**OPINION ENTERED: NOVEMBER 2, 2012**

CLAIM NO. 201199545 & 201101043

PHILLIP VANOVER PETITIONER

VS. **APPEAL FROM HON. CAROLINE PITT CLARK, ADMINISTRATIVE LAW JUDGE**

FRASURE CREEK MINING, LLC
and HON. CAROLINE PITT CLARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**AFFIRMING**

* * * * * *

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

**SMITH, Member.** Philip Vanover ("Vanover") appeals from the Opinion and Order rendered by Hon. Caroline Pitt Clark, Administrative Law Judge ("ALJ"), dismissing his claim for income and medical benefits relating to injuries alleged on May 21, 2010 and December 20, 2010. Vanover also appeals from the ALJ's May 8, 2012 order denying his petition for reconsideration. Vanover argues the ALJ's decision is not supported by substantial evidence. We disagree and affirm.

Vanover filed a Form 101 on July 22, 2011, alleging first, that on May 21, 2010, he was injured within the scope and course of his employment with Fraser Creek Mining, LLC ("Fraser Creek"), when the dozer he was operating backed up over a rock and "came slamming back down to the ground." Vanover filed a second Form 101 on the same day, alleging that on December 20, 2010, he was again injured "while pushing a very large rock with a D10T dozer and he had the rear of the dozer picked up off the ground, the rock slipped off blade causing the dozer to slam down on to solid rock."

Vanover testified by deposition on September 13, 2011 and at his formal hearing held December 20, 2011. He acknowledged his duties included operating a rock truck and dozer. He also admitted that, at the time of his May 21, 2010 accident, he had been treating with Dr. Grady Stumbo on a regular basis since 2007 for low back pain. He was taking Lorcet, Tramadol, Neurontin, and Robaxin prescribed by Dr. Stumbo. The medication reduced his pain symptoms, allowing him to continue to work.

Vanover returned to Dr. Stumbo following the May 21, 2010 injury and then followed up with Fugate's Chiropractic in Hazard, Kentucky. He was able to continue working, stating, “it got a little better, yeah, it did. The pain resolved, you know, the pain pills I was taking was keeping

the pain down and I was doing fine up until this last accident."

Vanover testified that on December 20, 2010,

> I was pushing a very large rock and I guess I hit it fouled someway and it had the back end of the dozer up off the ground and then the blade slipped off and it sit [sic] the dozer down on solid rock.

The incident caused constant pain radiating down his leg. He testified:

> The only actual relief I get is when I'm laying down, and then when I'm laying down I'm constantly turning, because I can't never [sic] get a solid position that I'm actually comfortable. I don't sleep no [sic] more than two hours a time. I mean, it's just -- I mean, it's destroyed me as far as having a life.

At the formal hearing, Vanover explained he continues to have burning pain up and down his leg. The pain has progressed to the extent he is now taking Cymbalta for depression and OxyContin which provides some relief from pain. He explained the amount of medication he now takes would prevent him from returning to any type work. He does nothing on a daily basis but lie in bed and watch television.

Vanover submitted the September 28, 2010 medical report of Dr. James Bean. Dr. Bean noted Vanover was a 42-year-old bulldozer operator with a history of lower back pain that

had been present for years, but lately worsened. Radiographic images showed degenerative disc disease at L2-L3, L3-4, L4-5 and L5-S1. Disc bulges were seen at L2-3 and L3-4. Dr. Bean’s impression was multilevel lumbar degenerative disc disease with back pain syndrome. He noted surgery was not feasible and Vanover would "have to continue to work with back pain for as long as he is able to tolerate the symptoms."

Vanover submitted the medical report of Dr. William Lester, who evaluated him on January 20, 2011. Dr. Lester noted Vanover's complaints of low back and leg pain extended three or four years prior to his reported workplace injuries of 2010. Vanover rated his pain as unbearable. In addition, he had weakness, numbness and tingling in his legs and hips. On physical examination, Dr. Lester diagnosed lumbar myofascial pain from the work injury of December 20, 2010 and noted pre-existing back pain. Dr. Lester recommended an MRI and physical therapy for three weeks. He concluded the present medications should continue until physical therapy was finished and then Vanover should be weaned off medications entirely. Dr. Lester determined Vanover could do sedentary work with eventual return to full-duty work after the completion of an MRI and physical therapy.

