

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: May 10, 2019

CLAIM NO. 201800621 & 201800620

SPURLOCK MINING, LLC

PETITIONER

VS.           **APPEAL FROM HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE**

CURTIS GAYHEART and  
HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**ALVEY, Chairman.** Spurlock Mining, LLC (“Spurlock Mining”) appeals from the December 12, 2018 Opinion and Award, and the January 18, 2019 Order on Petition for Reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ found Curtis Gayheart (“Gayheart”) provided proper notice of his January 18, 2017 and September 27, 2017 work accidents. The ALJ awarded temporary total disability (“TTD”) benefits, permanent partial disability

(“PPD”) benefits and medical benefits due to the September 27, 2017 work injury. The ALJ awarded temporary medical benefits limited to those bills already incurred due to the January 18, 2017 work injury.

On appeal, Spurlock Mining argues the ALJ erred in finding Gayheart sustained a September 27, 2017 work injury. It also argues the ALJ erred in finding Gayheart provided due and timely notice of the September 27, 2017 work injury. Spurlock Mining additionally argues the ALJ erred in awarding TTD benefits. Finally, Spurlock Mining argues the ALJ failed to address its liability for medical benefits from the January 18, 2017 injury which resulted in no impairment. Because substantial evidence supports the ALJ’s determination that Gayheart sustained an injury on September 27, 2017 for which he provided due and timely notice, we affirm. We also find the ALJ adequately addressed Spurlock Mining’s liability for medical expenses for the January 18, 2017 injury. Finally, we determine the ALJ adequately addressed Gayheart’s entitlement to TTD benefits, and on that issue, we likewise therefore affirm.

Gayheart filed separate Form 101s on April 18, 2018, alleging two injury dates. At all relevant times, Gayheart worked for Spurlock as a rock truck driver. Gayheart alleged that on January 18, 2017, he was jarred when a co-worker dumped a load of rock into his truck. He also alleged the front of his truck slammed up and down while he was driving on a rough road. He alleged these incidents caused injuries to his neck, head, left shoulder and arm. The Form 101 indicates Gayheart notified his supervisor, David Coleman (“Coleman”), of his injuries on that date. Gayheart alleged that on September 27, 2017, “a large rock was dropped

into the bed and cab shield causing a concussive injury to his head and ears causing vestibular dysfunction such as migraine headaches and vertigo causing balance problems.” Again, Gayheart indicated he reported the accident to Coleman on the date of the incident.

Spurlock Mining filed written correspondence dated December 5, 2017 from Gayheart’s counsel notifying it of acute injuries sustained on January 18, 2017 and September 27, 2017. The September 11, 2018 benefit review conference order reflects Spurlock Mining disputed both alleged injury dates. Benefits per KRS 342.730, work-relatedness/causation, notice, average weekly wage, unpaid or contested medical expenses, TTD, and maximum medical improvement (“MMI”) were identified as contested issues. Injury as defined by the Act was subsequently added as a contested issue. Because the issues on appeal primarily involve the September 27, 2017 work injury, we will not discuss in detail the evidence relating to the January 18, 2017 work injury.

Gayheart testified by deposition on June 25, 2018, and at the final hearing held October 16, 2018. Gayheart, a resident of Pine Top, Kentucky, worked in coal mining for thirty years. He worked for Spurlock Mining approximately a year and a half. Gayheart primarily drove a rock truck but sometimes operated a dozer during his employment with Spurlock Mining. He identified Coleman as his supervisor/ foreman.

Gayheart testified he was jarred by a large rock load dumped into his truck on January 18, 2017. He also testified his truck slammed up and down while he drove down a rough road. These incidents caused him to experience pain in his

mid-back, neck and left shoulder, as well as numbness and tingling. Gayheart testified he verbally informed Coleman of the work incident the following day. However, Gayheart declined to fill out an accident report. Gayheart eventually sought treatment at a local clinic. Gayheart thought he missed a day or two of work due to the January 18, 2017 work accident, then returned to his regular job duties.

Gayheart testified the rock was poorly shot on the night of September 27, 2017, causing the rock load to be very large. Gayheart testified a new loader dumped the large rock into the bed of the truck using an incorrect method. Gayheart stated the rock load “was right over top of me, and it was just like a bomb went off inside the cab. . . I went numb. I went numb head to toe, head to toe. And it was like waves just pulsated through me, tingling all over.” Initially, Gayheart was unable to move. He eventually pulled himself out of the way and sat for several minutes. Gayheart completed his shift that evening.

