

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 12, 2021

CLAIM NO. 201800355

DOW SILICONES CORPORATION

PETITIONER

VS. **APPEAL FROM HON. TONYA M. CLEMONS,
ADMINISTRATIVE LAW JUDGE**

RICHARD CARTER (DEC'D);
PATIENCE MILLER-CARTER,
ADMINISTRATRIX AND INDIVIDUALLY AS WIDOW OF
RICHARD CARTER AND CUSTODIAL PARENT OF CADENCE CARTER
AND ERICA CARTER AS CUSTODIAL PARENT
AND/OR LEGAL GUARDIAN OF E'RIYAH CARTER; AND
HON. TONYA M. CLEMONS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

BORDERS, Member. Dow Silicones Corporation (“Dow”) appeals from the December 17, 2020 Opinion, Award, and Order and the January 8, 2021 Order on Petition for Reconsideration rendered by Hon. Tonya Clemons, Administrative Law

Judge (“ALJ”). The ALJ determined Richard Carter, deceased (“Carter”) proved he contracted adenocarcinoma (“cancer”) of the lungs as a result of exposure to chemicals while employed as a chemical plant operator with Dow, ultimately causing his death. The ALJ awarded benefits to his widow and two minor children.

On appeal, Dow argues the ALJ erred in determining Carter proved a causal connection between the work conditions and the occupational disease. It further argues Carter did not prove the workplace conditions could cause the disease and no “rational” connection between the work and occupational disease can be made. We disagree and affirm.

An Application for Resolution of Claim-Occupational Disease was filed on March 6, 2018 on behalf of Carter. It alleges Carter contracted adenocarcinoma as a result of exposure to chemicals during the course and scope of his employment as a chemical plant operator with Dow, with a last date of injurious exposure on February 11, 2017.

Patience Miller-Carter (“Ms. Carter”), widow of the decedent, testified by deposition on October 3, 2019 and at the hearing held October 20, 2020. She and Carter were married on May 17, 2015. Carter passed away on May 11, 2017. They had one child together, Cadence, who was born in August 2013. Carter was previously married to Erica Carter and had a daughter, E’Riyah, born in October 2005. Ms. Carter testified Carter was diagnosed with cancer on February 14, 2017. She testified he was having shortness of breath, chest pain, and recurring pneumonia prior to the diagnosis. At some point, his eyes started swelling. He was finally diagnosed with lung cancer. Ms. Carter testified that she and Carter’s mother were

smokers and that he had lived with both women at different points in his life. Ms. Carter believed Carter's cancer was caused by his exposure to certain chemicals while working. She believed this because others that had worked with Carter had also developed cancer and died.

At the formal hearing, Ms. Carter stated there were times when Carter came home from work irritated because he had to clean the tall vats. A cleaning company had previously cleaned the vats, but it had not cleaned them for the last couple of years. When Carter cleaned the vats, his back would hurt because he had to bend to keep his head out of the "cancer clouds." Ms. Carter stated testing of her home revealed no evidence of radon. Neither Carter's mother nor his sister had ever been diagnosed with cancer. Ms. Carter testified she never discussed with Carter the possible causes of his adenocarcinoma. Ms. Carter knew of two other employees who developed cancer shortly after retiring from Dow.

Dr. Muneeb Choudry of Norton Cancer Institute stated in an undated note that Carter had been "diagnosed with metastatic lung cancer-disease involving his lung, liver and multiple areas of his bones." Dr. Choudry documented Carter's symptoms and found he was not fit for duty.

The June 19, 2017 Kentucky Certificate of Death attached to the Form 102 reflects Carter died on May 11, 2017. The immediate cause was listed as adenocarcinoma of the lung.

Dr. Barbara Weakley-Jones performed a post mortem examination on May 13, 2017. She concluded, "Death in this case is attributed to metastatic adenocarcinoma of the lung."

The Administratrix introduced Dr. George Nichols' August 14, 2019 report addressing the cause of Carter's diagnosis and subsequent death. He reviewed material safety data sheets, medical records from Norton Audubon/Norton Healthcare, the certificate of death, the autopsy report, discovery responses including job duties, blood tests, Notices of Violations, responses to requests for documents, and personal protective gear issued to Carter. Dr. Nichols agreed with Dr. Weakley-Jones that Carter died from adenocarcinoma of the lung. Dr. Nichols acknowledged he had no means to prove if and how often Carter came in contact with any or all of the substances discussed in the material data sheets. However, sixteen of the sheets referenced carcinogenic ratings for the substances. The ratings extended from "known to be a human carcinogen" to "can reasonably anticipate to be a human carcinogen." Dr. Nichols stated, within reasonable medical probability, Carter was exposed to carcinogenic materials while at work. Dr. Nichols stated the personal protective gear issued by Dow could protect Carter from what he would inhale. However, Dr. Nichols noted he had no way of proving that the equipment was maintained properly, used as instructed, or torn or damaged while used by Carter. Dr. Nichols concluded Carter suffered an injurious exposure due to an occupational source, and that his fatal lung cancer can be traced to his employment.