Vanover submitted the medical opinion of Dr. Grady Stumbo, his treating physician. Dr. Stumbo diagnosed chronic low back pain resulting from Vanover's December 20, 2010 work injury. He also confirmed treatment he provided through March 18, 2011 was reasonable, medically necessary, and related to Vanover's lower back condition.

Vanover submitted a psychological report from Eric Johnson, Ph.D., who evaluated Vanover on August 23, 2011. Dr. Johnson diagnosed adjustment disorder with chronic depressed mood and pain disorder with psychological factors relating to his medical condition. He noted unemployment, inadequate finances and health problems were stressors affecting Vanover’s situation. Dr. Johnson made the following prognosis and recommendations:

> I agree with the diagnosis given by Dr. Edwards, but in my opinion he is not able to work on a consistent basis at this time. The opinion is based on his description of daily activities, sleep and energy level disturbances related to both physical and psychological factors, results from the PAI and observation. His psychological prognosis and in part on the medical prognosis and care, since the back pain affects his ability to work, and his inability to work contributes to depression and worry about finances. His prognosis also depends on his willingness to undertake counseling in addition to medication. Counseling would reduce the symptoms of depression, and would address and hopefully mitigate his anger, as

> suggested by the PAI. In my opinion, his prognosis is fair.

Dr. Johnson estimated a 12% psychological impairment pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides") and 2nd edition. However, he cautioned permanent impairment could not be assessed since Vanover was still taking Cymbalta and had not had counseling. Dr. Johnson opined Vanover would not have a permanent impairment once he received appropriate treatment.

Fraser Creek submitted the September 29, 2011 medical report of Dr. Gregory Snider. Dr. Snider noted Vanover was taking Lorcet 10mg four times a day in addition to Ultram, Robaxin and Neurontin prior to his work injury in 2010. Dr. Snider also noted Vanover was morbidly obese and had other medical problems including hypertension, high cholesterol, hypothyroidism and depression. He used a cane to assist with ambulation.

Dr. Snider diagnosed chronic low back pain, lumbar sprain/strain from injuries on May 21, 2010 and December 20, 2010, and morbid obesity. He noted Vanover's documented narcotic-dependent chronic low back pain predated either work injury stating:

> Obviously, I have no way of independently confirming whether or not

> work injuries actually occurred. In any event, Mr. Vanover's 5/21/10 work injury appeared to be more self-limiting and reached maximum medical improvement (MMI) as of approximately 8/21/10. In my opinion that 12/10/10 work injury reached maximum medical improvement by 3/10/11.

In Dr. Snider's opinion, no further formal medical treatment was reasonable or necessary for the work-related sprain/strain injuries. He also saw no need for further use of narcotics, noting Vanover remained narcotic-dependent. Finally, there is no need for surgical or interventional measures. He assigned a DRE Lumbar Category II impairment rating of 3% pursuant to the AMA Guides for "symptomatic worsening of low back pain from the two work injuries described, assumed to represent soft tissue sprain/strain superimposed on prior complaints."

Fraser Creek submitted the medical report of Dr. David Muffly, who evaluated Vanover on October 13, 2011. Dr. Muffly’s assessment was chronic low back pain with multilevel osteoarthritis, degenerative disc disease and neuroforaminal narrowing. He did not detect any sign of nerve root impingement. Dr. Muffly opined Vanover has active low back pain and was undergoing treatment at the time of his May 2010 and December 2010 work injuries. Dr.

Muffly concluded that injuries from those events did not worsen his active pre-existing lumbar condition.

Dr. Muffly determined Vanover had a 5% impairment rating pursuant to Lumbar Category DRE II of the AMA Guides. He further determined none of the impairment was caused by either the May 21, 2010 or December 20, 2010 work injury. He noted Vanover had no work restrictions related to the alleged work injuries and should be able to return to work without further treatment.

