Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 14, 2021

CLAIM NO. 202000772

JOSE VANEGAS PETITIONER

VS. **APPEAL FROM HON. PAUL WHALEN, ADMINISTRATIVE LAW JUDGE**

QDOBA MEXICAN EATS
and HON. PAUL WHALEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

STIVERS, Member. Jose Vanegas ("Vanegas") appeals from the January 7, 2021, Opinion and Order and the February 15, 2021, Order of Hon. Paul Whalen, Administrative Law Judge ("ALJ"). The ALJ dismissed Vanegas' claim "with prejudice" for failing to prove a work-related injury occurred on October 28, 2019.

On appeal, Vanegas asserts five arguments. His first argument that the ALJ committed reversible error by dismissing his claim contains three sub-

arguments. Vanegas first asserts the ALJ failed to set forth sufficient findings as to whether the October 28, 2019, event caused Vanegas' toe infection and amputation. Next, Vanegas asserts the ALJ erred in the weight he afforded Dr. Jules Barefoot's opinions. Finally, Vanegas asserts the ALJ erred in his analysis regarding notice.

Vanegas also argues the ALJ erred by allegedly "penalizing" him for failing to file the audiotape of a conversation between Vanegas' sister-in-law, Diana Sanchez ("Sanchez"), and John Veatch ("Veatch"), Vanegas' manager at Qdoba Mexican Eats ("Qdoba") at the time of the alleged work injury. Vanegas concludes by contending the ALJ erred in finding Vanegas was unaffected by a language barrier.

The Form 101 alleges Vanegas sustained work-related injuries on October 28, 2019, when four bags of chicken fell on his foot while working for Qdoba.

Qdoba introduced records of Norton Brownsboro Hospital where Vanegas was treated upon going to its emergency room on November 6, 2019. Among the ER notes is the following notation:

> Pt arrives to ED with c/o LLE pain, swelling and redness. Pt has hx of diabetic ulcers to L foot with toe amputation **Pt states that he cannot pin point an injury to that foot.** Pt does work on his feet for 7-8/7 days per week. Pt states he has had subjective chills but has not had a thermometer to check his temperature. Pt has open wound to 3rd digit of L foot, with erythema from foot to calf. Pts LLE is warm to touch. Pain worse with palpation but somewhat manageable with his pain medication he took at home. (Emphasis added).

A November 6, 2019, MRI revealed the following: "Osteomyelitis of the distal and middle phalanges of the fourth digit with diffuse soft tissue swelling. No evidence of abscess."

The November 6, 2019, admission records list the following under "Impression":

> 1. There is soft tissue swelling and a wound of the left fourth toe with lytic destruction of the fourth distal phalanx, compatible with osteomyelitis.
>
> 2. Widening of the fourth DIP joint suggests joint effusion and raises possibility of septic arthritis.
>
> 3. Diffuse soft tissue swelling. No soft tissue gas.
>
> 4. Status post amputation of the first and second toes.
>
> 5. Ankylosis across the left subtalar joint.

A November 7, 2019, "Foot and Ankle Consult Note" of Dr. Josh Coger Reveals under "History of Present Illness" the following:

> Jose Vanegas is a 48 yr/o male with PMH of diabetes mellitus, HTN and consult has been placed to podiatry for wound to left foot. Patient states about one week ago he developed a wound to his left 4th toe. He is unaware how he developed the wound. He has noticed some drainage and redness. He has a history of hallux amputation on this side due to injury and second toe amputation secondary to infection. He denies fever, chills, nausea or vomiting. He does report limb length discrepancy on the left and wears accommodating shoes. Discussed plain for surgery today and he is agreeable. (Emphasis in original).

Qdoba introduced Dr. Keith Myrick's September 14, 2020, Independent Medical Examination report. After performing a physical examination

and a medical records review, Dr. Myrick set forth the following assessment: "1. S/P amputation toes 1-5 left 2. Diabetes Mellitus with neuropathy 3. Limb length inequality." Dr. Myrick opined Vanegas reached maximum medical improvement on January 10, 2020, and assessed a 3% impairment rating due to the amputation of toes three through five on his left foot. Dr. Myrick assessed a 6% whole person impairment rating for a pre-existing active condition due to the loss of Vanegas' "left great toe" in 2009 and left second toe in 2017. Concerning causation, Dr. Myrick opined as follows:

> Mr. Vanegas' presentation to Norton Hospital and the resultant amputations of toes 3-5 are not attributable to the 10/28/2019 work incident. It was noted in the Norton Hospital chart entry on Nov 6, 2019 'that he could not pinpoint an injury to that foot.' Dr. Coger's chart entry Nov 7, 2019 states Mr. Vanegas 'is unaware how he developed the wound' to his left foot. The most significant finding was the radiographic findings on Nov 6, 2019 showing 'left 4th toe lytic destruction of the 4th distal phalanx' which is consistent with osteomyelitis. Radiographic findings of bone destruction occur at a minimum of 2 weeks after the onset of osteomyelitis. Furthermore, osteomyelitis would require several days to weeks of an untreated wound to develop. Therefore, the alleged work injury 8 days prior to these radiographic findings could not have caused the osteomyelitis and thus the amputations are not attributable to the work event. The cause of Mr. Vanegas' osteomyelitis and resultant amputations of toes 3-5 is most likely his diabetes with neuropathy.

During his August 17, 2020, deposition Vanegas testified when he informed his employer of the alleged injury:

> Q: Did you tell your employer about the injury?
>
> A: Yes, I told the one that was in charge. I don't remember who it was, because the general manager was taking the day off.

Q: Does the name Jeffrey Barnes ring a bell?

A: Yes. Yes.

Q: Would that have been the person that you told of the injury?

A: I don't remember exactly if it was him or if it was Jeff.

Q: What did you tell the person in charge about your injury?

A: That I had got hit, and I had this accident and that I needed to get a report, so I could go to the hospital, but they answered that I was okay, that nothing happened to me.

Q: So if I understand you correctly, you're saying that the Qdoba employee in charge told you you didn't need to go to the hospital because you were okay?

A: Exactly. That's correct.

Q: Did you continue to work the rest of your shift that day?

A: Yes. I even worked on Tuesday, Wednesday and until the fifth day when I told the manager that I could not work anymore, that I really needed to go to the hospital.

…

Q: Now, when you told your manager that you had to go to the hospital on the fifth day, was this the same person that you told about your work injury when it happened?

A: No, it was the general manager that also downloaded the insurance card on my phone, so I could go to the hospital.

Q: Would that have been John Veatch?

A: Yes, he is the general manager.

> Q: Did you have any discussion with John Veatch about your foot being related to a work injury?
>
> A: Yes. And he told me that he couldn't do anything because it was already over 24 hours from the accident, so he could not make a report.
>
> Q: But you did tell him you had injured yourself at work, correct?
>
> A: Correct.

Vanegas testified he informed the medical providers at Norton Brownsboro Hospital that bags of chicken fell on his foot at work. He also testified that during a series of text messages with Veatch in November or December of 2019, he informed Veatch that "bags of chicken fell on [his] foot."

Sanchez, Vanegas' sister-in-law, was deposed on October 27, 2020. She first learned from Vanegas about the alleged work injury on "November the 2nd. That day, I made my son a birthday party and he, my brother-in-law, came for a little while and he said he was leaving because he was in pain because at work a bag of chicken fell on his feet and he was having pain and soreness." She testified about an alleged meeting on December 19, 2019, between Vanegas and Veatch, which she recorded. Her testimony, in relevant part, is as follows:

> Q: Okay. And what do you recall about that meeting?
>
> A: Well, we went there to see because since he wasn't working they were not taking his insurance out, so he needed a paper saying he wasn't working to get on Medicaid. And so when we stopped there, the manager told him that he wasn't aware that it was really bad.
>
> And I started recording. I sent it, the recording, to the lawyer. When I checked it, it says my brother is telling him, remember I told you about it. And Mr. John said,

you might have told me, but I didn't thought [sic] it was that bad so I didn't make a report.

Q: And this was on December the 19th?

A: Yes.

Q: And did he also try to blame the problem on diabetes?

A: Yes. That's why I try – I started recording the things because I knew they were going to say it was because of his diabetes, which they can check that it's well controlled at the time.

Q: And was he asked or did you-all ask him or did you ask him to fill out a report, an incident report?

A: Yes. I asked him could you fill the report right now. He told me, no. It's too late. It's been more than like a month and I cannot do nothing [sic] about it.

Q: That it's company policy?

A: Yes.

Q: Okay. Now, you forwarded to me earlier today a copy of that audio recording; is that correct?

A: Yes.

Q: And I have also sent that to the other attorney here, John Harrison, and I'm going to send it when we're done to the court reporter who I'm going to ask to transcribe it the best she possibly can.

…

Q: Do you recall in this conversation, whether Jose specifically told him about dropping a bag of chicken on his foot?

A: Well, at the beginning he did tell him, but it's not on the recording. But after that, he's telling his manager, remember I told you about it. And John answer [sic], you might have told me but I didn't thought [sic] it was

> that bad, so I didn't made [sic] a report. So he knew about it.