Dr. Theron Blickenstaff's December 9, 2019 report was introduced. Dr. Blickenstaff reviewed the records, the deposition of Ms. Carter, Dr. Nichols medical report. Dr. Blickenstaff stated there was no objective evidence that Carter was exposed to actual amounts of any chemical that could cause lung cancer while working for Dow. Dr. Blickenstaff noted exposure to formaldehyde,

trichloroethylene, and methylene chloride had been alleged. None of these will cause lung cancer. He stated formaldehyde causes cancers of the nasopharynx and sinonasal cancer and may cause leukemia. Trichloroethylene causes kidney cancer and may cause liver cancer and non-Hodgkin lymphoma. Methylene chloride causes cancer of the biliary tract and non-Hodgkin lymphoma. Dr. Blickenstaff noted Carter had other known risk factors for lung cancer including exposure to secondhand smoke and possibly radon. Dr. Blickenstaff concluded Carter's work activities were not causally related to his adenocarcinoma of the lung or to his death.

Dr. Robert Sklaroff's February 26, 2020 report was introduced. Following his review of records and reports, he stated that he disagreed with Dr. Blickenstaff's assessment that there is no evidence Carter was exposed to chemicals that caused his lung cancer. Dr. Sklaroff noted violations occurred at the Dow facility, presumably during the timeframe when Carter was employed. He noted "high chlorine excursions" in February 2005 and the release of methyl chloride on two occasions in March 2011 and October 2013. Dr. Sklaroff stated, "methyl chloride was/is associated with lung cancer." He also concluded that, based upon the evidence in this case, lung cancer "followed as a natural incident to the work as a result of the exposure which can fairly be traced to the employment as the proximate cause." Dr. Sklaroff noted the absence of any other dispositive etiology of the malignancy.

In a March 25, 2020 supplemental letter addressing the rebuttal report from Dr. Sklaroff, Dr. Blickenstaff reiterated his opinion that the presence of a substance in a workplace does not mean that the employees are necessarily exposed.

He stated Dr. Sklaroff demonstrated a lack of knowledge of basic chemistry, and ignorance of chemical manufacturing processes and employee health and safety policies and procedures used by large chemical companies.

Both parties submitted Material Safety Data Sheets (“MSDS”) and other documents concerning chemicals present in the Dow plant. The contents of the document follow. The MSDS for limestone indicates it is a Category 1 Carcinogen, which may cause damage to organs (lungs). Prolonged or repeated inhalation of crystalline silica may cause lung cancer. The hydrated lime MSDS states it is in carcinogenicity Category 1A. It may cause cancer through inhalation. Green Pak 85-p can cause lung cancer in humans. Kruzite Castable contains silicon dioxide and methyl chloride. Dow Corning ® 2-0424INT is a Category 2 carcinogen, suspected of causing cancer if inhaled. Loctite contains cumene, designated as reasonably anticipated as a human carcinogen. The Permatex Form A Gasket MSDS states it is considered hazardous and contains ingredients that are known carcinogens. It targets organs of the respiratory system. Kast-O-Lite is a category 1A carcinogen with a crystalline silica warning. The MSDS indicates Crystalline silica inhaled from occupational sources can cause lung cancer in humans. The MSDS sheet for Dow Corning Silicon CPS-3000 reflects it is a Category 1A Carcinogen. Its ingredients may cause cancer by inhalation, and it targets the lungs. The MSDS sheet for Dow Corning ® Q8-6818 Unquenched Methyl Spent Bed indicates it is a Category 1A carcinogen by inhalation, containing hazardous silicon, silicon dioxide, and quartz. The sheet additionally reflects there is positive evidence for carcinogenicity from human epidemiological studies by

inhalation (quartz). The MSDS sheet for Hydrocarbon Siloxene Dow Corning Q8-6533 Waste Hydrocarbone/Siloxane notes it is suspected of causing cancer if inhaled. The MSDS for methyl chloride states it is “suspected of causing cancer” and “may cause damage to organs (lung, kidneys, liver, central nervous system) through prolonged or repeated exposure.” Methylene chloride is classified as possibly carcinogenic for humans by the IARC.