Fraser Creek submitted the medical report of Dr. Russell Travis, who examined Vanover on September 29, 2011. Dr. Travis noted Vanover exceeded the 350 pound limit of his office scales.

MRI reports from September 12, 2007 through February 1, 2011 indicated Vanover's "problem was present even as early as 9/12/2007." Dr. Travis noted:

> The degenerative changes described on the MRI of 9/12/2007 have simply progressed a bit in the intervening four years. However, the significant degenerative changes present on 9/12/2007 were significant and have changed only minimally, associated with age, by the MRIs of 8/28/2010 and 2/1/2001. There is no change of significance between the 2/1/2001 MRI and the 8/28/2010 MRI.

Dr. Travis opined Vanover's symptoms have been the same since essentially 2007, particularly the same since the May

21, 2010 incident, and he has remained on the same medications since approximately 2009. He determined Vanover had a DRE Lumbar Category III, 10% impairment rating pursuant to the AMA Guides. Significantly, Dr. Travis concluded that all of Vanover's impairment actively existed prior to December 20, 2010. He did not think Vanover needed medical treatment other than mild opioids and NSAIDs "for his lateral recess stenosis on the basis of pre-existing degenerative changes." He would place no restrictions on Vanover that would not have been appropriate prior to the December 20, 2010 incident. In summary, the December 20, 2010 incident was:

> … simply an incidental event in a progressive and unrelieveing [sic] course of low back and lower extremity pain, which this gentleman had been suffering since 2007 secondary to morbid obesity and moderately severe degenerative changes of the lumbar spine.

Vanover submitted the medical report of Dr. David Herr, who evaluated him on April 29, 2011. Dr. Herr noted Vanover was 43 years old, six feet tall and weighed 380 pounds. He used a quad cane to assist in his walking. Upon physical examination, Dr. Herr diagnosed degenerative disc disease of the lumbar spine and herniated nucleus pulposus. It was clear to him that Vanover had suffered chronic low back pain

and sciatica for many years. He opined, "when able, he continued to work with pain for many years availing himself of the treatment that supported his commitment to his occupation, and to the support of his family."

Dr. Herr concluded Vanover's spine pathology was too diffuse to be addressed surgically. He determined Vanover was permanently and totally disabled, with the May 21, 2010 injury contributing 10% and the December 20, 2010 injury contributing 90% of his disability. Dr. Herr assigned an impairment rating of 28% pursuant to the AMA Guides.

Vanover submitted the medical report from Dr. Anbu Nadar, who evaluated Vanover on October 6, 2011. Dr. Nadar diagnosed lumbosacral strain with radiculopathy. He noted Vanover had reached maximum medical improvement ("MMI") but would need continuing periodic symptomatic care. Dr. Nadar opined Vanover would be unable to return to his former employment and would be restricted from work activity requiring heavy lifting, pushing, pulling, prolonged standing, walking and "any other activity of such nature." Using DRE Lumbar Category II, Dr. Nadar assigned an 8% impairment rating pursuant to the AMA Guides.

Fraser Creek submitted the report of Dr. Douglas Ruth, who examined Vanover on October 27, 2011. Dr. Ruth noted Vanover reported symptoms of depression arising in June of

2011, which he attributed to his pain and physical functional limitations arising from his low back disease. Vanover did not report any functional limitation arising from psychiatric complaints warranting the assignment of a permanent psychiatric impairment. Dr. Ruth diagnosed depressive disorder due to back pain and also determined that the work injury did not cause any psychiatric impairment. He opined Vanover did not require any continuing medical treatment for his psychiatric complaints. He recommended Vanover continue follow up appointments with his primary care physician for management of his antidepressant medications. As to the causation of Vanover's psychiatric complaints, Dr. Ruth stated:

> The need for antidepressant treatment arises from his pre-existing degenerative low back disease, unrelated to either work injury, and from the aggravation of the back symptoms arising with the December 2010 back injury. Mr. Vanover indicates that the temporary increase in his back pain that arose from the 5/21/10 work incident resolved back to his pre-injury baseline, and his complaints of depression did not arise until the months following the December 2010 work injury. Therefore, the 5/21/10 injury does not contribute to his psychiatric complaints.