Veatch's September 21, 2020, deposition was introduced. He testified as follows regarding the series of text messages between he and Vanegas before Vanegas went to the hospital on November 6, 2019:

> Q: Did you have a conversation at all with Mr. Vanegas before he went to the hospital?
>
> A: We had some text messages and he told me he was going to the hospital for his foot.
>
> Q: So he did tell you that he was going to the hospital for his foot?
>
> A: Yes.
>
> Q: And so – so you were aware that he was not going to be at work because he was going to the hospital for his foot, correct?
>
> A: Yes.
>
> Q: All right. It's just that you had no idea, at least at that time, that it was because of an alleged work injury, is that fair?
>
> A: Yes.
>
> The text messages were attached to the deposition as Exhibit 1.

Veatch testified that in February 2020 he first became aware Vanegas was claiming a work injury:

> Q: Okay. Now, when did you first become aware that Mr. Vanegas was alleging a work injury?
>
> A: In February.
>
> Q: And how did that happen? How did you become aware?

> A: His girlfriend called and asked me some questions. And I was like, what's this for. And she said well, Ann says it's the woman that lives with him, girlfriend, whatever she is. They have lived together for like a year and a half, two years now. She called and said that she was speaking for him, but I could hear him talking to her in the background. And said that he hurt himself at work. And I was like, that's the first I've heard of it.
>
> Q: And what was the extent of the conversation after that, at that time?
>
> A: Well, I was like if you're trying to report it now as an injury at work it's too late like that – that has to be reported within one or two days at the most. If it's any further than that like, that's not – that's not how the policy is, which the procedure for us to take care of it if it's – it's possible, but that way if it's an injury they can do something about it.
>
> Q: Okay. But did this conversation that you're talking about, you say this happened in February of 2020; is that correct?
>
> A: Yes.

Veatch was unable to provide a reason Qdoba was prejudiced by learning of Vanegas' alleged work injury in February of 2020.

Geoffrey Stephen Barnes, Qdoba's assistant manager at the time of Vanegas' alleged work injury, was deposed on October 27, 2020. He offered the following concerning when he first learned Vanegas was alleging a work injury:

> A: I don't know the dates specifically, but I knew it once the restaurant manager, John Veatch, had told me about [sic].
>
> Q: Okay. I know you said not specifically, but can you give me a timeframe or a ballpark of when this would have occurred and you became aware that he was claiming a work injury?

> A: Well, I know for a fact it was after the beginning of the new year. So, I mean, late January early February, would probably be my best guess.
>
> Q: Of 2020?
>
> A: Correct, 2020.
>
> Q: Okay. So that's the starting point of when you would have been told. Can you put an end date as to the latest timeframe that you would have been made aware he was alleging a work injury?
>
> A: The latest would have been end of June. At the end of June, is when I transferred stores and promoted.

The November 9, 2020, Benefit Review Conference Order and Memorandum lists the following contested issues: "work-related injury/ causation, permanent income benefits per KRS 342.730, TTD benefits, ability to return to work, exclusion for pre-existing impairment, unpaid or contested medical expenses, and MMI." Under "other contested issues" is the following: "work related, causation, TTD as to rate, date of and occurrence of injury."

On October 8, 2020, Qdoba filed a "Motion to Amend BRC Order and Memorandum" to include "notice" and "proper use of the AMA Guides" as contested issues. By Order dated October 19, 2020, the ALJ sustained Qdoba's Motion.

The November 12, 2020, Order reflects the parties waived the Final Hearing and submitted the claim on the record.

The January 7, 2021, Opinion and Order contains the following Analysis and Findings which is set forth *verbatim*:

> …

In this instance, there is a need to consider causation prior to considering other issues. There is a conflict as to the cause of how Plaintiff Jose Vanegas lost three toes. Plaintiff and his Form 101 stated the cause of his lost toes was caused because of chicken falling on his left foot on October 27, 2019. On November 6, 2019, Mr. Vanegas went to Norton Brownsboro Hospital where he was admitted. The records from Norton Brownsboro Hospital indicate that while his symptoms began the prior week, he denied any trauma to his toes but mentioned that his shoes are sometimes too tight. Dr. Josh Coger, a podiatrist writes in an email that "He (Plaintiff) is unaware how he developed the wound."

The first mention of bags of chicken hitting Plaintiff's foot came in the October 27, 2020, deposition of Diane Sanchez, Plaintiff's sister-in-law. Ms. Sanchez states that he told her at her son's birthday party on November 2, 2019. The ALJ does not find that information regarding the bags of chicken hitting Plaintiff is communicated to anyone else prior to February 2020.

