UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	FCIA Docket No. 15-0043
	)	
Steve Lane,	)	
	)	
Respondent	)	**Decision and Order**

PROCEDURAL HISTORY

Brandon Willis, Manager, Federal Crop Insurance Corporation [Manager], instituted this administrative proceeding by filing a Complaint on December 11, 2014. The Manager instituted the proceeding under the Federal Crop Insurance Act, as amended (7 U.S.C. §§ 1501-1524) [Federal Crop Insurance Act]; the regulations promulgated under the Federal Crop Insurance Act (7 C.F.R. §§ 400.451-.458) [Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [Rules of Practice].

The Manager alleges Steve Lane violated the Federal Crop Insurance Act and the Regulations by willfully and intentionally providing false or inaccurate information relative to his 2009 crop insurance policy to Great American Insurance Company and to the Risk Management Agency, United States Department of Agriculture [Risk Management Agency].[1] On December 30, 2014, Mr. Lane filed an Answer and Hearing Demand in which he denied the material allegations of the Complaint.

---

[1] Compl. ¶ III(c)-(d) at 9.

Administrative Law Judge Janice K. Bullard [ALJ] conducted an oral hearing in Savannah, Georgia, on June 23, 2015, through June 24, 2015.[2] George H. Rountree and Robert F. Mikell, Brown Rountree PC, Statesboro, Georgia, represented Mr. Lane. Mark R. Simpson, Office of the General Counsel, United States Department of Agriculture, Atlanta, Georgia, represented the Manager. On September 25, 2015, Mr. Lane filed a motion to reopen the record to submit additional evidence created post-hearing, and, on October 26, 2015, the ALJ, over the Manager's objection, granted Mr. Lane's motion and admitted the post-hearing evidence to the record.

On April 5, 2016, after Mr. Lane and the Manager filed post-hearing briefs,[3] the ALJ issued a Decision and Order: (1) concluding Mr. Lane willfully and intentionally provided false or inaccurate information to the Federal Crop Insurance Corporation or to the Great American Insurance Company with respect to an insurance plan or policy under the Federal Crop Insurance Act; (2) disqualifying Mr. Lane for five years from receiving any monetary or nonmonetary benefit under seven specific statutory provisions and any law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities; and (3) imposing an $11,000 civil fine on Mr. Lane.[4]

On April 18, 2016, Mr. Lane appealed the ALJ's Decision and Order to the Judicial Officer.[5] On May 19, 2016, the Manager filed a response to Mr. Lane's appeal to the Judicial

---

[2] References to the transcript of the June 23-24, 2015 oral hearing are designated as "Tr." and the page number; references to Mr. Lane's exhibits are designated as "RX" and the exhibit number; and references to the Manager's exhibits are designated as "CX" and the exhibit number.

[3] Respondent's Written Closing Arguments; Complainant's Closing Argument; Respondent's Reply to Complainant's Closing Arguments; Claimant's Response to Respondent's Reply to Complainant's Closing Argument.

[4] ALJ's Decision and Order ¶ V at 28, Order at 28-29.

[5] Respondent's Appeal to Judicial Officer [Appeal Petition] and Respondent's Brief in Support of Appeal.

Officer,[6] and on May 23, 2016, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DECISION

Mr. Lane's Request for Oral Argument

Mr. Lane's request for oral argument,[7] which the Judicial Officer may grant, refuse, or limit,[8] is refused because the issues raised in Mr. Lane's Appeal Petition are not complex and oral argument would serve no useful purpose.

Mr. Lane's Request that the Judicial Officer Take Judicial Notice

Mr. Lane requests that the Judicial Officer take judicial notice of Exhibit A attached to his Appeal Petition.[9] Exhibit A is a copy of a page from the United States Department of Agriculture, Office of Administrative Law Judges' website which contains the ALJ's biographical information. The Rules of Practice provide that official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character; however, the parties must be given an adequate opportunity to show that such facts are erroneously noticed.[10]

I do not find the ALJ's biographical information contained in Exhibit A attached to Mr. Lane's Appeal Petition relevant to any issue in this proceeding. Therefore, I deny Mr. Lane's

---

[6] Complainant's Response to Appeal to the Judicial Officer.

[7] Respondent's Request for Oral Hearing filed April 18, 2016.

[8] 7 C.F.R. § 1.145(d).

[9] Appeal Pet. Introduction at 4 n.2.

