

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 19, 2021

CLAIM NO. 201790399

BRENDA DORNACHER

PETITIONER

VS. **APPEAL FROM HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE**

COVINGTON PUBLIC SCHOOLS AND
HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Brenda Dornacher (“Dornacher”) appeals from the November 12, 2020 Opinion, Award & Order rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”). The ALJ found Dornacher sustained compensable work-related right upper extremity injuries when she tripped and fell while exiting a bus on March 9, 2017, in the course of her employment with Covington Public Schools (“Covington”). The ALJ awarded temporary total

disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits based upon a 25% impairment rating, and medical benefits. The ALJ determined KRS 342.730(4) effective July 14, 2018, limits Dornacher’s award of income benefits. Dornacher also appeals from the November 25, 2020 Order overruling her Petition for Reconsideration.

On appeal, Dornacher argues the application of the amended version of KRS 342.730(4) is unconstitutional. She also argues the ALJ failed to properly apply the correct analysis in finding she is not permanently totally disabled. Finally, Dornacher argues the evidence supports a finding that she sustained a compensable work-related neck injury. Because we find the ALJ appropriately analyzed the claim, substantial evidence supports her determinations, and a contrary result is not compelled, we affirm.

Dornacher filed a Form 101 alleging injuries to her right shoulder, brain, brachial plexus, neck (C4-C5/C5-C6), carpal tunnel syndrome, and radiculopathy when she fell on March 9, 2017, in the course of her employment with Covington. Dornacher began working as bus driver for Covington on December 1, 2016. She previously drove buses for other school systems, and worked in that capacity for approximately twenty-three years. Dornacher’s Form 104 indicated she had also previously worked as a processor/mail clerk for an investments company, a medical records clerk, a postal clerk, a receiving clerk, an assembler, and an airline reservation clerk.

Dornacher testified by deposition on April 29, 2019 and at the hearing held September 14, 2020. Dornacher is a resident of Independence, Kentucky. She

was born on January 12, 1944, and was 73 years old on the date of injury. Dornacher is a high school graduate. She worked as an EMT in the late 1960s to the early 1970s, for which she held a certification that has long since expired. She also had a CDL when she was driving buses, but that is no longer valid. She additionally worked as a professional photographer at one time, for which she received training from her husband. She no longer works as a photographer.

Dornacher began driving buses for Covington on December 1, 2016. She missed a few weeks of work in early 2017 due to contracting whooping cough after exposure to one of the students who rode her bus. Dornacher drove bus routes in the morning, after school, and had one stop during the mid-day. She earned \$16.50 per hour, and drove approximately twenty-five hours per week. The accident occurred on March 9, 2017, around 2:30 p.m. Dornacher pulled over to allow an emergency vehicle to pass. Another vehicle struck the bus after she pulled over. When she stepped out of the bus to inspect the damage, she tripped on broken concrete, causing her to fall forward onto her head and right shoulder.

Dornacher went directly to St. Elizabeth Business Health for treatment. She completed an accident report the following day. She returned to light duty work for Covington until she had her first right shoulder surgery. She has not worked since, and has not formally applied for work since then, although she informally inquired about a bus driving position in Kenton County. She testified she would like to return to work, but she is no longer able to drive a bus due to difficulty with steering. She also testified she is unable to perform any of her other previous

work. Dornacher testified she is no longer able to cook, do housekeeping, bowl, play her guitar, or engage in any of the previous activities she enjoyed.

Dornacher underwent an arthroscopic right rotator cuff repair by Dr. Bruce Holladay on April 17, 2017. She later underwent a right shoulder arthroplasty by Dr. Michael Griewe on September 19, 2017. She subsequently underwent injections, and additional surgery was recommended, which she declined. No additional surgery is scheduled, although she testified she has constant right shoulder pain. Dornacher additionally complains of numbness from her forearm to her right wrist. She also complains of neck problems and pain between her shoulder blades. Dr. Howard Schertzinger has treated her neck. Dr. James Baker has treated her right arm. She explained her neck pain varies with activity. She has also experienced headaches and dizziness since the accident. Dornacher underwent previous bilateral carpal tunnel releases several years before the work incident. She currently takes multiple medications for unrelated conditions, including aspirin, Levothyroxine (thyroid medicine), Torsamide (high blood pressure), Bupropion (depression), Citalopram (depression), and Pantoprazole. She only takes over-the-counter Tylenol and Ibuprofen for the residuals of her work injuries. She testified she would like to have additional treatment for her neck and shoulder.