Gayheart provided conflicting testimony regarding notice and when he last worked. Gayheart testified at his deposition that he last worked on October 2, 2017. Gayheart testified he called Coleman after his last shift. “I told him that I was in trouble, that I had to go the doctor, that I’d lost everything.” Gayheart explained he sought treatment with his primary care physician, Dr. Darian Ratliff, because he was losing his depth perception and vision. He also experienced vertigo, and had difficulty judging his truck during operation. Gayheart testified that both he and his wife called Coleman on October 2, 2017.

At the hearing, Gayheart testified he did not return to work after the September 27, 2017 incident. Gayheart testified as follows regarding notice:

Q: Did you eventually tell your boss?

A: Not - - no ma'am, not that night I didn't. But the next day, the wife did because I was planning on going back to work. I come home. I laid down, and said I'll sleep it off. I got up, wasn't feeling great, but I had plans on going to work. But I went outside to take my dinner jug out, and that's when I lost my balance and everything start the spinning. I was waiting on my ride to come pick me up, and that's when everything kicked in. I couldn't stand up. I just started falling to the left side, and everything started spinning. I started spinning, not the environment. I was the one spinning inside.

....

On cross-examination, Gayheart testified as follows regarding notice:

Q: You never told your boss, David Coleman, about what you say happened to you on September 27<sup>th</sup>, 2017; is that correct?

A: Not that night, no, sir.

Q: You've never told him that night or after that, did you?

A: Yes, sir.

Q: Well, when did you tell him?

A: I can't give you a date. My wife is the one that talked to him.

Q: Well, no, I'm saying you. Did you ever tell him?

A: Well, sure, later on, yes, sir.

Q: When did you tell him?

A: You want a specific date? Maybe - -

Q: How about a year? Did you tell him last year, or did you tell him this year?

A: I would say maybe a couple of weeks after I got in the shape to talk to him.

Q: Okay. You told him specifically what happened to you with this new operator dropping this rock on your truck?

A: Well, yes, of course. . . .

A: Yeah, I told him I was hit with a - - you know, like gelled, what we call it, gelled, you know.

Q: Did you tell him Ronnie Mullins dropped the rock that gelled you?

A: I didn't say Ronnie Mullins, but Ronnie was the only one on the job.

. . .

Q: . . .You're telling me today that you told David Coleman that you were injured on the job on September 27<sup>th</sup> of 2017, but you don't know when you told him that; is that right?

A: No. I can't give you a specific date, sir. I can't. Everything is boggled up for me after that. To nail down a date, I can't do it.

Q: Why didn't you ask Mr. Coleman to complete a Workers' Compensation injury report?

A: I should have but I hadn't seen or been in his presence, you know. When I couldn't work, I didn't leave the house after that.

Q: Why?

A: I went to the doctor, and the wife called. I asked her to call in for me. I remember that specifically because I was having such trouble. I was sick and throwing up, spinning, vertigo, you know. I wasn't in the best shape to work.

Coleman testified by deposition on October 12, 2018. He confirmed he was Gayheart's supervisor at all relevant times. Coleman recalled Gayheart

telling him that he felt dizzy and did not want to drive the rock truck near the end of the night shift on October 2, 2017. Coleman testified Gayheart did not tell him that a rock had dropped roughly in his truck prior to October 2, 2017. He also testified Gayheart declined to complete an accident report. Coleman also recalled talking to Gayheart's wife about his general medical condition over the telephone, but not a work injury. Coleman testified Gayheart never notified him of the September 27, 2017 incident. Coleman learned Gayheart was asserting his symptoms were work-related a couple weeks prior to his deposition.

Both parties filed the records from Dr. Ratliff. Gayheart first sought treatment after the September 27, 2017 work injury on October 4, 2017. He complained of fatigue, a sensation of the room spinning, as well as neck and shoulder pain radiating into his head. Dr. Ratliff noted the following: "States he feels like it is related to working night shift. States he does not sleep well and wakes up often. States he has 'not felt right' since starting night and it's getting worse." Dr. Ratliff initially ordered an EKG and prescribed medication. On October 11, 2017, Dr. Ratliff noted Gayheart complained of worsening dizziness for two weeks, as well as visual disturbances, poor balance, coordination and headaches. He ordered a brain MRI and noted Gayheart had been admitted to the hospital. Dr. Ratliff continued to treat Gayheart throughout the remainder of 2017 for dizziness, headaches, thoracic back pain and cervical degenerative joint disease. He prescribed medication, and referred Gayheart to an ENT, a neurologist and physical therapy. None of his records reference a September 27, 2017 event.