[10] 7 C.F.R. § 1.141(h)(6).

request that I take official notice of Exhibit A attached to his Appeal Petition.

Mr. Lane's Appeal Petition

Mr. Lane raises six arguments in his Appeal Petition. First, Mr. Lane contends the ALJ's finding that drought did not ravage Mr. Lane's 2009 non-irrigated tobacco crop is not supported by substantial evidence, is unwarranted by the facts, and is arbitrary, capricious, and an abuse of discretion.[11]

The ALJ found "the preponderance of the evidence does not support that drought conditions ravaged [Mr. Lane's 2009] non-irrigated [tobacco] crop."[12] Mr. Lane contends the evidence presented by Stephen Jeffrey Underwood, a weather expert, and Wesley Harris, a tobacco agronomy expert, establishes that a pattern of wet weather followed by a terrible drought ravaged Mr. Lane's 2009 non-irrigated tobacco crop.[13]

The ALJ accorded substantial weight to a pre-harvest growing season inspection field review[14] in which Ned Day, an insurance loss adjuster, reported his August 12, 2009 observation that Mr. Lane's tobacco crop was in "very good condition."[15] The ALJ summarized Dr. Underwood's and Mr. Harris' expertise and testimony[16] and discussed her reasons for finding that, even in light of Dr. Underwood's and Mr. Harris' testimony, a preponderance of the evidence does not support a finding that drought ravaged Mr. Lane's 2009 non-irrigated tobacco crop, as

---

[11] Appeal Pet. ¶ I at 4-8, ¶ IV at 16.

[12] ALJ's Decision and Order ¶ III(3) at 20.

[13] Appeal Pet. ¶ I at 8.

[14] CX 12.

[15] ALJ's Decision and Order ¶ III(3) at 22.

[16] ALJ's Decision and Order ¶ III(1) at 12-16.

follows:

> Despite Respondent's adjustor's August 12, 2009, field inspection that concluded that the crop looked good, Respondent prospectively filed a notice of loss for drought. Although Respondent concluded in August, 2009, "that if we didn't start getting some rain I couldn't harvest that tobacco" (Tr. at 314), weather expert Dr. Stephen Underwood "did not think there would be drought conditions in [August and September, 2009]". Tr. at 533. Tobacco expert Rex Denton testified that 21 days without rain after the crop was appraised on August 12, 2009, would have had little effect on the crop. Tr. at 250. Expert Wesley Harris testified that the amount of water needed after August 12, 2009 would not have mattered to the development of the crop. Tr. at 571. Dr. Underwood opined that the period from June to August 6, 2009, was the fifth driest on record, but Mr. Day's inspection on August 12, 2009, revealed a crop that looked good.
>
> Respondent proffered other claims of loss due to drought in 2009, but the evidence failed to establish that the claims were paid. In addition, the record does not establish that the conditions creating a loss of a corn or peanut crop to drought would similarly affect a tobacco crop. The evidence of other claims of loss due to drought has little probative value.

ALJ's Decision and Order ¶ III(3) at 21. The ALJ further found Mr. Harris' opinion about the look and color of Mr. Lane's tobacco was not probative, as Mr. Harris did not see the actual tobacco plants and could not determine from photographs of Mr. Lane's tobacco whether Mr. Lane's irrigated tobacco plants were more mature than Mr. Lane's non-irrigated tobacco plants. Similarly, the ALJ found Mr. Harris' opinion regarding the condition of Mr. Lane's fields that Mr. Harris inspected in 2015 is immaterial to the condition of Mr. Lane's fields in 2009.[17]

I find substantial evidence supports the ALJ's finding that "the preponderance of the evidence does not support that drought conditions ravaged [Mr. Lane's 2009] non-irrigated [tobacco] crop"[18] and reject Mr. Lane's contention that Dr. Underwood's and Mr. Harris' testimony is sufficient to reverse the ALJ's finding.

---

[17] Ibid.

[18] ALJ's Decision and Order ¶ III(3) at 20.