Dornacher filed medical records from multiple providers in support of the Form 101. The first record bears no date, nor does it reflect the name of the physician. However, the initials HJS are on the document. Therefore, it is presumed to be a note from Dr. Schertzinger. That document indicates Dornacher was diagnosed with a traumatic brain injury, cervical sprain, right brachial plexus strain,

C4/5 right foraminal stenosis, C4/5 spondylotic protrusion, work-related injury on March 9, 2017, and a partial empty sella tarcica. Dornacher was prescribed physical therapy, cervical traction, Prednisone, and Pamelor. She also filed Dr. Schertzinger's May 10, 2017 note indicating her complaints of neck and right arm pain. He diagnosed right shoulder pain from a fall, a large rotator cuff tear, non-painful joint arthritis, right wrist sprain/strain, and she was recovering from arthroscopic right shoulder repair.

The March 22, 2017 MRI report revealed full-thickness tears of the supra and infra spinatus. The March 29, 2017 intake sheet from Commonwealth Orthopaedics notes Dornacher complained of right shoulder problems, including constant throbbing, burning, tingling, and numbness from tripping and falling on a sidewalk on March 9, 2017. Dr. Bruce Halladay's April 17, 2017 operative note reflects she underwent right shoulder arthroscopic rotator cuff repair. The April 20, 2017 note from Commonwealth Orthopaedics physical therapy reflects Dornacher's complaints of dull, sharp, aching, and throbbing pain into her right forearm and wrist below her elbow. In his April 24, 2017 note, Dr. Baker diagnosed Dornacher with radiculopathy and cervical osteoarthritis. A May 4, 2017 CT-scan, interpreted by Dr. Amit Rattan, noted Dornacher has a reversal of the cervical lordosis with mild C5 kyphosis, advanced cervical spondylotic changes, narrowing of the right foramina and left foramina (most advanced at C4-C5). A September 13, 2017 CT-scan report from St. Elizabeth's noted findings consistent with rotator cuff arthropathy, and suspected bursitis. Dr. Griewe's September 19, 2017 operative note indicates he performed a right reverse total shoulder arthroplasty, and revision of biceps

tenodesis. Dr. Lesley Allen's June 26, 2016 note from OrthoCincy indicates Dornacher is status-post right reverse total shoulder arthroscopy, but she still complains of diffuse anterior shoulder tenderness. The last record filed with the Form 101 was Dr. Allen's July 26, 2018 note from a follow-up office visit. He again noted Dornacher's complaint of persistent anterior shoulder pain following surgery. He observed a CT-scan revealed no hardware loosening or stress fracture.

Dornacher subsequently filed numerous medical records and reports from various medical providers. She filed records from OrthoCincy physical therapy for treatment she received on four occasions between May 10, 2017 and May 24, 2017. The notes reflect she was progressing as expected, but continued to report pain in her neck and her right shoulder. The notes also reflect she may have experienced an exacerbation of her pain due to overdoing it at physical therapy, although she demonstrated full range of motion and strength.

Dr. John Wolf with Case Consultants of Ohio evaluated Dornacher at her request on April 25, 2019. He noted the March 9, 2017 date of injury consisting of tripping and falling, landing on her right upper extremity in the course of her work as a school bus driver. He diagnosed her with an acute rotator cuff tear superimposed on probable pre-existing rotator cuff tear disease, a possible cerebral concussion, acute cervical strain super-imposed on pre-existing degenerative multiple level cervical disc disease, and possible right-sided cervical radiculopathy. He assessed a 22% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Dr. Wolf deferred to another expert to evaluate whether Dornacher

sustained a traumatic brain injury or cerebral concussion. Dr. Wolf did not address whether Dornacher had reached maximum medical improvement (“MMI”).

Dornacher filed the September 19, 2019 note from OrthoCincy reflecting her complaints of neck pain. She also filed the October 9, 2019 EMG/NCV report from Dr. James Ferrell indicating no evidence of radiculopathy. The report indicates she had findings consistent with carpal tunnel syndrome and musculoligamentous neuropathy. Dr. Rattan interpreted an October 13, 2019 MRI as demonstrating right multilevel foraminal encroachment with narrowing at C4 – C7. The December 11, 2019 note of Amanda Mallory, PA-C, indicates a review of Dornacher’s MRI demonstrated cervical stenosis, and complaints of right shoulder and knee pain.

