaints in the medical records several months after the automobile collision of September 27, 2007. It is perfectly understandable why the defendant contests the work relatedness of that condition as the plaintiff had numerous opportunities to voice her concern regarding her cervical spine complaints to her medical providers. The defendant correctly points out that the first cervical complaints in the medical records comes[sic] in March of 2009 with Dr. Rohmiller, the treating neurosurgeon. He expressed his belief that the condition is related to the

automobile accident as the automobile accident had aroused degenerative changes in the plaintiff's cervical spine. He indicated his belief that the condition was masked by the plaintiff's treatment for her lumbar condition which was of primary concern until that time. Dr. Kelley's opinion was that the accident may have aroused the degenerative changes but it would be difficult to place causation on the automobile accident. After the plaintiff asked for interlocutory relief, the matter was referred to a university evaluator. Dr. Roberts' evaluation report indicates the first records he reviewed began January 25, 2009. The records from Summit Medical Group were not available at the time of the evaluation to be furnished to the evaluator as they were not filed of record until May 17, 2011. Even at that time they were filed by the defendant employer. Without the benefit of the records indicating an absence of cervical complaints the university evaluator related the cervical condition to the automobile accident occurring over two years prior to his evaluation. Dr. Zerga evaluated the plaintiff and felt the cervical condition was simply a degenerative condition of spondylosis and spinal stenosis without any relation to the work injury. The testimony of Dr. Zerga indicates his belief that the absence of[sic] the medical records of complaints for seventeen months following the work accident is critical in making a determination of causation. When questioned about the plaintiff noting neck and head pain on the incident report he indicated that it was not unusual for individuals to be sore or make multiple complaints immediately following an accident. However, the seventeen month absence in

the medical records is much more critical in making such a determination. The plaintiff argues in her brief that Dr. Zerga had misread the records from Summit Medical Group from September 27, 2007. However, the ALJ has also reviewed this record and cannot find any evidence whatsoever that the plaintiff made a complaint of cervical spine pain on that day or any other day for that matter. In fact, the record in question of September 27, 2007 indicates the physician had circled low back under the musculoskeletal section with the other signs or symptoms being low back and leg pain. Even the enumerated items at the bottom does not make any mention of cervical spine pain. In addition, there is a complete absence of any diagnostic tests performed in regards to the cervical spine. The defendant correctly points out that the plaintiff's argument in regards to the cervical spine condition being masked by the lumbar condition also has flaws. For instance, when the plaintiff originally had a subsidence of the lumbar pain and was released to return to full duty work by the treating physician, she did not return with complaints of cervical pain. However, she did return with complaints of lumbar spine pain a few days later.

Expert opinions in medical evaluation reports rendered pursuant to KRS 342.315 may not be disregarded by the fact finder. To the extent that a university evaluator's testimony favors a particular party, it shifts to the opponent the burden of going forward with evidence which rebuts the testimony. If the opponent fails to do so, the party whom the testimony favors is entitled to prevail by operation of the presumption. Stated otherwise, the

clinical findings and opinion of the university evaluator constitutes substantial evidence with regards[sic] to medical questions which, if uncontradicted, may not be disregarded by the fact finder. *Magic Coal Company v. Fox*, S.W.3d 88 (Ky. 2000). In order to reject a university evaluator's clinical findings and opinions, the administrative law judge must state a reasonable basis for rejecting such clinical findings and opinions. *Bullock v. Goodwill Coal Co.* 214 S.W.3d 890 (Ky. 2007). In this particular instance, I note the university evaluator's opinion in regards[sic] to causation did not have the benefit of the medical records which were produced between September 27, 2007 and January 25, 2009. It appears the university evaluator relied upon the history of continuous cervical complaints given to him by the plaintiff. This history is called into question by the complete absence of complaints in the medical records from the period of September 27, 2007 through March 6, 2009. If a physician relies on an incorrect history, an Administrative Law Judge may disregard his expert opinion which was based upon that history. *Osborne v. Pepsi-Cola*, 816 SW2d 643 (Ky. 1991). In this particular instance, the history relied upon by the university evaluator is simply not supported in the medical records. As such, the opinion of the university evaluator is rejected. An employee has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of his workers' compensation claim. *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App., 1979). In this particular instance, I am not convinced the plaintiff has met her burden of proof in showing the cervical condition is related to the automobile