Dr. Ruth concluded Vanover retains the capacity to return to his prior work from a psychiatric point of view.

Fraser Creek submitted the October 13, 2011 vocational evaluation report of Ralph M. Crystal, Ph.D., who noted Vanover is a high school graduate with training as a mine emergency technician, who has worked for several companies, mostly as a rock truck and heavy equipment operator. Dr. Crystal concluded Vanover also has demonstrated vocational skills relating to using judgment and decision-making. His intellectual and academic abilities indicate capabilities to perform a wide range of jobs requiring academic skills.

Fraser Creek submitted the psychological report of Dr. David Shraberg, who evaluated Vanover on November 9, 2011. Dr. Shraberg noted Vanover had worked as a heavy equipment operator for 17 years. He has also struggled with morbid obesity since childhood. Dr. Shraberg stated:

> The literature on morbid obesity notes a tremendous amount of psychology associated with this disorder in many instances. Mood disorders as well as significant oral dependencies (opiates and alcohol, etc.) are commonly associated with morbid obesity. This young man may very well have been constitutionally obese and his present psychological and physical complaints are, in my opinion, solely due to what is a metabolic disorder with far ranging effects on the body as the individual ages. Approximately ten years ago, he began to have a breakdown of a variety of joints associated with weighing over 500 pounds on a 6 foot frame. He did undergo a gastric bypass. Although there were some initial significant

> lifestyle changes, he is back to his pattern of over eating [sic] and sweet cravings ("I am back with Little Debbie"). He is depressed about his condition and state.

Dr. Shraberg disagreed with Dr. Johnson's opinion therapy should be addressed toward relief of his pain disorder. Dr. Shraberg opined Vanover has a mood disorder associated with a general condition of morbid obesity. Dr. Shraberg further opined psychotherapy would not be helpful, but would divert Vanover from the more important psychobiological issue, his metabolic syndrome. Dr. Shraberg concluded Vanover has no active psychiatric impairment related to his injury of December 20, 2010 and could return to his usual and customary level of employment with restrictions imposed due to his discomfiture and obesity.

Vanover submitted the medical report of Dr. G. Christopher Stephens, who performed an evaluation on October 20, 2011, at the request of Fraser Creek. On physical examination, Dr. Stephens noted Vanover was in no acute distress and weighed 410 pounds with a normal gait but slow in appearance. A comparison of Vanover's August 2010 MRI scan with the February 2011 scan showed a change at the L3-4 level where a central and right paracentral protrusion of disc material is clearly increased and worsened.

Dr. Stephens diagnosed chronic back and leg pain secondary to degenerative disc and mild spinal stenosis. In his opinion, Vanover had a pre-existing active condition with his back and leg prior to the December 2010 accident. However, from his review of the MRI scans, Dr. Stephens concluded Vanover's problem had worsened. He assigned an 8% impairment rating pursuant to the AMA Guides, DRE Lumbar Category II, with half of the impairment due to a pre-existing active condition and spinal stenosis, and the other half due to the effects of the work injury.

In an opinion rendered February 20, 2012, the ALJ made the following findings regarding the alleged May 21, 2010 injury:

> Plaintiff asserts that he injured his low back and hips at work on May 21, 2010, when he backed over a rock in his dozer and experienced significant jarring. He relies on the medical testimony of Dr. Stumbo, Dr. Herr, Dr. Nadar, and Dr. Johnson to support his claim, and asserts that he suffers from a 3% whole person impairment as a result of the work injury (based on 10% of the 29% WPI assigned by Dr. Herr), and that he did not suffer from any pre-existing, active, physical or psychological conditions/impairments.
>
> Defendant Employer argues that Plaintiff’s claim for income and medical benefits as a result of the alleged May 21, 2010 work injury should be dismissed in its entirety because he did not give due and timely notice of the incident or

injury. Likewise, Defendant Employer relies on the medical testimony of Drs. Muffly, Travis, Snider, Ruth and Shraberg to assert that Plaintiff did not suffer any permanent injury or impairment as a result of the May 2010 work incident. Defendant Employer contends that, at most, Plaintiff suffered a mild exacerbation/aggravation of his ongoing and symptomatic low back pain that resolved without causing any permanent impairment.