Dornacher filed Dr. John Jacquemin’s treatment records from OrthoCincy for office visits on January 29, 2020 and March 11, 2020. Dr. Jacquemin noted her complaints of neck, shoulder, and right arm pain. He stated she might be a candidate for epidural steroid injections, and a prescription for Cymbalta. He observed she has cervical degenerative disc disease with arthropathy. He additionally noted she had carpal tunnel syndrome, but no radiculopathy. He diagnosed her with ongoing neck, right shoulder, and lower extremity problems with pain. He additionally noted she has cervicalgia with multilevel degenerative disk and joint disease with neural foraminal stenosis.

Covington filed Dr. Michael Bertram’s report from EMG/NCV studies performed on April 12, 2017. He noted the studies revealed evidence of moderate right median neuropathy at the wrist consistent with carpal tunnel

syndrome. He noted there was no evidence of right cervical radiculopathy or plexopathy, nor was there evidence of radial or ulnar neuropathy.

Dr. Thomas Bender evaluated Dornacher at Covington's request on June 28, 2017. In his June 30, 2017 report, Dr. Bender diagnosed Dornacher with contusions with the right shoulder, elbow, wrist, and head. He also noted she sustained a tear of the right rotator cuff. He found she did not sustain a traumatic brain injury, but indicated she may have experienced a cervical strain. He found no evidence of a brachial plexus injury, and no evidence of the aggravation of a pre-existing cervical condition into disabling reality, including her C4-C5 foraminal stenosis. He likewise found no evidence of C4-C5 spondylotic protrusion. He stated Dornacher's osteoarthritis was not aroused into disabling reality by the work incident. He also stated she had not reached MMI. He recommended temporary right upper extremity restrictions due to her recuperation from surgery.

Dr. Bender again evaluated Dornacher on February 11, 2019. He diagnosed a right rotator cuff tear occurring on March 9, 2017, contusions of the right elbow, wrist, and head, and C6 nerve root neuropraxia of the right upper extremity. He found she does not have right upper extremity radiculopathy. He found Dornacher had reached MMI. Dr. Bender assessed a 10% impairment rating pursuant to the AMA Guides. He found she could not return to work as a vehicle driver due to her restricted range of motion. In a supplemental report dated June 17, 2019, Dr. Bender noted he had failed to include the right reverse shoulder arthroplasty in the impairment rating he assessed. He therefore revised the rating to 25% pursuant to the AMA Guides.

On April 27, 2020, Dr. Bender noted he had reviewed additional records and testing. He stated, "I do not believe the claimant has cervical radiculopathy related to the event of 3/9/17." He found she does not have a brachial plexus injury. He revised the impairment rating to 22%.

Covington filed records from Dr. Carmella Giulitto at Mercy Health. On June 28, 2018, Dr. Giulitto diagnosed Dornacher with a single episode major depressive disorder and coronary artery disease. She noted Dornacher was seen for an attempted renewal of her CDL. She also noted Dornacher was taking Citalopram and Wellbutrin for depression. On November 20, 2018, Dr. Giulitto diagnosed Dornacher with a depressive disorder, not elsewhere classified. She also noted Dornacher's complaints of low back pain.

Covington later filed treatment notes from Drs. Griewe and Matthew Connolly, D.P.M., for treatment on four occasions between September 12, 2019 and October 15, 2019. Dr. Griewe noted Dornacher's continued complaints of shoulder pain, more than two years post-surgery. On September 12, 2019, he diagnosed her with cervical radiculopathy associated with spinal stenosis, and anterior shoulder pain. He recommended a fluoroscopic guided right shoulder aspiration to rule out infection. On September 19, 2019, he diagnosed cervicalgia, right upper extremity pain (concerning for cervical radiculopathy), status-post reverse shoulder arthroplasty, bilateral carpal tunnel releases, bilateral cubital tunnel releases, and a recent right wrist contusion with a subdural hematoma. Dr. Connolly evaluated her for left lower extremity pain. On October 15, 2019, Dr. Griewe prescribed antibiotics to combat a possible low-grade infection.

Covington additionally filed the December 9, 2019 note from Zachary Dedden, PA-C. He noted Dornacher's left knee symptoms, and the fact she underwent a left knee replacement fifteen years prior. He diagnosed her with persistent left lower extremity pain, possibly neuropathy, and a painful left total knee replacement.

A Benefit Review Conference was held on November 26, 2019. At that time, the issues preserved for determination included causation of Dornacher's neck problems, benefits per KRS 342.730, her ability to return to her pre-injury work, exclusion of prior active impairment, and credit for the overpayment of TTD benefits.