accident of September 27, 2007. In doing so, I reject the opinion of the university evaluator as the history relied upon by the university evaluator is not supported in the medical records. I am not convinced by the plaintiff's testimony that the cervical complaints continued throughout that period of time. Therefore, plaintiff's claim for cervical spine complaints must be dismissed.

The plaintiff has also made a claim for psychological injuries. Like the cervical complaints her first psychological complaints were made to a healthcare physician when she sought treatment with Dr. Ganshirt in September of 2010. This is three years following the accident. Dr. Ganshirt diagnosed the plaintiff with post-traumatic stress disorder, major depression and cognitive disorder. It does not appear Dr. Ganshirt made any assessment of whether the physical conditions for which the plaintiff made complaints were or were not related to her work accident. I also reviewed the testimony and opinions of Dr. Shraberg who indicated the plaintiff may have some adjustment disorder but it does not rise to the level to cause impairment. Dr. Shraberg rejects the opinion of Dr. Ganshirt in regards[sic] to post-traumatic stress disorder and placed emphasis on the fact that the plaintiff was able to drive the automobile away from the scene of the accident and then take herself to a family physician for treatment. Dr. Shraberg further noted the plaintiff did not receive life threatening injuries although she did ultimately undergo a lumbar fusion. After reviewing the entirety of the psychological and psychiatric

testimony, I am more convinced by the opinion of Dr. Shraberg.

In her petition for reconsideration, Elkins argued in part, the ALJ erred in finding no evidence in the record Elkins complained of neck pain on the day of the accident or on any other day. In the order denying the petition for reconsideration, the ALJ stated:

The ALJ has reviewed the same as well as the response thereto and hereby amends the Opinion and Award to eliminate the statement in the analysis and conclusion that there is no evidence whatsoever that the plaintiff made a complaint of cervical spine pain on that day or any other day. **The statement is amended to reflect that it is unclear as to whether the plaintiff made any complaint of cervical spine pain on that day.** In all other respects, the Opinion and Award will remain unchanged as the ALJ finds the remainder of the Petition for Reconsideration to be a re-argument of the evidence. The ALJ has reviewed the analysis and conclusion and believes it is supported by substantial evidence of the record. Therefore, the remainder of the Petition for Reconsideration is denied.

(emphasis added)

As the claimant in a workers' compensation proceeding, Elkins had the burden of proving each of the essential elements of her cause of action including causation/work-relatedness of the occupational

disease/injuries alleged. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Since Elkins was unsuccessful before the ALJ in regard to causation, the question on appeal is whether the evidence compels a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence which is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

In rendering a decision, KRS 342.285 grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). The ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the

ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 79 (Ky. 1999).

Causation and the work-relatedness of a condition are factual questions to be determined within the sound discretion of the ALJ, and the ALJ, as fact-finder, is vested with broad authority to decide such matters. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003); Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W.2d 565 (Ky. 1969). In addition, the Act does not require causation to be proved through objective medical findings. See KRS 342.0011(1); Staples, Inc. v. Konvelski, 56 S.W.3d 412, 415 (Ky. 2001).

Elkins argues the ALJ erred in rejecting the opinion of a university evaluator pursuant to KRS 342.315 in finding her cervical injury was not caused by her motor vehicle accident on September 27, 2007. In this instance, Dr. Rohmiller, Elkins treating surgeon, and the university evaluator, Dr. Roberts, found the injury to be work-related. Dr. Rohmiller further opined her cervical condition was masked by her lumbar condition. Dr. Kelly opined the motor vehicle accident may have aroused

degenerative changes but could not place causation on the accident. Dr. Zerga opined Elkins' cervical condition had no relation to the accident in part because seventeen months had passed before medical records made any note of cervical complaints.