The ALJ finds the statements of Plaintiff's manager John Veatch, and assistant manager John [sic] Barnes credible that they were not given notice of Plaintiff's work-related accident on October 28, 2019 or after Plaintiff went to the hospital.

Dr. Myrick's Independent Medical Examination (IME) concluded that the amputation of toes 3-5 were not attributable to an October 28, 2019, work-related injury. Dr. Barefoot, in his IME, concluded that Plaintiff had a history of workplace traumatic injury to the left foot. The ALJ finds that "history of workplace traumatic injury" is not supported in his report. The ALJ finds that Plaintiff had an automobile accident. On page 9, I find that Dr. Barefoot's statement, "He is unable to work on ladders, scaffolding or at heights unprotected." is not relevant to the Plaintiff who is a restaurant worker.

This ALJ, relies on the opinion of Dr. Myrick that workplace trauma did not cause the need for the amputation of toes 3-5 of his left foot. Instead, the reason for the amputation was due to osteomyelitis, would require several days to weeks to an untreated

> wound to develop. The ALJ finds based upon the opinions of Dr. Myrick that the amputations of three toes on Plaintiff's left foot was not the result of a work-related injury but due to infections from diabetes.

Vanegas filed a Petition for Reconsideration asserting the same arguments he now makes on appeal. By Order dated February 15, 2021, the ALJ denied the Petition for Reconsideration.

As previously noted, Vanegas' first argument has three sub-parts. Vanegas first asserts the ALJ failed to set forth a sufficient analysis as to whether the subject injury was the precipitating event that ultimately led to the infection and amputation. He asserts, "there is some form of an 'injury' which may seem minor to most individuals, but with serious diabetics, the condition then develops into sores requiring early medical attention." We affirm on this issue.

As the claimant, Vanegas bore the burden of proving each of the essential elements of his cause of action, including causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because he was unsuccessful in that burden, 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, 34 S.W.3d 48 (Ky. 2000). 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, 998 S.W.2d 479 (Ky. 1999). 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, 708 S.W.2d 641 (Ky. 1986).

In the January 7, 2021, Opinion and Order, the ALJ fully apprised the parties of the basis for dismissing the claim for lack of establishing causation. Unquestionably, the ALJ must provide a sufficient basis supporting his or her determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining, Co., 634 S.W.2d 440 (Ky. App. 1982). However, an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his or her reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

The ALJ specifically cited Dr. Myrick's opinions and the medical records of Norton Brownsboro Hospital which persuaded him the amputation of toes three through five were not the result of a work-related injury but, rather, due to infection from diabetes. In Dr. Myrick's September 14, 2020, report, he opined that

the amputations of toes 3-5 are not attributable to the October 28, 2019, work incident. Regarding the cause of the initial injury, Dr. Myrick cited to the November 6, 2019, Norton Hospital records noting Vanegas "could not pinpoint an injury" to his left foot. Dr. Myrick also cited Dr. Coger's November 7, 2019, chart entry revealing Vanegas "is unaware how he developed the wound." Dr. Myrick was also convinced by the radiographic finding on November 6, 2019, indicating "left 4th toe lytic destruction of the 4th distal phalanx." Dr. Myrick concluded that the alleged work incident occurring eight days prior to the radiograph "could not have caused the osteomyelitis and thus the amputations are not attributable to the work event." Dr. Myrick attributed the osteomyelitis and amputations to Vanegas' diabetes. Dr. Myrick's medical opinions and the medical records of Norton Brownsboro Hospital constitute substantial evidence supporting the ALJ's finding the precipitating cause of the eventual amputation of toes three through five is not the alleged October 28, 2019, work incident but, instead, Vanegas' diabetes. The ALJ furnished sufficient findings detailing his reliance upon Dr. Myrick, and additional findings are unnecessary.

We find no merit in the assertion the ALJ erred in his analysis of the weight and credibility to be afforded Dr. Barefoot's opinions. According to Vanegas, the ALJ disregarded Dr. Barefoot's opinions because of his restriction of "no work activities on ladders, scaffolding, or unprotected heights."

In his decision, the ALJ explained why Dr. Barefoot's report was less compelling. In doing so, the ALJ explained that Dr. Barefoot's restrictions regarding ladders, scaffolding, and heights were irrelevant to Vanegas' work as a restaurant

worker. *Well within the discretion afforded to the ALJ is the ability to find these restrictions irrelevant and determine which medical opinions upon which he will rely.* 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, supra. 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, supra. Moreover, the ALJ is vested with the authority to weigh the medical evidence, and if "the physicians in a case genuinely express medically sound, but differing, opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). Consequently, the Board may not second-guess the ALJ and the reasons he relied upon the opinions of one physician while rejecting the opinions of another. This discretion belongs exclusively to the ALJ.