Second, Mr. Lane contends the ALJ's reliance on Mr. Day's August 12, 2009 pre-harvest growing season inspection field review is not supported by substantial evidence, is unwarranted by the facts, and is arbitrary, capricious, and an abuse of discretion.[19]

The ALJ accorded substantial weight to a pre-harvest growing season inspection field review[20] in which Mr. Day reported his August 12, 2009 observations of Mr. Lane's tobacco crop.[21] Mr. Lane contends the ALJ's reliance on Mr. Day's pre-harvest growing season inspection field review is error because Mr. Day's "appraisals are not guaranteed and just give an idea of what exists at a certain time," Mr. Day's "appraisal . . . does not take factors regarding maturity into account," and Mr. Day's "calculation is based on a formula using the number of leaves and is 'purely mathematical' with no discretion left to the adjuster." In short, Mr. Lane contends the ALJ's reliance on Mr. Day's August 12, 2009 pre-harvest growing season inspection field review is error because it "provides no reliable method to estimate ultimate production."[22]

Mr. Day worked as an insurance loss adjuster for thirty years. Tr. at 69. Mr. Day observed Mr. Lane's tobacco crop on August 12, 2009, the date of Mr. Day's pre-harvest growing season inspection field review. CX 12. The appraisal methodology used by Mr. Day to evaluate Mr. Lane's tobacco crop was the methodology used for mature tobacco. Tr. at 94-102. At the time of Mr. Day's field review, Mr. Lane's tobacco was mature.[23] Mr. Day testified that he had never had an appraisal that had a divergence between the estimated ultimate production and the actual

---

[19] Appeal Pet. ¶ II at 8-10.

[20] CX 12.

[21] ALJ's Decision and Order ¶ III(3) at 22.

[22] Appeal Pet. ¶ III at 9.

[23] ALJ's Decision and Order ¶ III(1) at 6.

production as great as the divergence between the estimated ultimate production in his August 12, 2009 pre-harvest growing season inspection field review and the actual production Mr. Lane asserts he had from his non-irrigated tobacco field in 2009. Tr. at 109-10.

Based on Mr. Day's experience and the appraisal methodology that Mr. Day followed when appraising Mr. Lane's 2009 tobacco crop, I reject Mr. Lane's contention that the ALJ's reliance on Mr. Day's August 12, 2009 pre-harvest growing season inspection field review, is error. Mr. Lane has not raised any meritorious basis upon which to find that the ALJ's according substantial weight to Mr. Day's August 12, 2009 pre-harvest growing season inspection field review, is error.

Third, Mr. Lane contends the ALJ erroneously found Mr. Lane was not credible.[24]

The ALJ found Mr. Lane was not credible and discussed the bases for her credibility determination, including Mr. Lane's varied ability to recall events relevant to the issue in this proceeding, Mr. Lane's changing version of the events relevant to the issue in this proceeding, and Mr. Lane's admission that he lied to Randy Upton, a Risk Management Agency investigator, regarding the events relevant to the issue in this proceeding.[25]

The Judicial Officer is not bound by an administrative law judge's credibility determinations and may make separate determinations of witnesses' credibility, subject only to court review for substantial evidence. *Mattes v. United States*, 721 F.2d 1125, 1128-29 (7th Cir. 1983).[26] The Administrative Procedure Act provides that, on appeal from an administrative law

---

[24] Appeal Pet. ¶ III at 10-15.

[25] ALJ's Decision and Order ¶ III(3) at 19-24.

[26] See also Jenne, 2015 WL 4538827, at *5 (U.S.D.A. July 17, 2015); Perry (Decision as to Perry and Perry's Wilderness Ranch & Zoo, Inc.), 2013 WL 8213618, at *6 (U.S.D.A. Sept. 6, 2013); KOAM Produce, Inc. (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1470, 1474 (U.S.D.A. Aug. 21, 2006); Southern Minnesota Beet Sugar Cooperative, 64 Agric. Dec. 580, 605 (U.S.D.A.

judge's initial decision, the agency has all the powers it would have in making an initial decision, as follows:

> **§ 557. Initial decisions; conclusiveness; review by agency; submissions by parties; contents of decisions; record**
>
> . . . .
>
> (b) When the agency did not preside at the reception of the evidence, the presiding employee or, in cases not subject to section 554(d) of this title, an employee qualified to preside at hearings pursuant to section 556 of this title, shall initially decide the case unless the agency requires, either in specific cases or by general rule, the entire record to be certified to it for decision. When the presiding employee makes an initial decision, that decision then becomes the decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the agency within time provided by rule. On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.