With regard to notice, Plaintiff testified that he called his foreman, Ken Howard, immediately after the work incident on May 21, 2010, and told him what had happened and that he needed to go see a doctor, Plaintiff's testimony is unrebutted, and it supports a finding that he gave Defendant Employer due and timely notice of the work injury. As to the remaining issues, after careful consideration of the conflicting medical evidence presented herein, I find that Dr. Travis and Dr. Muffly have rendered the most accurate and authoritative assessments of Plaintiff's low back and hip conditions both immediately before and after the work incident on May 21, 2010, and of a resulting permanent impairment rating under the AMA Guides, and I adopt their expert opinions on these issues. It is therefore determined that Plaintiff did not suffer any additional permanent impairment to his low back or hips as a result of the May 21, 2010 work incident, and the incident did not create the need for Plaintiff to incur any medical treatment/medication over and beyond what he was already taking for his ongoing and symptomatic low back and hip problems. Likewise, based on the medical testimony of Drs. Ruth and Shraberg, I find that Plaintiff did not suffer any psychological injury or

> impairment as a result of the May 2010 incident at work.

With regard to the alleged December 20, 2010 injury, the ALJ made the following findings:

> Plaintiff asserts that he injured his low back, hips and legs at work on December 20, 2010, while using his dozer to lift a heavy rock, which slipped off the blade, slamming the rear end of the dozer down on solid rock. He relies on the medical testimony of Dr. Stumbo, Dr. Herr, Dr. Nadar, Dr. Stephens, and Dr. Johnson to support his claim. Plaintiff relies on the medical opinion of Dr. Herr to assert he suffers from a 26% whole person impairment due to his physical injuries from the December 2010 work-related injury. In the alternative, he relies on Dr. Nadar, who assigned an 8% physical impairment. Both Dr. Herr and Dr. Nadar opined that Plaintiff did not suffer from any pre-existing, active, physical conditions or impairments. Dr. Stephens assigned Plaintiff an 8% whole person physical impairment as a result of the December 2010 work injury, but he opined that 4% was pre-existing and active. With regard to, his psychological condition, Plaintiff relies on the medical testimony of Dr. Johnson to assert that he suffers from a 12% whole person psychological impairment as a result of the December 20, 2010 work injury.
>
> Defendant Employer argues that Plaintiff's claim for income and medical benefits as a result of the December 20, 2010 work injury should be dismissed in its entirety because the work incident did not cause any appreciable change in Plaintiff's condition, given his long history of low back pain and the fact that he was using narcotic medications

> on a daily basis prior to the December 2010 date of injury. Defendant Employer relies on the medical testimony of Dr. Travis, Dr. Muffly, Dr. Shraberg, and Dr. Ruth, who all four opine that the December 20, 2010 work incident did not cause any worsening of Plaintiff's overall condition or result in any permanent physical or psychological impairment.
>
> After careful consideration of the conflicting medical evidence presented herein, I again find that Dr. Travis and Dr. Muffly have rendered the most accurate and authoritative assessments of Plaintiff's low back, hip, and leg conditions both immediately before and after the work, incident on December 20, 2010, and of a resulting permanent impairment rating under the AMA Guides, and I adopt their expert opinions on these issues. It is therefore determined that Plaintiff did not suffer any additional permanent impairment to his low back, hips or legs as a result of the December 20, 2010 work incident, and the incident did not create the need for Plaintiff to incur any medical treatment/medication over and beyond what he was already taking for his ongoing and symptomatic low back and hip problems. Likewise, based on the medical testimony of Drs. Ruth and Shraberg, I find that Plaintiff did not suffer any psychological injury or impairment as a result of the December 2010 incident at work.

Accordingly, the ALJ dismissed both claim number 2011–01043 and 2011–99545.

Vanover filed a petition for reconsideration, raising essentially the same arguments he now raises on appeal. By

Order dated May 8, 2012, the ALJ denied the petition for reconsideration, stating there were no errors patently appearing on the face of the Opinion and Order.