The ALJ rendered her Opinion, Award, and Order on November 12, 2020. The ALJ awarded TTD benefits at the rate of \$157.56 per week from April 17, 2017 through February 15, 2019, and allowed Covington to take credit for any overpayment as to rate. She awarded PPD benefits thereafter based upon a 25% impairment rating for Dornacher's right shoulder injury, enhanced by the multipliers contained in KRS 342.730(1)(c)1, limited by KRS 342.730(4) as amended on July 14, 2018, based upon her age. The ALJ found Dornacher did not sustain a cervical injury, and likewise did not sustain an aggravation of her pre-existing cervical degenerative changes when she fell on March 9, 2017. The ALJ additionally performed an analysis taking into consideration the requirements set forth in Ira A. Watson Department Store v. Hamilton, Ky., 34 S.W.3d 48 (2000) and Ashland v. Stumbo, 461 S.W.3d 392 (Ky. 2015) in finding Dornacher is not permanently totally disabled as a result of the March 9, 2017 work incident. The ALJ also awarded

medical benefits for Dornacher's right upper extremity injury pursuant to KRS 342.020. Regarding her finding that Dornacher is not permanently totally disabled, the ALJ found *verbatim* as follows:

Dornacher argues she is permanently and totally disabled as a result of the work injury. An employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. K.R.S. 342.0011(34) defines work as providing service to another in return for remuneration on a regular and sustained basis in a competitive economy. In determining whether a worker is totally disabled, an ALJ must consider several factors, including the worker's age, education level, vocational skills, medical restrictions, and the likelihood that he can resume some type of "work" under normal employment conditions. Ira A. Watson Department Store v. Hamilton, Ky., 34 SW3d 48 (2000).

The ALJ is required to undertake a 5-step analysis to determine whether a claimant is permanently and totally disabled. The ALJ must determine whether there has been a work-related injury, Plaintiff's impairment rating is, and address permanent disability. Finally, the ALJ must determine whether Plaintiff can perform any type of work and that total disability is due to the work injury. Ashland v. Stumbo, 461 SW 3d 392 (Ky. 2015).

After considering Dornacher's age, educational level, vocational skills, medical restrictions, and the likelihood she can resume some type of work under normal employment conditions, this ALJ finds Dornacher is not permanently and totally disabled. First, this ALJ notes Dornacher is 76 years old. Dornacher's age is perhaps the strongest factor in favor of an award of permanent total disability. However, she has a 12th-grade education and a plethora of experience performing sedentary work. Thus, her employment history does not support an award of permanent total disability.

This ALJ carefully considered Dornacher's vocational skills in tandem with her work restrictions.

The ALJ notes a claimant's testimony may be substantive when considering occupation disability. Hush v. Abrams, 584 S.W.2d 48(Ky. 1979). Dr. Wolf did not opine Dornacher was precluded from performing any type of work. Dr. Bender's restrictions were limited to Dornacher right upper extremity. Under these circumstances, this ALJ feels Dornacher can obtain and perform work within a light duty or sedentary capacity. Thus, this ALJ feels Dornacher is not permanently and totally disabled.

Dornacher filed a Petition for Reconsideration arguing the ALJ erred in finding she did not sustain a cervical injury. Dornacher specifically noted, "The basis of the ALJ's decision is that the two EMGs did not show radiculopathy. Big deal!" She argued EMGs are not reliable tests, although there is no evidence in the record supporting this assertion. She argues the ALJ's reliance on this testing rather than opinions and testing supporting such injury constitutes a patent error. She also argues the ALJ patently erred by failing to find she is permanently totally disabled due to the March 9, 2017 work incident. She additionally argues the ALJ failed to appropriately follow the steps necessary to determine whether she is permanently totally disabled, which she again argues was patently erroneous.

The ALJ issued an Order denying the Petition for Reconsideration on November 25, 2020. The ALJ specifically found *verbatim* as follows:

This matter comes before this Administrative Law Judge ("ALJ") upon Plaintiff's petition for reconsideration.

First, Plaintiff petitions this ALJ regarding her finding that she did not sustain a cervical injury. This ALJ reviewed the evidence and set forth why she relied on Dr. Bender's opinion. Plaintiff's petition, on this issue, is a reargument of the merits of the claim. Thus, it will be over-ruled.

Secondly, Plaintiff's petition addressed the constitutionality of KRS 342.730 (4). This ALJ does not have the discretion or authority to address constitutional issues. Thus, she must defer to the appellate courts.

After reviewing this matter and the ALJ being in all ways sufficiently advised, it is ordered as follows:

Plaintiff's petition for reconsideration is over-ruled.

