

FACTUAL HISTORY

The Office accepted that the employee, then a 50-year-old customs inspector, sustained a lumbosacral strain, right cervical radiculopathy, cervical discectomy and a cervical fusion at C5-6 as a result of a December 3, 1983 employment incident, when he was thrown into the front corner of a van during an automobile accident and a December 12, 1984 employment incident, occurring while the employee was climbing across a drawbar of two railroad cars to perform an inspection. The record reveals that the employee underwent two cervical fusions at C5-6 and subsequently experienced a myocardial infarction, which resulted in coronary artery bypass surgery and a cerebrovascular event.

On October 21, 1985 the employee was placed on the periodic rolls and received appropriate compensation benefits.

By letter dated January 19, 2000, appellant notified the Office of the employee's death on November 27, 1999 and requested forms for survivor benefits.

On March 6, 1999 appellant filed a claim for death benefits (Form CA-5). A copy of the employee's death certificate, signed December 13, 1999, listed aspiration pneumonia as the cause of death. Appellant also provided a copy of her March 6, 1954 marriage certificate and a December 9, 1999 receipt from a funeral home, totaling \$7,819.11.

In a medical report dated February 1, 2000, Dr. A. Marc Gorden, Board-certified in family medicine, opined that the employee's aspiration pneumonia was secondary to complications arising out of two spinal fusion surgeries in 1985. He stated that three weeks after the second spinal fusion, the employee sustained an acute myocardial infarction, leading to coronary artery bypass surgery. Three days following the coronary surgery, the employee sustained a cerebral vascular accident and, while still in the hospital, developed severe aspirational pneumonia. Dr. Gorden maintained that the employee continued to develop recurrent problems for the 14 years after the second cervical spinal fusion, including pulmonary fibrosis, chronic pulmonary obstructive disease (COPD), severe right hemiparesis, subsequent cerebral hemorrhage and arteriosclerotic heart disease.

By letter dated August 25, 2000, the Office notified appellant of deficiencies in her claim and requested that she provide additional information.

In an October 2, 2000 medical report, Dr. Gorden opined that the employee's myocardial infarction, which was sustained three weeks after the second cervical fusion, was likely related to the physical stress and the hypercoagulation state postsurgery and the complications and physical deterioration due to the cervical fusions caused subsequent medical problems. He opined, with a high degree of medical probability, that had the employee not required the cervical fusions, many of his subsequent medical problems leading to his demise on November 27, 1999 would not have developed to the same degree.

On May 1, 2001 the Office referred the employee's file and a statement of accepted facts, to Dr. Charles V. Mattingly, a Board-certified internist, for a second opinion evaluation regarding whether the his medical conditions, including coronary artery disease, myocardial

infarctions with post bypass surgery, cerebral accidents, chronic lymphocytic leukemia, COPD and aspirational pneumonia, were causally related to his employment and whether the employee's death was causally related to his accepted work conditions.

In a medical report dated May 17, 2001, Dr. Mattingly briefly described the employee's medical conditions and opined that his back injury was not the cause of the subsequent heart or lung problems, leukemia or stroke. He stated that no specific employment or work activity leads to the development of coronary atherosclerosis or stroke. Rather, the prime cause of coronary artery disease and cerebral atherosclerosis are the major risk factors, including increasing age, male, hypertension, elevated blood lipids, smoking, diabetes and a family history of coronary heart disease. Dr. Mattingly maintained that the employee fit well into the profile for having coronary heart disease and concluded that, based on a reasonable degree of medical probability, the employee's heart problems, stroke and aspirational pneumonia were not a direct and proximate result of his employment.

By decision dated May 29, 2001, the Office denied death benefits finding that the weight of the medical evidence lied with Dr. Mattingly, who provided rationale to support his medical conclusion and was an expert in the relevant field.

In a September 10, 2001 medical report, Dr. Gorden opined that the Office, in denying benefits, overlooked the fact that the employee's cervical spinal injuries and subsequent surgeries contributed to a significant decline in his general physical condition. He concluded that, while the employee's myocardial infarction could arguably be due to family history, based on the sequence and timing of events, he believed that the neck injuries and cervical fusions substantially contributed to his severe disability and subsequent demise.

On June 21, 2001 appellant, through counsel, filed a request for an oral hearing before a hearing representative.

By decision dated October 2, 2002, the hearing representative determined in a preliminary review that the case was not in posture for decision as a conflict of medical opinion existed requiring resolution by an impartial medical examiner.

