

PLACID OIL CO. ET AL.

IBLA 79-375

Decided April 10, 1980

Appeal from decision of the Director, Geological Survey, affirming decision of Acting Conservation Manager requiring unitization of the C6-RA reservoir (SSB 207), lease OCS-G 1523, and the JS A-1 reservoir (SSB 206), lease OCS-G 1522.

Affirmed.

1. Geological Survey -- Oil and Gas Leases: Unit and Cooperative Agreements -- Outer Continental Shelf Lands Act: Oil and Gas Leases -- Outer Continental Shelf Lands Act: Unit Plans

An order by a GS conservation manager directing holders of two adjacent outer continental shelf oil and gas leases covering a single producing geological structure to unitize will be affirmed where the record shows that the producing mechanism of the structure is a gas cap almost wholly under the exclusive control of the holders of one of the leases, and that improper development of gas from this cap would reduce the ultimate recovery of oil and gas from the structure, as the Department has the authority to require unitization in order to conserve the resources of the outer continental shelf under sec. 5(a) of the OCS Lands Act, as amended.

APPEARANCES: Theodore L. Garrett, Esq., and William Skinner, Esq., Washington, D.C., for Placid Oil Co., Ashland Exploration, Inc., General Crude Oil Co., Gulf Oil Exploration and Production Co., Hamilton Brothers Oil Co., Highland Resources, Inc., Hunt Industries, Hunt Oil Co., Prosper Energy Corp., and TransOcean, Inc., appellants; Robert T. Jorden, Esq., and Gene W. Lafitte, Esq., New Orleans,

Louisiana, for Continental Oil Co., Atlantic Richfield Co., Cities Service Oil Co., and Getty Oil Co., appellees.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Placid Oil Co. et al. (Placid), 1/ lessees of Federal oil and gas lease OCS-G 1523, have appealed from a decision of the Director, Geological Survey (GS), affirming an order by the GS Conservation Manager for outer continental shelf operations in the Gulf of Mexico (the Manager) which directed them to negotiate an agreement for the unitization of this lease with Continental Oil Co. et al. (CAGC), 2/ holders of the adjacent lease OCS-G 1522. Lease OCS-G 1523 is located in the Ship Shoal Block 207 field, OCS-G 1522 in the Ship Shoal Block 206 field.

Placid's and CAGC's leases were issued effective June 13, 1967. On July 23, 1971, the Acting Oil and Gas Supervisor for the Gulf Coast Region, GS, notified them that geological and engineering studies indicated the presence of competitive reservoirs there, and that it felt that "unitization, with an equitable allocation formula, offers a lasting solution to the competitive reservoir problem" in the area. Accordingly, it encouraged them "to employ this method wherever possible."

The "administrative record" submitted by GS 3/ shows that Placid and CAGC did subsequently initiate informal discussions regarding the unitization of the area and exchanged production data from this area. The record is silent about the course of these negotiations until February 15, 1977, when Continental wrote Placid, stating that the

---

1/ The following companies comprise the "Placid Group," which owns Federal lease OCS-G 1523, and which has appealed: Ashland Exploration, Inc., General Crude Oil Co., Gulf Oil Corp., Hamilton Brothers Oil Co., Highland Resources Inc., Hunt Industries, Hunt Oil Co., Placid Oil Co., and Prosper Energy Corp., and TransOcean Oil, Inc.

2/ The following companies comprise the "CAGC group," which owns Federal lease OCS-G 1522, and which has made an appearance as appellee here: Atlantic Richfield Co., Cities Service Oil Co., Continental Oil Co., and Getty Oil Co.

3/ GS submitted no formal, chronological record in this matter, but rather forwarded only materials used by the Director in deciding the appeal of the Manager's decision. The Director requested that the Manager provide information in support of his action, and he submitted only portions of information filed by the parties during the negotiations preceding his orders. Thus, it is impossible to state some dates with specificity. Although the present record is adequate to support fully the Manager's decision, we note that full administrative review normally requires review of the entire case history, not merely such portions as the official whose decision is being reviewed deems appropriate to submit.

last discussion on unitization had been held on October 3, 1974, at which time it was agreed that further unit negotiations would be deferred until development operations were complete. In the letter of February 15, 1977, Continental suggested that unitization discussions be renewed. It repeated this suggestion on February 25, 1977. Placid apparently responded that day by telephone and rejected the proposal to reopen negotiations.