Vanover raises several issues on appeal. First, he argues the ALJ erroneously claimed only a single medical statement by Dr. Stumbo was introduced, when the records show that Dr. Stumbo saw Vanover four times prior to the injury of May 21, 2010, three times after that injury, and seven times after the injury of December 10, 2010.

Next, Vanover argues the ALJ erred in assessing the effects of the injury when she determined Vanover did not suffer additional permanent impairment as a result of the work injuries as they did not create the need for him to incur medical treatment over and above what he was already taking. Vanover argues the ALJ should have relied upon the opinions of Drs. Herr, Nadar, Stevens, Snider, Lester and Stumbo. Vanover also argues the ALJ erred in not setting out her reasons for rejecting the opinions of these physicians.

Finally, Vanover argues the ALJ erred in relying upon the opinions of Dr. Muffly and Dr. Travis.

It is well established that a claimant in a workers' compensation claim bears the burden of proving each of the

essential elements of his cause of action. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Since Vanover was unsuccessful in his burden of proof before the ALJ, the question on appeal is whether the evidence is so overwhelming, upon consideration of the whole record, as to compel a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

Compelling evidence is defined as evidence that 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). The ALJ, as fact-finder, may 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. Magic Coal v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Rowland, *supra*. In order to reverse the decision of the ALJ, it must be shown there was no evidence of substantial probative value to support her decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

As fact-finder, the ALJ has the sole authority to determine the quality, character, and substance of the

evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Similarly, the ALJ has the sole authority to determine the weight and inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997).

Vanover's arguments on appeal are essentially an attempt to re-argue the merits of his claim. While Vanover is able to identify evidence that could support a finding in his favor, the evidence does not compel a finding in his favor. The ALJ was faced with conflicting evidence regarding whether the alleged injuries caused a harmful change or resulted in impairment.

Unfortunately for Vanover, the ALJ was not persuaded by his evidence. The ALJ clearly indicated she considered all the medical opinions regarding Vanover's condition and found the opinions of Drs. Travis, Muffly, Ruth and Shraberg more persuasive. Dr. Muffly indicated Vanover had no restrictions or impairment as a result of the alleged work injuries and did not require any further treatment. Dr. Travis indicated "Nothing seemed to have changed secondary to the injury either of 5/21/2010 and certainly nothing changed in the injury of 12/20/2010, either symptomatically or medication-wise or MRI imaging

findings." Further, he indicated any medical treatment Vanover required was not a result of the December 20, 2010 accident, but was for pre-existing problems. Dr. Ruth assigned no impairment rating related to the May 21, 2010 accident. Dr. Ruth indicated any need for anti-depressant treatment arises from Vanover's pre-existing degenerative low back disease. Dr. Shraberg stated Vanover had no psychiatric impairment related to the December 20, 2010 accident and could return to his usual and customary level of employment. The ALJ was well within her authority as fact-finder in choosing to rely upon those opinions and in rejecting the opinions of Drs. Stumbo, Herr, Nadar, Stephens and Johnson.

The ALJ's explanation that she found the medical opinions of Drs. Travis, Muffly, Ruth and Shraberg more persuasive is a sufficient analysis. The ALJ was not required to explain the minutia of her reasoning. We reject Vanover's argument that the ALJ's reliance on their opinions was in error since a greater number of physicians' opinions would support a finding in his favor. Workers' compensation cases are not decided based upon a "head count." Rather, the ALJ alone has responsibility to determine the appropriate weight to be granted each physician's opinion. We may not second guess the ALJ's

determination or substitute our own opinion regarding the appropriate weight. The opinions of Drs. Travis, Muffly, Ruth and Shraberg are substantial evidence supporting the ALJ's findings. Thus, it cannot be said the evidence compels a finding in Vanover's favor and therefore we may not reverse.

Accordingly, the February 20, 2012 Opinion and Order and the May 8, 2012 Order on Reconsideration rendered by Hon. Caroline Pitt Clark, Administrative Law Judge, are **AFFIRMED**.

ALL CONCUR.

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