On November 6, 2002 the Office referred the record to Dr. David A. Berman, a Board-certified cardiologist and internist, along with a statement of accepted facts, for an impartial medical opinion to resolve the conflict regarding the relationship of the employee's death to his accepted conditions.

In a letter dated November 6, 2002, appellant's counsel requested participation in the selection of the impartial medical examiner. By letter dated November 20, 2002, the Office notified appellant that she did not provide any reason for participating in the selection of the impartial medical examiner and invited her to provide a valid reason, in writing, if she objected to the selection of Dr. Berman. In a December 30, 2002 letter, appellant's counsel contended that the reason for the request was that she had a right under the law to participate in the selection process.

In a November 21, 2002 medical report, Dr. Berman described the employee's medical history, noting that he did not have access to medical records regarding the myocardial infarction

or the triple coronary bypass graft surgery on November 22, 1985. He opined that there was no evidence to suggest that the cervical injuries were a precipitating factor for the employee's myocardial infarction, but rather this condition was due to preexisting coronary disease and risk factors, including sex, smoking history and positive family history. Dr. Berman stated that the myocardial infarction was due to a rupture of an arteriosclerotic plaque with subsequent thrombosis leading to infarction of the muscle supplied by the artery. Due to the absence of any significant complication from the surgery and given the time period of four weeks following the second operation, Dr. Berman did not find that the surgery was a causative or aggravating factor for the myocardial infarction. Further, Dr. Berman opined that the COPD, cerebral infarction, chronic lymphocytic leukemia and aspirational pneumonia were not work related, but rather due to underlying medical problems.

By decision dated December 23, 2002, the Office denied death benefits on the grounds that Dr. Berman's report was given special weight, due to his status as an impartial medical examiner and thus, the medical evidence did not establish that the employee's death was causally related to his accepted work conditions.

On January 27, 2003 appellant, through counsel, requested an oral hearing before a hearing representative.

In a medical report dated February 19, 2002, Dr. Gorden stated that the employee did not fully recover after his second cervical surgery and developed chest pain leading to cardiac bypass surgery. He stated that only a short time following the cerebrovascular accident the employee developed significant aspiration pneumonia, which caused pulmonary fibrosis and chronic obstructive lung disease. Dr. Gorden opined that the pneumonia was due primarily to the decreased reflexes and decreased sensorium following the neurological event. He concluded that the employee's problems were a cascade of events stemming from his cervical surgeries.

On May 13, 2003 appellant's counsel argued before an Office hearing representative that Dr. Berman did not have a complete medical record on which to base his medical report.

By decision dated August 5, 2003, the hearing representative remanded the case, finding that Dr. Berman did not have complete medical records and thus his report could not carry the weight of medical evidence. She ordered the Office to submit a complete medical file to Dr. Berman for a supplemental report.

On June 21, 2004 the Office referred the employee's case to Dr. Berman for a supplemental report.

In a June 30, 2004 medical report, Dr. Berman discussed additional medical evidence not included in his previous report, however, he opined that there was still no evidence that the employee's coronary heart disease, myocardial accident, chronic lymphocytic leukemia, COPD or aspirational pneumonia were related to the work-related injuries and cervical fusion surgery. He stated that the idea of a hypercoagulable state was speculative and unsupported by the record. Dr. Berman opined that the major cause of the coronary disease was the significant risk factors, including age, sex, previous coronary disease, smoking and positive family history. He concluded that nothing in the record supported the idea that the prior surgery contributed to the

event and, further, the time interval between the surgery and the heart attack argued against a causative relationship.

By decision dated August 3, 2004, the Office affirmed the denial of death benefits, finding that the weight of the medical evidence rested with Dr. Berman, in his capacity as an impartial medical examiner.

On September 15, 2004 appellant, through counsel, requested an oral hearing before a hearing representative. This hearing took place on December 29, 2004.