On March 7, 1977, Continental wrote to GS to request that it issue a determination that the reservoir is competitive and take action to force unitization, and that it order production from Placid's well A-28 to be stopped, as it was allegedly completed within 500 feet from the border of the leases, which would be impermissible in a competitive reservoir. The Supervisor apparently ordered Placid and CAGC to meet to discuss unitization, and, on May 9, 1977, they convened with GS officials, each presenting its case for and against unitization. Some of the material presented at this conference has been included in the administrative record by GS, but a great deal of it is missing. <sup>4/</sup>

On June 17, 1977, the Conservation Manager, Gulf of Mexico OCS Operations, GS, advised Placid and CAGC that he had determined that the reservoir is competitive and "that the interest of conservation would best be served if [it] is operated under an approved unitization plan." Accordingly, he ordered them to develop a mutually agreeable unitization plan by January 1, 1978.

Both Placid and TransOcean filed appeals from this order to the Director, GS, requesting that the effect of the Manager's order be stayed. On October 18, 1977, the Director denied these requests. Apparently, notwithstanding the fact that the order was in full effect, the parties did not develop a unitization plan by the deadline prescribed therein. Placid advised the Manager's office that they could not reach an agreement, although it had submitted under protest a proposal setting forth the parameters under which it would agree to unitization. There is nothing in the record concerning further negotiations, and we must assume that the parties have suspended efforts to develop a unitization plan, despite the Manager's order.

On February 16, 1978, the Manager prepared a memorandum to the Director, GS, in support of the order requiring the parties to develop a unitization plan. It is this memo and its attachments which makes up the bulk of the substantive record before this Board.

On February 21, 1979, the Director, GS, issued his decision, GS-124-O&G, affirming the Manager's decision requiring that Placid's C6-RA reservoir in Ship Shoal Block 207, lease OCS-G 1523, be unitized

---

<sup>4/</sup> See n.3.

with CAGC's JS A-1 reservoir in Ship Shoal Block 206, lease OCS-G 1522, and directing them to draft a unit agreement and to submit it to the Manager for approval. The Director stressed that the leases covered a common reservoir, which derives its producing mechanism through a limited water drive and an expanding gas cap, and that ultimate recovery of oil therein could be diminished by improper development of the reservoir, specifically, by producing gas before producing oil, noting that Placid's own study in 1972 recognized that "ultimate oil recovery from the [reservoir] will be related to the number and location of producing wells, completion, intervals, and the individual well oil rate assignments." The Director cited section 5(a) of the OCS Lands Act, as amended, 43 U.S.C.A. § 1334(a) (West Supp. 1979), which provides that the Secretary, through his designated representative, is directed to insure the prevention of waste and to insure the conservation of natural resources of the outer continental shelf, and to provide for unitization agreements and for the efficient development of a leased area.

The Director held that, under unitization, emphasis can be placed upon efficient production of the remaining reserves with maximum ultimate recovery as the main objective and with complete disregard of the competitive interests of the lessees under the individual leases. The Director rejected Placid's argument that unitization need not be imposed in view of the availability of other procedures which the manager could use to accomplish conservation goals, holding that section 5(a) of the OCS Lands Act, supra, does not require that unitization be imposed only as a last resort when no other procedures are available to the manager. The Director also cited OCS Order No. 11, issued on May 1, 1974, by the Oil and Gas Supervisor, Production Control, Gulf of Mexico Area, which provides that the Manager may require unitization of any competitive reservoir.

[1] We agree with the Director's analysis and accordingly affirm his decision. There is one main geologic structure lying below the two leases in question. The parties differ as to the extent of the segregation of various parts of this structure and as to whether there is communication between pools of oil underlying their respective leases. However, there is no doubt as to two important facts on which the Director relied: 1) the gas cap of this structure is largely responsible for its "producing mechanism" and lies entirely on Placid's lease so that it presently has complete control over production of gas from the gas cap; and 2) improper development of gas from the cap will result in loss of recovery from the entire structure, including that portion located on CAGC's lease. 5/

---

5/ These facts are apparent from the present administrative record and are not in dispute. To the contrary, Placid admits in its statements of reasons that all of the fault blocks in the structure are in pressure communication, that all of the gas producing area lies on its lease, and that maximum recovery of the oil from the reservoir requires limiting the production of gas from the gas cap in order to conserve reservoir energy until the recoverable oil has been produced.