Dow submitted a list of the various chemical processes and the required protective materials for each process. Dow also submitted the IARC Classification Definitions that provide detail as to the meaning of certain terms when describing chemicals and their effect on the human body. Dow filed an IARC monograph for methyl chloride that refers to the chemical makeup of methyl chloride. Further, it includes the uses of the chemical, where it occurs, regulations, and a study regarding its link to cancer in humans. Dow submitted a computer printout regarding methylene chloride from OSHA’s website. Dow submitted a document titled “A Guide to The Globally Harmonized System of Classification and Labeling of Chemicals (GHS).” The document includes the categories of “Carcinogenicity.”

A Benefit Review Conference and hearing were held, during which the following contested issues were identified: Work-related injury/causation; whether the Plaintiff’s death was caused by exposure to chemicals which occurred within the course and scope of his employment by the Defendant/Employer; and benefits per KRS 342.750.

The ALJ made the following determinations relative to this appeal, which are set forth, *verbatim*:

“Injury” is defined by KRS 342.0011(1) as a “work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which proximately causes a harmful change in the human organism as evidenced by objective medical findings.” “Injury” also includes occupational disease.

The Act defines “occupational disease” as a disease arising out of the course and scope of employment. KRS 342.0011(2). The Act goes on to explain that an occupational disease:

“...shall be deemed to arise out of the employment if there is an apparent to the rational mind, upon consideration of all circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that sources as a rational consequence.” KRS 342.0011(3).

Finally, “injurious exposure” is defined as that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made. KRS 342.0011(4).

The Kentucky Supreme Court has held in Miller v. Tema Isenmann, Inc., 542 S.W.3d 265, 271 (Ky. 2018), that the “statute requires only that exposure could independently cause the disease—not that it did in fact cause the disease.” Rather, all the statute requires “is

that the exposure be such as could cause the disease independently of any other cause.” Id. at 271 (quoting Childers v. Hackney’s Coal Co., 337 S.W.2d 680, 683 (Ky. 1960)). Thus, the Miller court held that for a claimant to prevail on his claim for occupational disease, the evidence must demonstrate a causal connection between the conditions under which the work was performed and the occupational disease as well as demonstrate that work place conditions could cause the disease, which in this case is cancer. Id. at p. 271.

In this matter, Plaintiff asserts that Mr. Carter contracted the occupational disease, adenocarcinoma (cancer), during the period of time he was employed with Defendant and the cancer was due to his occupational exposure to numerous carcinogenic chemicals and compounds. Thus, entitlement to income benefits under KRS 342.750 are required. Defendant conversely argues that the claim is not supported by substantial evidence as there is no proof of injurious exposure to methyl chloride or that the chemical causes cancer.

It is undisputed that Mr. Carter worked for Defendant and was working for Defendant until February 11, 2017 in the Utilities Department. Further, pursuant to the Employee Health Certification Form, his first date missed from work and the date the illness or injury began was on February 11, 2017. It is further not disputed that Plaintiff had been diagnosed with metastatic adenocarcinoma (cancer) of the lung. Per the correspondence of Dr. Choudry, the disease involved Mr. Carter’s lung, liver, and multiple areas of the bone. Per the post-mortem autopsy and death certificate, Mr. Carter’s May 11, 2017 death was attributable to the metastatic adenocarcinoma of the lung. Defendant submitted into evidence a list of chemicals in its plant. It notes in its brief that the list of chemicals and CD-ROM includes the chemical “methyl chloride” at line 161. A Material Safety Data Sheet for methyl chloride was submitted into evidence on behalf of Plaintiff. Under Section 11: Toxicological Information, it is noted that methyl chloride is in IARC group 3 not classifiable. Per the IARC Classification Definitions filed by Defendant, Group 3 meant the agent was not classifiable as to its

carcinogenicity to humans. The definition went on to explain, however, that “[a]n evaluation in Group 3 is not a determination on non-carcinogenicity or overall safety. It often means that the agent is of unknown carcinogenic potential and that there are significant gaps in research.” The Material Safety Data Sheet, however, indicates that with respect to specific target organ toxicity on repeated exposure, methyl chloride “[m]ay cause damage to organs (lung, kidneys, liver, and central nervous system” through prolonged or repeated exposure.” Mrs. Miller-Carter testified to Plaintiff’s job duties, which included work not just sitting in a control room, but also going out into the plant and cleaning vats. While Plaintiff may have been wearing PPE, there is no indication that he did not have exposure to the chemicals listed in Defendant’s own list of chemicals submitted into evidence. Those chemicals included, but by no means were limited to, methyl chloride.