Spurlock Mining filed the records from Hazard ARH on October 11, 12, and 13, 2017. Dr. Chandrashekar Krishnaswamy noted Gayheart “actually has been having dizzy, lightheaded episodes for probably about a year now. He explains that it started out very gradual. He works night shift. He just related it to that. He explains that it got steadily, a little bit more frequently . . .” Dr. Krishnaswamy noted Gayheart experienced daily episodes of dizziness and lightheadedness, as well as headaches and visual changes. He did not discuss the alleged September 27, 2017 work accident. Gayheart was diagnosed with headaches, dizziness, and cervicgia, and referred to UK for a vestibular workup.

Records from Dr. Michael Cecil, an ENT, were also filed into the record, including a November 8, 2017 audiogram which demonstrated mild sensorineural hearing loss. Dr. Cecil ordered VNG testing for balance issues, nausea, lightheadedness, headaches, and a tingling sensation in his neck, back and head. Dr. Cecil noted Gayheart had been experiencing these symptoms for six to seven weeks following two head injuries sustained at work. The VNG testing demonstrated peripheral vestibulopathy. Subsequently, Dr. Cecil recommended vestibular rehabilitation. In an August 15, 2018 medical questionnaire, Dr. Cecil was asked whether Gayheart’s symptoms of dizziness and vertigo were due to the work-related injury. Dr. Cecil replied, “The answer is not that simple. It is possible that his injury is playing a role but I have no way to confirm that. Also I think he has vestibular migraine as a possible etiology as well.” Dr. Cecil indicated restrictions were not necessary.



Gayheart filed Dr. Arthur Hughes' May 9, 2018 report. Dr. Hughes also testified by deposition on September 5, 2018. He noted Gayheart experienced a severe increase in neck pain without a preceding injury in January 2017. He noted a large rock was dropped into the bed of Gayheart's truck in September 2017 causing him to bounce in the cab and causing him to experience a sudden pressure sensation. Dr. Hughes diagnosed Gayheart with neck pain due to cumulative trauma and a work-related vestibular injury in September 2017. Dr. Hughes assessed a 15% impairment for the neck injury and a 30% impairment for the vestibular dysfunction pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Dr. Hughes determined Gayheart had not attained MMI for either condition. Dr. Hughes opined Gayheart does not retain the physical capacity to return to work and assigned restrictions.

Spurlock Mining filed the July 11, 2018 report by Dr. David Muffly. He noted both the January 18, 2017 and September 27, 2017 work incidents, as described by Gayheart. Dr. Muffly noted Gayheart continues to experience dizziness, headaches, a roaring sensation in his ears and neck pain radiating into his left shoulder. He also noted Gayheart has not returned to work since the September 27, 2017 work accident. Dr. Muffly reviewed the medical records and performed an examination. Dr. Muffly diagnosed, "vestibular trauma related to the 9-27-17 work injury. Resolved cervical strain related to the 1-18-2017 injury. No sign of cervical radiculopathy. Normal shoulder examination." Dr. Muffly found no evidence of cumulative trauma. Dr. Muffly opined Gayheart experienced a harmful change to the human organism evidenced by objective medical findings. Dr. Muffly found

Gayheart had attained MMI for both the January 18, 2017 and September 27, 2017 injuries. Dr. Muffly assessed a 10% impairment rating for the vestibular disorder due to the September 27, 2017 incident and a 0% for the cervical condition pursuant to the AMA Guides. He restricted Gayheart from driving and lifting over 50 pounds waist to chest, and noted he is unable to balance, climb or work at heights. In a September 7, 2018 supplemental report, Dr. Muffly attributed the vestibular injury to the September 27, 2017 work incident based solely upon the history of its occurrence provided by Gayheart.

The ALJ found Gayheart provided due and timely notice of the January 18, 2017 incident. The ALJ also found Gayheart provided due and timely notice of the September 27, 2017 incident by stating as follows:

13. The Plaintiff testified . . . that his wife notified his supervisor regarding the September 27, 2017 incident. The Plaintiff added that he personally informed his supervisor about the September incident after he recovered enough to do so.

. . . .

16. The Plaintiff testified that due to his condition, his wife informed Mr. Coleman that he had been injured on September 27, 2017, and that he too told him when he became able to do so. Mr. Coleman acknowledges receiving a call from the Plaintiff's wife but testified that she did not mention that the Plaintiff's condition was work-related. The ALJ finds that due to the nature of the injury to the Plaintiff, that he complied with KRS 342.185 by notifying his direct supervisor when he became able to do so. The ALJ consequently finds that the Plaintiff gave notice in compliance with the statute for the September 27, 2017 injury.