As the Director held, the Department has the authority to require unitization, pooling, and drilling agreements in order to prevent waste, to conserve natural resources of the outer continental shelf, for the protection of the correlative rights therein, and to provide for efficient development of a lease area. 43 U.S.C.A. § 1334(a)(4) and (7) (West Supp. 1979); 30 CFR 250.50. This power is delegated to the GS Conservation Manager. 30 CFR 250.11.

The record shows beyond doubt that this reservoir is such that recovery of oil from it may be greatly reduced by incorrect development, and that control of the production of gas is essential to maximum development of the resources which it contains. It is equally clear that unitization will allow close control of the production of gas from this structure. Thus, unitization will enable GS to conserve resources by avoiding misdevelopment of this reservoir.

Where a GS official who is knowledgeable about the exact details of a situation elects to use a particular method to solve a problem or prevent a potential problem, we will not disturb his solution in the absence of a showing that it is clearly erroneous or unrelated to the problem, provided that he has the authority to take the action which he elects, as GS is the technical expert of the Department in geologic matters. See Amoco Production Co., 41 IBLA 348, 353 (1979); Corrine Grace, 30 IBLA 296, 300 (1977); Rosita Trujillo, 21 IBLA 289, 291 (1975).

Unitization offers a unique and convenient method of coordinating production efforts and pooling geologic data, so that a maximum of oil and gas in a structure may be recovered, as explained in 5 Summers, The Law of Oil and Gas, § 951 (1966):

Unitization \* \* \* is a deliberate effort to consolidate all, or a sufficiently high percentage of the royalty and working interests in a pool as will permit reservoir engineers to plan operation of the pool as the natural energy mechanism unit which it is. This means taking production at the locations and rates it is most efficient to take it, without disruption of the scheme by the legal rights inhering in competing properties. \* \* \* To realize the significance of what is attempted it must be appreciated an oil pool is a highly complex energy mechanism, capable of desirable and undesirable responses depending on how it is handled. The artificial property lines man has drawn upon these pools, coupled with the lessor-lessee rights and obligations arising from competitive production methods sanctioned or event required by law, make virtually impossible maximum ultimate recovery in the absence of unitization, and this is true even though a state has otherwise excellent conservation regulations to limit the worst rule of capture competitive producing practices.

The loss can be dramatic. For example, it has been estimated that in the Fairway Field of East Texas, discovered in 1960, only about 70 million barrels of oil could be produced under regulated competitive methods whereas, unitized and operated as a pressure maintenance project, as much as 200 million barrels will be obtained. Additionally, regulated competitive practices would entail a much larger investment in wells and lease equipment. [Footnotes omitted; emphasis supplied.]

It is self evident that the urgency for efficient production of petroleum resources is growing daily, and efforts toward such efficiency, including unitization, are thus increasingly desirable.

Placid argues that it is unreasonable to impose unitization here, in view of the availability of other less stringent alternatives, such as simply ordering it not to produce gas from its lease. While it may be true that Placid has voluntarily restricted production of gas in the past in accordance with a plan approved by GS, it is not inconceivable that it may become desirable to produce natural gas, with the vagaries and rapid shifts in today's energy market. Under a unitization plan, Placid would have good reason to abide by restrictions on early production of gas from the gas cap, as compensation for loss of production resulting from any violation of such restrictions could be conveniently arranged simply by redistributing the proceeds from sales. This deterrent would not be present if Placid were simply ordered to defer production of gas from its lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing  
Administrative Judge

## ADMINISTRATIVE JUDGE THOMPSON CONCURRING:

There is no dispute in this case concerning the authority of the Geological Survey (Survey) to require compulsory unitization. The issue raised by appellants is whether unitization is warranted here. Appellants have made no request for a fact-finding hearing or an offer of proof which would suggest that the basic facts relied upon by Survey are in error. Judge Burski suggests we should order a fact-finding hearing under 43 CFR 4.415 to determine whether unitization is necessary to protect correlative rights, and whether appellants have operated prudently, have attempted to maximize short-term recovery at the expense of long-term production, or, alternatively, if there is a reasonable likelihood that appellants' operations in the future might damage ultimate recovery. The latter inquiries would be made to determine if unitization is "necessary" for conservation purposes.