By letter dated February 15, 2005, appellant, through counsel, challenged the weight of Dr. Berman's medical reports, claiming she was not provided an opportunity to participate in his selection, the statement of the accepted facts were inadequate, the medical opinion was not fully rationalized and he did not have access to all medical records. Appellant further argued that the forthcoming medical report of Dr. James Zavoral, a Board-certified pediatrician, was of greater weight as he reviewed all medical records and provided rationalized medical findings.¹

In a medical report dated October 21, 2004, Dr. Zavoral discussed the employee's medical history, noting that he had incomplete information concerning treatment for his coronary disease, diabetes and hypertension. He opined that, while the employee did fit the profile for high risk of heart disease, this disease was further aggravated by the pain and recurrent cervical fusions. Dr. Zavoral stated that, ultimately, the aggravation of the work injuries provided a great deal of stress to the employee's heart and was responsible for the myocardial infarction and stroke post bypass. He cited morbidity and mortality statistic for postsurgical patients, opined that the time period of under a month following the second operation was statistically related as an aggravating factor for subsequent myocardial infarction.

In a medical report dated December 28, 2004, Dr. Zavoral discussed supplemental medical records provided by appellant. He stated that there was a high risk for heart disease, however, he believed that the work-related injuries were a substantive and aggravating cause of the employee's cardiovascular issues with subsequent myocardial infarction, a cerebrovascular accident after the first bypass and ultimately death from aspirational pneumonia.

By decision dated March 31, 2005, the hearing representative affirmed the denial of death benefits on the grounds that Dr. Berman's medical opinion was sufficient to be given special weight, as it was well rationalized and based on a complete medical and factual background. She further noted that appellant did not have an unqualified right to participate in the selection of the impartial medical examiner and never set forth a valid reason for participating nor gave a valid objection to the selection of Dr. Berman.

On December 27, 2005 appellant, through counsel, filed a request for reconsideration on the merits.

By decision dated March 30, 2006, the Office denied modification finding that the October 21 and December 28, 2004 medical reports by Dr. Zavoral did not provide rationalized

¹ Appellant also included a copy of Dr. Zavoral's curriculum vitae.

medical opinion sufficient to support a causal relationship between the employee's death and his work injuries.

On December 18, 2006 appellant, through counsel, filed a request for reconsideration on the merits.

In an October 31, 2006 medical report, Dr. Zavoral opined that the employee's work injuries and cervical neck fusions were the cause of the myocardial infarction and subsequent cerebrovascular accident. He stated that the stress of any operation, particularly one involving the cervical neck, which requires immobility and a great deal of pain, places cardiovascular stress on the heart, metabolically causing epinephrine surges, transfusions, hypertension and often glucose and coagulation and perfusion factors that can be etiologically related to heart attacks. Further, Dr. Zavoral, citing to the *Annals of Thoracic Surgery*, described the result of undergoing coronary artery bypass, including nonpulsatile blood flow and an increase of inflammation factors and coagulation changes due to arteries lacking a relaxing phase, which can lead to cerebrovascular accidents and nervous system damage. He reported that the survival rate for patients sustaining a cerebrovascular accident subsequent to coronary artery bypass surgery decreased 67 percent at one year and 47 percent at five years. Dr. Zavoral further opined that the employee's young age of 48 and the short time period between the second cervical fusion and the myocardial infarction support his conclusion that the myocardial infarction and cerebrovascular event were a result of the accepted cervical fusions.

By decision dated February 7, 2007, the Office denied modification on the grounds that Dr. Zavoral did not include any objective findings of medical evidence to support his opinion. Thus, the weight of the medical evidence continued to rest with Dr. Berman, who determined that appellant's death was unrelated to his employment injuries.

In a February 7, 2008 medical report, Dr. Zavoral opined that the employee was too young to die of a heart attack and stroke without the intervening occupation damage causing his cervical neck disease. He stated that the stress of a significant operation, such as a cervical fusion and coronary artery bypass, requires immobility, great pain, cardiovascular stress, hyperfusion of the brain, hypertension, issues with carbohydrate metabolism, elevation and lowering of blood sugars and micro and macro perfusion facts. Dr. Zavoral opined that the temporal connection, between the surgeries, myocardial infarction, bypass and subsequent stroke and the stress of the cervical fusion are considered objectively in all medical literature to be related to the surgical morbidity and mortality of a major operation.

On February 11, 2008 appellant, through counsel, filed a request for reconsideration of the merits.

By decision dated April 9, 2008, the Office denied modification on the grounds that the weight of the medical evidence continued to rest with Dr. Berman.

On May 27, 2008 appellant, through counsel, filed a request for reconsideration on the merits. Appellant contended that Dr. Berman's medical report was not entitled to special weight as his report was not based on complete medical records and his medical opinion was not fully rationalized.