The ALJ found Dr. Muffly's opinions more persuasive than those of Dr. Hughes. He found Dr. Muffly credibly opined Gayheart sustained a cervical

strain due to the January 18, 2017 injury, which resolved with no sign of radiculopathy, warranting a 0% impairment rating. He also relied upon Dr. Muffly's finding Gayheart suffered from chronic dizziness and vertigo due to the September 27, 2017 incident and his 10% impairment rating for the resulting vestibular disorder. The ALJ found Gayheart attained MMI for both injuries on the date of Dr. Muffly's examination, July 11, 2018. The ALJ determined Gayheart lacks the ability to return to the same type of work based upon the restrictions assigned by Dr. Muffly.

Regarding TTD benefits, the ALJ found as follows:

20. Temporary total disability means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment...KRS 342.0011(11)(a)

21. Based upon the foregoing, the ALJ finds that the Plaintiff reached maximum medical improvement on July 18, 2018 and that temporary total disability benefits are therefore payable from the last date worked by the Plaintiff, October 2, 2017, through the date upon which MMI was reached, July 18, 2018.

Regarding contested or unpaid medical benefits, the ALJ found as follows:

24. The ALJ finds in accordance with the foregoing that the Plaintiff shall be entitled to the reasonable and necessary medical expenses incurred as a result of the work related vestibular disorder found herein as well as for the reasonable and necessary medical expenses already incurred as a result of the January 18, 2017 injury that resolved as of July 18, 2018.

The ALJ awarded TTD benefits from October 2, 2017 through July 18, 2018, PPD benefits, and medical benefits for the "work-related injury."

Spurlock Mining filed a petition for reconsideration essentially raising the same arguments on appeal requesting additional findings on each issue. Spurlock Mining additionally requested the ALJ correct a typographical error by awarding TTD benefits until July 11, 2018, rather than July 18, 2018. In the January 18, 2019 order, the ALJ denied Spurlock Mining's petition except for correcting the TTD period.

On appeal, Spurlock Mining argues the ALJ erred by finding Gayheart sustained a September 27, 2017 work-related injury. Specifically, Spurlock Mining argues the ALJ abused his discretion by adopting Dr. Muffly's opinions without analyzing the underlying treatments records which contradict the finding he sustained an injury on September 27, 2017. Spurlock Mining points to the treatment records of Dr. Ratliff, Hazard ARH and the Lexington Clinic.

Spurlock Mining also argues the ALJ abused his discretion by finding Gayheart provided due and timely notice of the alleged September 27, 2017 work injury. Spurlock Mining notes Gayheart described an acute, traumatic event on September 27, 2017. Spurlock Mining asserts the ALJ applied a different notice standard by finding Gayheart notified his direct supervisor when he became able to do so. It also asserts the ALJ did not offer any support for his finding that the nature of Gayheart's injury relieved him of his duty to report the injury as soon as practicable pursuant to KRS 342.185.

In a related argument, Spurlock Mining argues the ALJ abused his discretion by referring to Gayheart's hearsay testimony that his wife reported the injury to Coleman. It noted Gayheart's wife was not called as a witness and that

Coleman's testimony refutes the hearsay testimony. We note that Spurlock Mining did not object to the testimony regarding Gayheart's wife at either the deposition or the hearing. Likewise, this was not presented as an issue in the BRC order, and no motion to strike the testimony was filed. Therefore, we determine this issue was not properly preserved and the ALJ could rely on this testimony in reaching his determination.

Spurlock Mining also argues the ALJ abused his discretion by failing to specifically find when notice was given and that "when [Gayheart] became able to do so" is insufficient pursuant to Shields v. Pittsburgh and Midway Coal Min. Co., 634 S.W.2d 440 (Ky. App. 1982). Spurlock Mining argues the ALJ erred in awarding TTD benefits from October 2, 2017 through July 11, 2018 without referencing any medical opinions to support the conclusion he was unable to work during this time, and failed to provide additional findings in the Order on petition for reconsideration. Spurlock Mining finally argues the ALJ failed to issue a specific ruling regarding liability for medical benefits related to the January 18, 2017 work injury.