As noted by the ALJ, it is unclear whether Elkins complained of cervical pain the day of the accident. Summit Medical Group's medical record dated September 27, 2007, note "SO-L TTP over upper back," but only low back had been circled under the musculoskeletal section. Only low back and leg pain were documented as symptoms and no diagnostic testing were performed on the cervical spine. Regardless, no documentation of a cervical complaint existed until March 6, 2009.

Dr. Zerga's expert medical testimony qualifies as substantial evidence upon which the ALJ, as fact-finder, was free to rely. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). It is apparent from the ALJ's analysis he found the medical history and expert opinions conveyed by Dr. Zerga to be most credible. Based on Dr. Zerga's expert opinion and the lack of documented neck complaints by Elkins in the medical records for approximately 17 months, we do not believe the evidence is

so overwhelming no reasonable person could reach the same conclusion regarding causation.

We disagree with Elkins' assertion the ALJ erred in rejecting the opinions of Dr. Roberts, the university evaluator. While KRS 342.315(2) generally requires presumptive weight to be afforded the clinical findings and opinions of the university evaluator, an ALJ has the discretion to reject such testimony where it is determined the presumption has been overcome by other evidence and he expressly states his reasons for doing so within the body of his decision. Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 891 (Ky. 2007); Morrison v. Home Depot, 197 S.W.3d 531, 534 (Ky. 2006); Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Whether a party overcomes the presumption established under KRS 342.315(2) is not an issue of law, but rather a question of fact at all times subject to the ALJ's discretion as fact-finder to pick and choose from the evidence. Magic Coal Co. v. Fox, supra.

In this instance, the ALJ expressly rejected the medical evaluator's opinion and provided his rationale for doing so. The evaluator did not have medical records from September 27, 2007 to January 25, 2009 which failed to document cervical complaints by Elkins to Summit Medical Group and Dr. Kelly. The ALJ also stated the medical

evaluator relied solely upon Elkins' own statements of continuous cervical symptoms which conflict with the medical records from the date of the accident to March 6, 2009. The ALJ correctly notes if a physician relies on an incorrect history, he may disregard the expert opinion upon which it is based. Osborne v. Pepsi-Cola, 816 S.W.2d 643 (Ky. 1991). The ALJ expressly stated sufficient reasons for rejecting the findings and opinions of Dr. Roberts, the university evaluator, pursuant to KRS 342.315(2).

Likewise we do not believe the evidence compels a finding of emotional impairment. See Dravo Lime Company v. Eakins, 156 S.W.3d 283 (Ky. 2005). KRS 342.0011 states injuries "shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury."

In this instance, Dr. Ganshirt and Dr. Shraberg gave conflicting expert opinions regarding Elkins' emotional injuries. As noted by the ALJ, Elkins sought treatment from Dr. Ganshirt, a licensed psychologist, approximately three years following the motor vehicle accident. Dr. Ganshirt subsequently diagnosed Elkins with post-traumatic stress disorder, major depression and cognitive disorder which he opined were directly related to the motor vehicle accident. However, the ALJ discredited

Dr. Ganshirt because he did not make any assessment of whether the physical conditions of which Elkins complained were related to the work accident. Dr. Shraberg found no evidence of post-traumatic stress disorder, but diagnosed Elkins with adult life adjustment disorder and depression. Dr. Shraberg opined the diagnosis did not cause impairment and assessed a 0% impairment rating.

In resolving the issue of causation, the ALJ, as fact-finder, has broad authority to utilize his discretion and pick and choose among the expert opinions in the record. The ALJ found the opinion of Dr. Shraberg more convincing and therefore the evidence is not so overwhelming as to compel a different result.

Accordingly, the decision rendered August 17, 2011 and the September 12, 2011, order denying the petition for reconsideration by Hon. John B. Coleman, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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