On appeal, Dornacher argues the retroactive application of KRS 342.730(4) is unconstitutional. She also argues the ALJ did not properly provide the analysis necessary to deny permanent total disability benefits. Finally, she argues the uncontroverted evidence supports a finding she sustained a work-related neck injury.

We will first address the constitutionality of the amended version of KRS 342.730(4). Dornacher argues the ALJ erred in retroactively limiting the duration of her award of PPD benefits pursuant to KRS 342.730(4) effective July 14, 2018, which she argues is unconstitutional.

House Bill 2 became effective July 14, 2018. Section 13 of that bill amended KRS 342.730(4) to provide as follows:

All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee reaches the age of seventy (70), or four (4) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate as of the date upon which the employee would have reached age seventy (70) or four (4) years after the employee's date of injury or date of last exposure, whichever last occurs.

In accordance with the holding by the Kentucky Supreme Court in Holcim v. Swinford, 581 S.W.3d 37 (Ky. 2019), we affirm the ALJ's application of KRS 342.730(4) as amended in 2018. There the Kentucky Supreme Court

determined the amended version of KRS 342.730(4) regarding the termination of benefits at age seventy has retroactive applicability. We therefore find Dornacher's award is governed by the limitations set forth in the amended statute.

We further note that this Board, as an administrative tribunal, has no jurisdiction to determine the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945). Consequently, we are without authority to render a decision upon Dornacher's argument regarding the constitutionality of the amended statute. Thus, on this issue we affirm.

We next note that as the claimant in a workers' compensation proceeding, Dornacher had the burden of proving each of the essential elements of her claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Dornacher was unsuccessful in proving she is permanently totally disabled due to the March 9, 2017 work incident, or that she sustained a compensable work-related cervical injury, the question on appeal is whether the evidence compels a different result. 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 function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, *supra*.

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308

(Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ 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 Co. 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 inadequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. As long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

After careful review, we find substantial evidence supports the ALJ's determination that Dornacher sustained only a work-related right shoulder injury for which she underwent two surgeries, including an arthroplasty, when she tripped and fell on March 9, 2017. The ALJ cited Dr. Bender's opinion as support for her decision. She noted there is no question that Dornacher had pre-existing degenerative cervical problems, but she determined the EMG studies establish she

does not have radiculopathy. The ALJ explained the evidence she relied upon in determining Dornacher did not sustain a compensable work-related cervical injury. Despite Dornacher's arguments to the contrary, in particular her unsupported assertions regarding the reliability of EMG studies, it was within the ALJ's discretion to rely upon that testing in reaching her determination. Because we determine substantial evidence supports the ALJ's decision that Dornacher sustained only right shoulder and upper extremity injuries in the March 9, 2017 work incident, and a contrary result is not compelled, we affirm.

We next note that permanent total disability is defined as the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work because of an injury. KRS 342.0011(11)(c). "Work" is defined as providing services to another in return for remuneration on a regular and sustained basis in a competitive economy. KRS 342.0011(34). In determining whether Dornacher is permanently totally disabled, the ALJ was required to perform an analysis pursuant to the City of Ashland v. Stumbo, supra and Ira A. Watson Department Store v. Hamilton, supra.

We find the ALJ performed the appropriate analysis pursuant to the required factors set forth in City of Ashland v. Stumbo, supra, and Ira A. Watson Department Store v. Hamilton, supra, in finding Dornacher is not permanently totally disabled. The ALJ explained the five-step process required to support her determination. As outlined above, the ALJ set forth the basis for her determination. She noted she considered Dornacher's age, educational level, vocational skills, medical restrictions, and the likelihood she can resume some type of work under

normal employment conditions in finding she is not permanently and totally disabled. She clearly found Dornacher has an impairment rating attributable to the work event, as evidenced by the award of PPD benefits. She also noted Dornacher is 76 years old, which she felt was the strongest factor in favoring of an award of permanent total disability. She additionally noted Dornacher has a 12th-grade education and a “plethora” of experience performing sedentary work, which she determined does not support an award of permanent total disability.

The ALJ appropriately considered Dornacher’s age, education, vocational skills, and restrictions in reaching her determination. She outlined the steps necessary, and the evidence she relied upon. The ALJ appropriately analyzed the claim, and her decision falls squarely within her discretion. Therefore, her determination on this issue will remain undisturbed and we affirm.

Accordingly, the November 12, 2020 Opinion, Award & Order and the November 25, 2020 Order on Petition for Reconsideration by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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