While I have sympathy with some of Judge Burski's views, I do not believe a hearing is warranted in the present posture of this case. Appellants claim they will be injured because they will be forced to share their proceeds from production with the appellees. Until the parties are ordered to agree to specific terms in a unitization plan, there can be no determination that appellants will be allocated an unfair share of the production, as they so strongly contend now. It is difficult to separate determinations concerning the proper allocation of production with determinations concerning correlative rights. In order to avoid piecemeal adjudication it would be better to have one proceeding to determine all the factual issues, if a hearing is warranted, rather than to have a possible series of hearings. This assumes, of course, that there is a sufficient basis for ordering the compulsory unitization in the first place.

I believe the record is sufficient here to make a tentative finding that the exercise of discretion made by Survey was proper. In this regard, I believe the undisputed fact concerning the nature of the formation is a sufficient prima facie reason to warrant the unitization. I would not make the test dependent solely upon the operator's past operations, as Judge Burski suggests. Past operations are relevant, but are no guarantee that future operations will be the same. It is evident from appellants' own submissions that its post-1972 production activities were designed to conserve gas from the gas cap much better than its pre-1972 activities. While it is true that there are alternatives which Survey may use in regulating the production activities to help assure control over waste and promote conservation, this does not mean that its choice of a different alternative, *i.e.*, unitization, is arbitrary. Administrative reasons may favor the choice of unitization over other alternatives which might necessitate a more rigid policing action and might lead to stoppage of production at a time when increased production is urged as a matter of public policy.

Accordingly, I agree with Judge Stuebing that there is a sufficient basis for ordering compulsory unitization at this time. I would, however, reserve the possibility of reconsidering the question of the propriety of ordering compulsory unitization in the event future circumstances warrant it. Thus, if issues arise concerning what terms should be in the compulsory agreement, including allocation of production, and these raise factual questions, a fact-finding hearing may then be warranted, especially if there are specific offers of proof tendered. The question of the propriety of the enforced unitization could then be reconsidered in light of its specific impact upon the parties and in determining whether the proposed agreement will meet the purposes of conservation, prevention of waste, and protection of correlative rights.

Joan B. Thompson  
Administrative Judge

## ADMINISTRATIVE JUDGE BURSKI DISSENTING:

The majority holds that the order of the Acting Conservation Manager, New Orleans, requiring unitization of the C6-RA reservoir, lease OCS-G 1523, and the JS A-1 reservoir, lease OCS-G 1522, comports with the applicable law and regulations. The question of the imposition of compulsory unitization is one of first impression before this Board. While I willingly accept the proposition that unitization "offers a unique and convenient method of coordinating production efforts and pooling geologic data, so that a maximum of oil and gas in a structure may be recovered," I am not persuaded by the present record that compulsory unitization is warranted in the instant case. Accordingly, I respectfully dissent.

Initially, I wish to note my concurrence with the majority's findings that the gas cap of this structure plays an integral part in the producing mechanism and is situated virtually entirely within Placid's lease, and that improper development of gas from the cap will result in loss of recovery to the entire structure. Additionally, I think it clear from the record that Placid's early production (prior to 1972) resulted in depletion of the gas and a concomitant loss in total recoverable oil reserves. I do not believe, however, that acceptance of these facts necessarily leads to the conclusion that compulsory unitization is correctly ordered.

Placid contends that subsequent to 1972, when it received a report from Core Laboratories which analyzed the data available and provided certain recommendations relating to maximization of recovery of oil and gas production, it has conducted operations prudently. The decision of the Director, Geological Survey does not factually dispute this contention. On the contrary, the decision of the Director justifies the need for compulsory unitization solely on the production activities of Placid prior to 1972 (Dec. at 2-3). The only indication that Placid has not properly managed the reservoir since 1972 is found in a memorandum from the Conservation Manager to the Director, GS. This memorandum is dated February 16, 1978, more than 6 months after Placid had appealed from the Conservation Manager's original decision.