As the claimant in a workers' compensation proceeding, Gayheart had the burden of proving each of the essential elements of his claim. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since he was successful in his burden, the question on appeal is whether substantial evidence of record 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).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). An ALJ is vested with broad authority in determining causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). Although a party may note evidence supporting a different outcome than reached by an ALJ, this is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that 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 weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

KRS 342.185 requires notice of a work-related accident be given to the employer, “as soon as practicable after the happening thereof.” While notice is mandatory, the Court of Appeals has indicated, “The statute should be liberally construed in favor of the employee to effectuate the beneficent purposes of the Compensation Act.” Marc Blackburn Brick Co. v. Yates, 424 S.W.2d 814, 816 (Ky. 1968). Whether notice has been given as “soon as practicable” depends upon the circumstances of the particular case. Id. Notice to an employer of a physical injury carries with it notice of all conditions that may reasonably be anticipated to result from that injury. *See* Dawkins Lumbar Co. v. Hale, 299 S.W. 991 (Ky. 1927). *See also* Reliance Die Casting v. Freeman, 471 S.W.2d 311 (Ky. 1971). Additionally, the statute does not necessarily require an injured worker to be aware of and report each injury resulting from an accident, but must report the accident itself. Id.

The Kentucky Supreme Court held in Granger v. Louis Trauth Dairy, 329 S.W.3d 296 (Ky. 2010), the ALJ correctly dismissed a claim based upon inadequate notice, and affirmed the ALJ’s refusal to find an excusable delay in reporting the injury pursuant to KRS 342.200. The Court noted the purpose of the notice requirement is threefold: to enable an 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 investigate the circumstances of the accident promptly; and to prevent the filing of fictitious claims. The Court additionally noted that although a lack of prejudice to the employer excuses an inaccuracy in complying with KRS 342.190, it does not excuse a delay in giving notice.

While Spurlock Mining has identified evidence supporting a different conclusion than reached by the ALJ, mainly Coleman's testimony he was never notified of the September 27, 2017 accident, substantial evidence was presented to the contrary. At the hearing, Gayheart testified both he and his wife notified Coleman of the September 27, 2017 work injury. Although Gayheart was unable to identify the specific date he notified Coleman, he stated it was, "maybe a couple of weeks after I got in the shape to talk to him." Gayheart stated he told Coleman specifically about the September 27, 2017 event. Although Gayheart's deposition testimony is inconsistent with his hearing testimony on this issue, it was within the ALJ's discretion to rely on the hearing testimony. Substantial evidence supports the finding Gayheart provided due and timely notice of the September 27, 2017 accident.

We likewise find Dr. Muffly's opinion constitutes substantial evidence supporting the ALJ's determination Gayheart sustained a work-related September 27, 2017 injury warranting a 10% impairment rating. On July 11, 2018, Dr. Muffly diagnosed, "vestibular trauma related to the 9-27-17 work injury." He opined Gayheart experienced a harmful change to the human organism evidenced by objective medical findings. Dr. Muffly assessed a 10% impairment rating for the vestibular disorder due to the September 27, 2017 incident. Importantly, Dr. Muffly noted Gayheart's account of the work events and outlined the medical records he reviewed. His review of the records include those pointed out by Spurlock Mining as contradictory to Gayheart's account of his September 27, 2017 work injury. We acknowledge Spurlock Mining is able to point to evidence supporting its argument that no injury occurred on September 27, 2017. However, the ALJ as fact-finder



determines the credibility of the evidence. The ALJ may also choose whom and what to believe when faced with conflicting evidence. It was the ALJ's prerogative to rely on Dr. Muffly's opinions. Because we find substantial evidence supports the ALJ's determination regarding causation/work-relatedness, we affirm.

Next, we find the ALJ adequately addressed Spurlock Mining's liability for medical expenses for the January 18, 2017 injury. The ALJ relied upon Dr. Muffly's opinion in finding Gayheart sustained a cervical injury due to the January 18, 2017 injury, which had resolved and warranted a 0% impairment rating. He also determined Gayheart reached MMI on July 11, 2018. In addressing unpaid or contested medical benefits, the ALJ found Gayheart entitled to, "reasonable and necessary medical expenses already incurred as a result of the January 18, 2017 injury that resolved as of July 18, 2018." The ALJ later corrected this date to July 11, 2018. The ALJ clearly found Gayheart entitled to medical benefits already incurred due to the January 18, 2017 work injury until it resolved.

Finally, we determine the ALJ adequately addressed Gayheart's entitlement to TTD benefits for the September 27, 2017 work injury, and his determination is supported by the evidence. In his decision, the ALJ awarded TTD benefits from October 2, 2017 to July 18, 2018. In the order on reconsideration, the ALJ amended the award of TTD benefits from October 2, 2017, the last day Gayheart worked, to July 11, 2018, the date he attained MMI as determined by Dr. Muffly. Clearly, the ALJ relied upon Dr. Muffly's opinions in reaching this determination.

Accordingly, the December 12, 2018 Opinion and Award, and the January 18, 2019 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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