5 U.S.C. § 557(b).

Moreover, the Attorney General's Manual on the Administrative Procedure Act describes the authority of the agency on review of an initial or recommended decision, as follows:

> *Appeals and review*. . . .
>
> In making its decision, whether following an initial or recommended decision, the agency is in no way bound by the decision of its subordinate officer; it retains complete freedom of decision—as though it had heard the evidence itself. This follows from the fact that a recommended decision is advisory in nature. See *National Labor Relations Board v. Elkland Leather Co.*, 114 F.2d 221, 225 (C.C.A. 3, 1940), certiorari denied, 311 U.S. 705.

Attorney General's Manual on the Administrative Procedure Act 83 (1947).

However, the consistent practice of the Judicial Officer is to give great weight to the findings by, and particularly the credibility determinations of, administrative law judges, since they have the opportunity to see and hear witnesses testify.[27] I have examined the record in light

---

May 9, 2005).

[27] Jenne, 2015 WL 4538827, at *6 (U.S.D.A. July 17, 2015); Perry (Decision as to Perry and

of Mr. Lane's arguments that the ALJ erroneously determined that Mr. Lane was not credible. I find Mr. Lane's arguments have no merit and find no basis for reversing the ALJ's credibility determination regarding Mr. Lane.

Fourth, Mr. Lane contends the ALJ's conclusion that Mr. Lane's failure to report carryover tobacco was willful, intentional, and material, is error.[28]

The Regulations define the terms "material" and "willful and intentional," as follows:

> **§ 400.452 Definitions.**
>
> For purposes of this subpart:
>
> . . . .
>
> *Material.* A violation that causes or has the potential to cause a monetary loss to the crop insurance program or it adversely affects program integrity, including but not limited to potential harm to the program's reputation or allowing persons to be eligible for benefits they would not otherwise be entitled.
>
> . . . .
>
> *Willful and intentional.* To provide false or inaccurate information with the knowledge that the information is false or inaccurate at the time the information is provided; the failure to correct the false or inaccurate information when its nature becomes known to the person who made it; or to commit an act or omission with the knowledge that the act or omission is not in compliance with a "requirement of FCIC" at the time the act or omission occurred. No showing of malicious intent is necessary.

7 C.F.R. § 400.452. Mr. Lane contends his failure to report carryover tobacco was not material because "there is no evidence of monetary loss" and was not willful and intentional because his failure to report carryover tobacco was "inadvertent."[29] The definition of the term "material" makes clear that monetary loss to the crop insurance program is not a necessary prerequisite to a

---

Perry's Wilderness Ranch & Zoo, Inc.), 2013 WL 8213618, at *7 (U.S.D.A. Sept. 6, 2013); KOAM Produce, Inc. (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1470, 1476 (U.S.D.A. Aug. 21, 2006); Bond (Order Denying Pet. to Reconsider), 65 Agric. Dec. 1175, 1183 (U.S.D.A. July 6, 2006).

[28] Appeal Pet. ¶ V at 17-18.

[29] Appeal Pet. ¶ V at 17.

finding that a violation is material. A violation is material if it has the potential to cause a monetary loss to the crop insurance program or if it adversely affects crop insurance program integrity. Therefore, I reject Mr. Lane's contention that the ALJ's conclusion that Mr. Lane's failure to report carryover tobacco was a material violation, is error.

Moreover, I reject Mr. Lane's contention that his failure to report carryover tobacco was inadvertent. Mr. Lane's insurance policy specifically required him to report his carryover tobacco.[30] The requirements of the Federal Crop Insurance Corporation include insurance policy provisions:

> **§ 400.452 Definitions.**
>
> For purposes of this subpart:
>
> . . . .
>
> *Requirement of FCIC.* Includes, but is not limited to, formal communications, such as a regulation, procedure, policy provision, reinsurance agreement, memorandum, bulletin, handbook, manual, finding, directive, or letter, signed or issued by a person authorized by FCIC to provide such communication on behalf of FCIC, that requires a particular participant or group of participants to take a specific action or to cease and desist from taking a specific action (e-mails will not be considered formal communications although they may be used to transmit a formal communication). Formal communications that contain a remedy in such communication in the event of a violation of its terms and conditions will not be considered a requirement of FCIC unless such violation arises to the level where remedial action is appropriate. (For example, multiple violations of the same provision in separate policies or procedures or multiple violations of different provisions in the same policy or procedure.)

7 C.F.R. § 400.452. The willful and intentional standard is based upon knowledge or having reason to know. The Regulations define the term "knows or has reason to know," as follows:

> **§ 400.452 Definitions.**
>
> For purposes of this subpart:
>
> . . . .
>
> *Knows or has reason to know.* When a person, with respect to a claim or statement:

---

[30] ALJ's Decision and Order ¶ III(1) at 8; Tr. at 128-30.