In his August 2019 report, Dr. Nichols noted that Mr. Carter was continuously employed by Defendant from 2006 through 2017 at its plant in the utilities portion of the factory. His position beginning in October 2007 through his last day of work in February 2017 was as a flexible technician, a split inside-outside job with duties that included, but were not limited to, equipment maintenance, inspections, and removing and securing hazardous materials. He was in agreement with the autopsy report that Mr. Carter died of adenocarcinoma of the lung.

Dr. Nichols reviewed Material Data Sheets for materials used at Defendant’s plant and those materials’ carcinogenic ratings. Based upon these materials, he found that Mr. Carter was exposed to carcinogenic materials while at work. He also reviewed the personal protective gear issued by Defendant for Mr. Carter’s use. Dr. Nichols ultimately concluded that Mr. Carter suffered an injurious exposure due to an occupational source and that the fatal lung cancer can be traced to Mr. Carter’s employment.

Dr. Sklaroff, a medical oncologist and hematologist, listed in his report multiple potential carcinogens that Mr. Carter could have been exposed during his work. He reviewed medical records from

Norton Audubon Medical Center and Carroll County Community Hospital along with material provided by Defendant. Dr. Sklaroff noted that the as the list of agents was provided by Defendant, then exposure to such chemicals “can be fairly traced to the employment as the proximate cause.”

He went on to list several chemicals that were covered in the information sheets from Defendant with potential pulmonary carcinogenic potential identified. The list included methyl chloride as a potent carcinogen that significantly increases the incidence of malignant lung (and liver) tumors in mice. He goes on to state that methyl chloride is associated with lung cancer. Dr. Sklaroff found a causal connection between the work condition of methyl chloride exposure and the occupational disease of lung cancer. Thus, Dr. Sklaroff’s opinions indicate that exposure to the chemical could independently cause lung cancer independent of any other cause.

Having reviewed all the evidence on this issue, the ALJ finds the testimony of Ms. Carter to be credible and convincing and the opinions of Dr. Nichols and Dr. Sklaroff to be the most persuasive and compelling as to the cause of the decedent’s fatal lung cancer. Accordingly, the ALJ finds that Mr. Carter’s exposure to chemicals in his employment with Defendant caused the work-related occupational disease.

Both Dow and Carter filed Petitions for Reconsideration. Carter argued the ALJ erred in calculating the award of benefits. Dow argued the ALJ erred in placing the burden of proof on them and the ALJ misinterpreted the term “occupational disease” as defined in the Act. In response to both petitions, the ALJ entered the following Order, *verbatim*:

Defendant makes two arguments in its Petition with respect to the finding that Mr. Carter’s exposure to chemicals in his employment with Defendant caused a work-related occupational disease. First, Defendant maintains that the ALJ erred by placing the burden of

proof on Defendant. Additionally, Defendant asserts the ALJ erred by misinterpreting the term “occupational disease” as defined by the Kentucky Workers’ Compensation Act (the Act). Thus, it requests an Order dismissing the claim or additional findings of fact.

Plaintiff has responded to Defendant’s Petition indicating that the Petition does not point to patent error on the face of the Opinion, but merely reargues the merits of the case. In her own Petition, Plaintiff asserts a patent error in the calculation of benefits awarded to the widow and dependent children.

As to Defendant’s Petition, the ALJ does not believe that Defendant points to patent errors. The parties in a workers’ compensation claim are entitled to a sufficient explanation by the ALJ of the basis for a decision. Whittaker v. Roland, 998 S.W.2d 479, 481 (Ky. 1999)(internal citations omitted). The Opinion identified the statutory definitions and applicable case law with respect to the burden of proof as well as the definitions of occupational disease and injurious exposure under the Act and applied the appropriate burden. The Opinion indicates that all of the evidence was fully considered in determining that Plaintiff met her burden of proof as to causation of the occupational disease based upon the opinions of Dr. Nichols and Dr. Sklaroff.