In the February 1978 memorandum, the Conservation Manager stated that certain findings of fact were substantiated by data available prior to the June 1977 decision. The findings relevant herein are:

6. Continued operations in the manner utilized prior to 1972 would have resulted in only 19.2 percent of the original oil in place being produced. While considerable improvement has taken place since 1972, total gas production as of June 17, 1977, was approximately equal to the total solution gas recovery that could be expected from this reservoir. This fact indicates that considerable gas-cap gas has been produced under competitive operations of this reservoir and is still being produced.

7. While structurally high completions on Placid's leases having gas/oil ratios as high as 31,000 cubic feet of gas per barrel of oil have been shut in, two wells having gas/oil ratios considerably higher than solution GOR (827 SCF/STD [sic]) are still being produced by Placid. These wells have a GOR in the order of 7,000 SCF/STB. This fact indicates that appreciable gas-cap gas continues to be produced under competitive operations of this reservoir. [Emphasis supplied.]

In its reply brief, Placid strongly objects to this memorandum. Placid notes that this was an inter-office memorandum which was not made available to the parties and upon which the Director did not purport to rely. Placid states that it was not informed of the existence of this memorandum until after the Director's decision (Reply Brief at 2) and directly attacks the conclusion that Placid had not been operating the reservoir in a prudent manner (Reply Brief at 3, 8-14).

In its reply brief, CAGC points to 30 CFR 290.3(b) for the authority of the Conservation Manager to prepare and transmit the report to the Director. That regulation provides: "The officer with whom the appeal is filed shall transmit the appeal and accompanying papers to the Director, Geological Survey, with a full report and his recommendation on the appeal." Additionally, CAGC points out that the Director is entitled to rely on the advice of his subordinates, and that the Board is equally entitled to rely on the findings of the Department's technical experts unless the conclusions are shown to be in error or arbitrary and capricious.

I am not persuaded that 30 CFR 290.3(b) contemplates the type of report submitted here. The Conservation Manager actually purported to make findings of fact ex parte. To the extent that the Director's decision was premised on such findings, and these findings are controverted by Placid, I think we must examine the question whether we should order a hearing pursuant to 43 CFR 4.415.

Close examination of the Director's and the majority decisions does not evidence reliance on these "findings of fact." While this may obviate some of the ex parte problems, I think it necessarily impels the conclusion that as a factual matter, for the purpose of this appeal, we cannot assume that Placid was operating in an imprudent manner subsequent to 1972. As regards future appeals, I feel that if a local officer is purporting to make "findings of fact" these findings must be served on any appellant.

If, as I have indicated above, we must assume Placid's operations did not conflict with proper management of the reservoir, we are then faced with the question as to the circumstances which will justify imposition of forced unitization. I agree that Placid's "last resort" argument should be rejected. I also would reject Placid's contention

that "the interest of conservation" is the only standard which will justify compulsory unitization.

While it is true that the applicable regulation, 30 CFR 250.50, states that unitization agreements may be initiated by lessees "or where in the interest of conservation they are deemed necessary by the Director," that regulation was promulgated in 1964 and amended in 1969, pursuant to section 5 of the Act of August 7, 1953, 43 U.S.C. § 1334(a)(1) (1976). See 29 FR 4563 (Mar. 31, 1964) and 34 FR 13547 (Aug. 22, 1969). Section 5 originally provided, inter alia: "[T]he rules and regulations prescribed by the Secretary \* \* \* may provide \* \* \* in the interest of conservation, for unitization, pooling, drilling agreements, suspension of operations or production \* \* \* of oil or gas in any of said submerged lands \* \* \*." (Emphasis supplied.) This section, however, was amended by section 204 of the Act of September 18, 1978, 92 Stat. 636. The section now provides:

The Secretary may at any time prescribe and amend such rules and regulations as he determines to be necessary and proper in order to provide for the prevention of waste and conservation of the natural resources of the outer Continental Shelf, and the protection of correlative rights therein. \* \* \* The regulations prescribed by the Secretary under this subsection should include, but not be limited to, provisions \* \* \*

\* \* \* \* \*

(4) for unitization, pooling and drilling agreements; \* \* \*.

Section 204, Act of September 18, 1979, 95 Stat. 636, 43 U.S.C.A. § 1334(a)(4) (West Supp. 1979).