> (1)(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;
>
> (ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or
>
> (iii) Acts in reckless disregard of the truth or falsity of the claim or statement; and
>
> (2) No proof of specific intent is required.

7 C.F.R. § 400.452. I find the evidence cited by the ALJ establishes that Mr. Lane knew or should have known that he was required to report his carryover tobacco; therefore, I reject Mr. Lane's contention that the ALJ's conclusion that Mr. Lane's failure to report his carryover tobacco was willful and intentional, is error.

Fifth, Mr. Lane contends the ALJ erroneously failed to consider the gravity of Mr. Lane's violations of the Federal Crop Insurance Act and the Regulations when disqualifying Mr. Lane from participating in the crop insurance program and imposing a civil fine on Mr. Lane.[31]

The Regulations require, when imposing any disqualification or civil fine, the administrative law judge must consider the gravity of the violation.[32] The gravity of the violation includes consideration of whether the violation was material and, if the violation was material, fifteen factors which are listed in 7 C.F.R. § 400.454(c)(2)(i)-(xv). Mr. Lane specifically identifies four of these fifteen factors which he contends the ALJ failed to consider, namely, (1) the number or frequency of incidents or duration of the violation, (2) whether the violator engaged in a pattern of violation or has a prior history of violation, (3) whether and to what extent the violator planned, initiated, or carried out the violation, and (4) other factors that are appropriate to the circumstances of a particular case.[33]

---

[31] Appeal Pet. ¶ VI at 18-19.

[32] 7 C.F.R. § 400.454(c).

[33] Appeal Pet. ¶ VI at 19.

The ALJ addressed the frequency, duration, and pattern of Mr. Lane's violations and Mr. Lane's direct involvement in the violations, as follows:

> I have found that Respondent willfully and intentionally provided false or inaccurate information to FCIC when he certified his production worksheet for Unit 104 with the knowledge that the information was not accurate. I have further found that Respondent willfully and intentionally failed to report the production of tobacco that he carried over for some time. Therefore, I find that Complainant's requested sanctions are appropriate.

ALJ's Decision and Order ¶ III(4) at 25. Therefore, I find the ALJ considered the gravity of Mr. Lane's violations when disqualifying Mr. Lane from participating in the crop insurance program and imposing a civil fine on Mr. Lane, and I decline to remand this proceeding to the ALJ for further consideration of the gravity of Mr. Lane's violations.

Sixth, Mr. Lane contends the issues in this proceeding are barred by issue preclusion. Specifically, Mr. Lane contends the issues in this proceeding were resolved by a Final Award of Arbitration issued by Robert N. Dokson, an arbitrator with the American Arbitration Association, in *In The Matter of the Arbitration between: Steve Lane, Claimant, Great American Insurance Company, Respondent*, Case No. 01-14-0001-2819.[34]

The ALJ rejected Mr. Lane's contention that the issues in this proceeding are barred by issue preclusion, as follows:

> I give little weight to the July 9, 2015, Decision of Arbitrator Robert N. Dockson [sic]. RX-35. That decision has no precedential value to my findings, and my conclusions are contrary to Arbitrator Dockson's [sic] finding that Respondent did not intentionally conceal the existence of carry-over tobacco. The Arbitrator accepted Respondent's contention that the unreported tobacco that he sold was carried over from 2006, and on that basis overturned [Great American Insurance Company's] voidance of Respondent's [Multiple Peril Crop Insurance Common Crop Insurance Policy] and [Great American Insurance Company's] finding of an overpayment. I do not know what evidence Arbitrator Dockson [sic] relied upon to reach his conclusion but I reject Respondent's contention that the source of all of the unreported tobacco that he sold in 2009 was carry over tobacco.

---

[34] Appeal Pet. ¶ VII at 19-26.

ALJ's Decision and Order ¶ III(3) at 23.