Consistent with the Kentucky Supreme Court’s decision in Miller v. Tema Isenmann, Inc., 542 S.W.3d 265 (Ky. 2018), the Opinion identifies the evidence relied upon that demonstrated a causal connection between the conditions under which Mr. Carter’s work as a maintenance worker was performed in an environment with methyl chloride releases and the occupational disease. The evidence including Material Safety Data Sheets, IARC Classification Definitions, data on chemicals at Defendant’s plant, and medical records/ reports led to the finding that the opinions of Dr. Nichols and Dr. Sklaroff were the most credible and persuasive.

The Opinion sets out the reasoning behind the finding that Plaintiff met her burden of proof to establish that Mr. Carter’s exposure to chemicals such as methyl chloride in his employment with Defendant caused the

occupational disease under relevant and applicable law. Defendant's Petition on these issues is a re-argument of the merits of the claim. Accordingly, Defendant's Petition is OVERRULED.

With respect to Plaintiff's Petition that the Opinion, Award, and Order contains mathematical errors in the calculation of the award of benefits to the widow and dependents, the ALJ agrees that the benefits awarded were miscalculated under the applicable statute. Accordingly, the Opinion, Award, and Order is clarified and corrected to reflect that the widow is entitled to \$375.77 per week in benefits and each dependent child is entitled to \$125.26 per week. Thus, Plaintiff's Petition with respect to the calculation of benefits awarded to the widow and dependents in this matter is SUSTAINED.

As the claimant in a workers' compensation proceeding, Carter had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Carter was successful in his burden, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). 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 regarding an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

On appeal, Dow argues Carter did not prove that his cancer was causally related to exposure at work. It argues at best he proved only "potential exposure" rather than "actual exposure" which is necessary to make the causal connection. It argues the evidence relied on by the ALJ in making her determination was not substantial and therefore cannot be relied on.

However, the Act does not make this distinction regarding the definition of exposure. The definition of injury is contained in KRS 342.0011(1)

which states: “Injury” is defined by KRS 342.0011(1) as a “work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which proximately causes a harmful change in the human organism as evidenced by objective medical findings.” “Injury” also includes occupational disease.”

KRS 342.0011(2) defines occupational disease as a disease arising out of and in the course of employment and explains that an occupational disease:

“...shall be deemed to arise out of the employment if there is an apparent to the rational mind, upon consideration of all circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence.”

KRS 342.0011(3) defines injurious exposure as “that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made. KRS 342.0011(4).”

In Miller v. Tema Isenmann, 542 S.W.3d 265 (Ky. 2018), the Kentucky Supreme Court held that the statute requires only that exposure could independently cause the disease, not that it did in fact cause the disease. Therefore, for a claimant to prevail in an occupational disease case, the evidence must demonstrate a causal connection between the conditions under which the work was

performed and the occupational disease, as well as demonstrate that the work place conditions could cause the disease.

The ALJ was confronted with conflicting evidence and found the evidence of Ms. Carter, Dr. Nichols, and Dr. Sklaroff were more persuasive than the testimony of Dr. Blickenstaff. This was her prerogative as the finder of fact. In making her determination, the ALJ noted it is undisputed Carter worked in the Utilities Department for Dow until February 11, 2017. It is undisputed he died from cancer of the lung as evidenced by the post-mortem autopsy and death certificate. The record contains a list of chemicals present in the Dow plant at which Carter worked. A myriad of the chemicals either are known to cause or are suspected of causing cancer in humans. Carter's job duties included cleaning vats of chemicals. While he may have worn PPE, there is no indication this prevented any exposure to the chemicals in the plant. Dr. Nichols reviewed the list of chemicals in the plant and their carcinogenic ratings and opined Carter suffered an injurious exposure to an occupational source, and his fatal lung cancer can be traced to that source at his work place. Dr. Sklaroff concurred with his opinion.

As a result of the foregoing proof, the ALJ determined that, pursuant to the mandates of KRS 342.0011, Carter met his burden of proving a causal connection between the conditions under which the work is performed and the occupational disease, which she determined followed as a natural incident to the work as a result of the employment, and which can be fairly traced to the employment as the proximate cause. We believe the evidence from Ms. Carter, Dr.

Sklaroff, and Dr. Nichols constitute substantial evidence supporting the ALJ's ultimate decision. Therefore, her decision will not be disturbed on appeal.

Accordingly, the Opinion, Award, and Order dated December 17, 2020 and the Order on Petition for Reconsideration dated January 8, 2021 rendered by Hon. Tonya Clemons, Administrative Law Judge are **AFFIRMED**.

ALL CONCUR.

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