I feel that the regulatory provision must now be read to embrace authority to impose compulsory unitization where, in the interest of the protection of correlative rights, the Director deems it "necessary." It is clear, however, that the Director did not purport to premise the imposition of unitization on protection of correlative rights. The only reference to such a consideration appears on page 6 of the decision, where it is noted that subsequent drilling operations "have improved [Placid's] competitive position and enabled the appellant to protect the reserves underlying its lease." This statement appears to support the conclusion that prior to its drilling program Placid was at a competitive disadvantage and not that it is now possessed of a competitive advantage.

It is on the analysis of the word "necessary," that I part company with the majority. To my mind, the word "necessary" relates to existing factual matters, where, in the opinion of Survey, unitization

is required to maximize recovery. This contemplates specific advertence to facts relating to past operations of the reservoir or the likelihood of future injury. Judge Stuebing's decision, however, seems to substitute "beneficial" for "necessary" and then makes a virtual finding of law that unitization is "beneficial." Additionally, implicit in the decision is a holding that the burden of proof on the appellant is not to show that unitization is unnecessary, but that it is actually detrimental to conservation. Inasmuch as the majority has already determined that unitization is presumptively beneficial, the conclusion in any such appeal is inevitable, absent a showing that the reservoir is not competitive.

Judge Stuebing's discussion of alternatives to compulsory unitization is not persuasive. The decision states:

While it may be true that Placid has voluntarily restricted production of gas in the past in accordance with a plan approved by GS, it is not inconceivable that it may become desirable to produce natural gas, with the vagaries and rapid shifts in today's energy market. Under a unitization plan, Placid would have good reason to abide by restrictions on early production of gas from the gas cap, as compensation for loss of production resulting from any violation of such restrictions could be conveniently arranged simply by redistributing the proceeds from sales. This deterrent would not be present if Placid were simply ordered to defer production of gas from its lease.

Inasmuch as the vast majority of the oil is also located within Placid's lease, this argument necessarily assumes that the price of natural gas would escalate rapidly while the price of oil remained static. Otherwise, it would make no sense for Placid to produce natural gas at the ultimate expense of its oil production. I do not believe there is any practical justification for such an assumption.

More critically, GS has ultimate responsibility for approving all OCS operations. If Placid were to commence producing natural gas contrary to GS instructions, the real deterrent would be to suspend production on the lease, as provided in 30 CFR 250.12(c). Failure to comply with the suspension order would be grounds to issue a notice of default and support a recommendation for the cancellation of the lease under 30 CFR 250.80. Indeed, this is the likely response even if unitization occurs, because redistribution of the proceeds of unitized sales would only benefit CAGC, while the United States would still have suffered a loss in the ultimate recovery of its leased mineral deposits. Thus, I fail to see how unitization necessarily provides greater deterrent to mismanagement than is afforded by the present regulations.

I do not believe it would have been beyond the power of the Secretary to promulgate a regulation which in effect said that the Director, GS, could order compulsory unitization on any whim or caprice. This, however, he has not done. Nor has the Secretary promulgated a regulation that allows compulsory unitization whenever the Director, GS, deems it "beneficial." Rather, the Secretary has circumscribed the imposition of compulsory unitization to those situations in which it is "necessary."

Placid argues that the Director has not shown that imposition of compulsory unitization is "necessary." See Brief of the Placid Group at 18-19. On appeal to this Board, however, the decision of the Director is presumptively valid, and I would place the burden on Placid of showing that it is invalid. In this regard, I think that the crucial evidence would relate to Placid's actions in the immediate past. While I noted above that the Director did not premise his decision on the February 1978 memorandum, it is part of the record. While I believe it would be improper to assume that the statements contained therein are true, it does raise doubts about the factual milieu of this appeal on matters which I deem important. Has Placid, for example, operated its lease prudently or has it attempted to maximize short-term recovery at the expense of long-term production? Alternatively, is there a reasonable likelihood that Placid's operations in the future might damage ultimate recovery? Is there sufficient evidence to justify compulsory unitization to protect correlative rights? While Placid argues that the evidence is uncontroverted that it has managed the resource prudently, the February 1978 memorandum indicates that this might not be the case. These are precisely the type of factual questions which could be answered in a hearing.

Accordingly, I would refer this matter to the Hearings Division for the assignment of an Administrative Law Judge who would take evidence on these questions. Since the majority, however, has determined to affirm the decision of the Director, under what I perceive to be an erroneous standard, I respectfully dissent.

James L. Burski  
Administrative Judge