Issue preclusion refers to the effect of a judgment in foreclosing relitigation of an issue of fact or law that has been litigated and decided.[35] Issue preclusion bars parties and their privies from relitigating issues which have been adjudicated on the merits in a prior action.[36] The burden of proof is on the party seeking preclusion.[37]

The arbitration proceeding on which Mr. Lane relies for his contention that the issues in this proceeding are barred is styled "In The Matter of the Arbitration between: Steve Lane, Claimant, Great American Insurance Company, Respondent."[38] The instant proceeding was instituted by Brandon Willis, Manager, Federal Crop Insurance Corporation, and is styled "In re: Steve Lane, Respondent." The Manager was not named in the arbitration proceeding and the general rule is that a litigant is not bound by a judgment to which he was not a party.[39]

Moreover, the Manager is not in privity with Great American Insurance Company.[40] A

---

[35] New Hampshire v. Maine, 532 U.S. 742, 748-49 (2001); Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 77 n.1 (1984); Baloco v. Drummond Co., 767 F.3d 1229, 1251 (11th Cir. 2014).

[36] Baloco v. Drummond Co., 767 F.3d 1229, 1251 (11th Cir. 2014); Soro v. Citigroup, 287 F. App'x 57, 59-60 (11th Cir. 2008) (per curiam); I.A. Durbin, Inc. v. Jefferson Nat. Bank, 793 F.2d 1541, 1549 (11th Cir. 1986).

[37] Jones v. United States, 846 F.3d 1343, 1361 (Fed. Cir. 2017); Stan Lee Media, Inc. v. Walt Disney Co., 774 F.3d 1292, 1297 (10th Cir. 2014); Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1050-51 (9th Cir. 2008).

[38] See RX 36.

[39] Taylor v. Sturgell, 553 U.S. 880, 884 (2008); Hansberry v. Lee, 311 U.S. 32, 40-41 (1940). See also Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110 (1969) (holding the consistent constitutional rule has been that a court has no power to adjudicate a person's claim or obligation unless it has jurisdiction over the person of the defendant).

[40] Williams Farms of Homestead, Inc. v. Rain and Hail Ins., Serv., Inc., 121 F.3d 630, 633 (11th Cir. 1997); Old Republic Ins. Co. v. FCIC, 947 F.2d 269, 276 (7th Cir. 1991). See also

person in privity with another is a person so identified in interest with another that he represents the same legal right.[41] The Manager instituted this administrative proceeding against Mr. Lane pursuant to the Federal Crop Insurance Act seeking to impose a sanction on Mr. Lane to improve compliance with, and the integrity of, the federal crop insurance program.[42] The arbitration proceeding relied upon by Mr. Lane concerned a contract between Mr. Lane and Great American Insurance Company in which Great American Insurance Company sought to void an insurance policy pursuant to section 27 of that policy. The Manager did not have an interest in the arbitration and could not have filed a section 27 claim against Mr. Lane.

I find no basis on which to reverse the ALJ's determination that *In The Matter of the Arbitration between: Steve Lane, Claimant, Great American Insurance Company, Respondent*, Case No. 01-14-0001-2819, has no preclusive effect on the instant proceeding. Mr. Lane has failed to carry his burden of proof that the instant proceeding is barred by issue preclusion.

Based upon careful consideration of the record, I find no change or modification of the ALJ's April 5, 2016 Decision and Order is warranted. The Rules of Practice provide, when the Judicial Officer finds no change or modification of the administrative law judge's decision is warranted, the Judicial Officer may adopt an administrative law judge's decision as the final order in a proceeding, as follows:

> **§ 1.145 Appeal to Judicial Officer.**
>
> . . . .
>
> (i) *Decision of the judicial officer on appeal.* . . . . If the Judicial Officer

---

Uniguard Security Ins. Co. v. North River Ins. Co., 4 F.3d 1049, 1054 (2d Cir. 1993); General Reinsurance Corp. v. Missouri General Ins. Co., 596 F.2d 330 (8th Cir. 1979).

[41] Stephens v. Jessup, 793 F.3d 941, 945 (8th Cir. 2015); Wayne County Hosp., Inc. v. Jakobson, 567 F. App'x 314, 317-18 (6th Cir. 2014); Jones v. HSBC Bank, 444 F. App'x 640, 644 (4th Cir. 2011); Pacific Frontier v. Pleasant Grove City, 414 F.3d 1221, 1230 (10th Cir. 2005).

[42] 7 U.S.C. § 1515(a)(1); 7 C.F.R. § 400.451.

> decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum.

For the foregoing reasons, the following Order is issued.

ORDER

The ALJ's April 5, 2016 Decision and Order is adopted as the final order in this proceeding.

Done at Washington, DC

April 5, 2017

[redacted]

William G. Jenson
Judicial Officer