Vanegas also insists the ALJ erred by finding he failed to provide due and timely notice of the alleged work injury. He claims the Qdoba company

representative, Veatch, testified the company was not prejudiced by any delay in receiving notice of the work injury. Therefore, the ALJ should not have determined timely notice was not provided.

As an initial matter, we note that the ALJ dismissed Vanegas' claim because he failed to prove an October 27, 2019, work injury. We take issue with the following statement in Vanegas' brief: "If it [sic] shown that Petitioner did indeed provide notice of an injury, then he would be entitled to workers' compensation benefits for his injury even if the ALJ were to still find that the subject injury did not precipitate the infection and amputation that followed the subject injury." This is an erroneous statement of law, as the issue of notice is wholly unrelated to the issue of work-relatedness and certainly not determinative of the compensability of a claim. Notice can be timely, but if causation is not established, the claim fails. Stated another way, if causation has not been established, notice is irrelevant. Therefore, based upon the ALJ's conclusions regarding causation, the issue of notice is immaterial. However, we will briefly address the issue.

KRS 342.185(1) provides notice of an accident shall be given "as soon as practicable" and that the claim for benefits to a resulting injury must be filed within two years "after the date of accident" or following the suspension of payment of income benefits, whichever is later. Among the purposes of requiring a worker to notify the employer of an accident and resulting injury "as soon as practicable" are: to enable the employer to provide prompt medical treatment in an attempt to minimize the worker's ultimate disability and the employer's liability, to enable the employer to make a prompt investigation of the circumstances of the accident, and to

prevent the filing of fictitious claims. Trico County Development & Pipeline v. Smith, 289 S.W.3d 538, 542-544 (Ky. 2008).

The ALJ relied upon the deposition testimony of both Veatch and Barnes in concluding Vanegas did not provide notice as soon as practicable, as they testified neither learned Vanegas was claiming a work-related injury until February 2020, four months after the alleged incident. We acknowledge there is contrary testimony from Vanegas and his sister-in-law. However, we note the issue of notice lies squarely within the discretion afforded to the ALJ by the relevant law and depends upon the particular facts and circumstances of the case. Marc Blackburn Brick Co. v. Yates, 424 S.W.2d 814 (Ky. 1968). *Therefore, it is the ALJ who makes the ultimate determination upon whom he relies in resolving this issue and not this Board or the parties.* Consequently, the fact Veatch testified he is unaware of how Qdoba was prejudiced by the delay has no bearing on the ALJ's exercise of discretion. Also, a lack of employer prejudice may excuse an inaccuracy in complying with KRS 342.190 but it "does not waive a delay in giving notice." Trico County Development & Pipeline v. Smith, supra. The ALJ determined Vanegas did not give notice of the allegation of work-relatedness until February 2020, a delay of four months, and that determination is supported by the deposition testimony of Veatch and Barnes.

Despite Vanegas' testimony he informed Veatch of the alleged work incident in a series of text messages, Exhibit 1 to Veatch's deposition, our review of Exhibit 1 does not establish such a revelation by Vanegas.

Vanegas maintains the ALJ "seems to penalize" him for being unable to produce the audio tape of the alleged conversation between Vanegas and Veatch

as referenced by Sanchez in her deposition. We are unable to find any evidence of a "penalty" against Vanegas due to his inability to produce the audio tape. The ALJ dismissed Vanegas' claim strictly because causation was not established. Nothing in either the January 7, 2021, Opinion and Order or the February 15, 2021, Order indicates the ALJ considered Vanegas' failure to produce the audio tape as a ground for dismissing his claim.

Finally, Vanegas asserts the ALJ committed reversible error by making findings he was unaffected by the language barrier. However, a review of both the January 7, 2021, Opinion and Order and the February 15, 2021, Order reveals the ALJ never made such a finding. Consequently, this final issue on appeal is moot.

Accordingly, concerning all issues raised on appeal, the January 7, 2021, Opinion and Order and the February 15, 2021, Order are **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

HON CHED JENNINGS **LMS**
401 W MAIN ST STE 1910
LOUISVILLE KY 40202

COUNSEL FOR RESPONDENT:

HON JOHN HARRISON **LMS**
600 E MAIN ST STE 100
LOUISVILLE KY 40202

CHIEF ADMINISTRATIVE LAW JUDGE:

HON DOUGLAS W GOTT **LMS**
MAYO-UNDERWOOD BUILDING
500 MERO ST 3RD FLOOR
FRANKFORT KY 40602