By decision dated July 11, 2008, the Office denied reconsideration of the merits on the grounds that appellant did not submit relevant evidence or present legal contentions not previously considered.

LEGAL PRECEDENT -- ISSUE 1

The mere fact that the employee was receiving compensation benefits prior to his death does not afford a basis for an award of death benefits.² Appellant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his federal employment. This burden includes the necessity of furnishing medical opinion evidence of a cause and effect relationship based on a proper factual and medical background.³

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁴ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

Section 8123(a) of the Federal Employees' Compensation Act⁸ provide that, if there is a disagreement between the physician making the examination for the United States and physician of the employee, the Secretary shall appoint a third physician who shall make an examination. It is well established that, when a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently rationalized and based on a proper factual and medical background, must be given special weight.⁹

ANALYSIS -- ISSUE 1

The Office accepted that the employee sustained a lumbosacral strain, right cervical radiculopathy, cervical fusion and cervical discectomy at C5-6 resulting from his December 3,

² *Francis J. Herring (George F. Herring)*, 32 ECAB 734 (1981).

³ *Kathy Marshall (Dennis Marshall)*, 45 ECAB 827, 832 (1994); *Timothy Forsyth (James Forsyth)*, 41 ECAB 467, 470 (1990).

⁴ *See Naomi A. Lilly*, 10 ECAB 560, 572-573 (1959).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ 5 U.S.C. § 8123(a).

⁹ *Gloria E. Godfrey*, 52 ECAB 486 (2001).

1983 and December 12, 1984 employment injuries. The employee subsequently sustained a heart attack, underwent coronary bypass surgery and sustained a stroke, which lead to other medical complications. The issue is whether appellant established that the employee's death was causally related to his accepted conditions. The Board finds that appellant did not meet her burden of proof.

The employee died on November 27, 1999. The death certificate listed aspiration pneumonia as the cause of death. In medical reports dated February 1 and October 2, 2000, Dr. Gorden opined that the employee's death from aspiration pneumonia was a result of general deterioration stemming from the accepted cervical fusions, which resulted in a heart attack, stroke and other medical complications. The Office referred the record to Dr. Mattingly for a second opinion. In a May 1, 2000 medical report, Dr. Mattingly concluded that the employee's heart problems, stroke and aspirational pneumonia were not a result of the accepted cervical injuries, but rather due to the employee's major risk factors, including age, sex, hypertension, elevated blood lipids, smoking, diabetes and a family history of coronary heart disease.

In an October 2, 2002 decision, a hearing representative determined that a conflict of medical opinion existed between Drs. Gorden and Mattingly. The Office then properly referred the record and a statement of accepted facts to an impartial medical examiner, Dr. Berman, a Board-certified cardiologist, to resolve the conflict, pursuant to 5 U.S.C. § 8123(a).

In a November 21, 2002 medical report, Dr. Berman found that the employee's death was related to preexisting coronary disease and other risk factors. He cited the absence of complications from the cervical surgeries and the substantial time in between the second surgery and the myocardial infarction as evidence that the employee's ensuing complications and eventual death were unrelated to his employment injuries. Dr. Berman further noted that he did not have access to a complete medical record, specifically medical reports relating to the myocardial infarction or triple coronary bypass graft surgery.

By decision dated August 5, 2003, an Office hearing representative found that Dr. Berman did not have access to a complete medical record. She properly remanded the case and ordered the Office to submit a complete medical file to Dr. Berman for a supplemental report.¹⁰

In a June 30, 2004 supplemental medical report, Dr. Berman opined that the employee's death was unrelated to his cervical injuries. He found that the major cause of the coronary disease was significant risk factors, including age, sex, previous coronary disease, smoking and positive family history. Dr. Berman noted Dr. Gorden's contentions that the employee experienced a hypercoagulable state, finding that this was speculative and unsupported by the record. He opined that there was nothing in the record to support that the employee's death was

¹⁰ The report of an impartial medical specialist is only entitled to special weight when it is well rationalized and based on a proper factual background. Where the Office secures an opinion from an impartial medical specialist for the purpose of resolving a conflict in medical opinion evidence and the opinion from such specialist requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the impartial specialist for the purpose of correcting the defect in the original report. *See Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988).

related to his cervical injuries and further, the time interval between the heart attack and the surgery argued against causation.

The Board finds that Dr. Berman's medical report was well rationalized and based on a complete medical record and proper statement of accepted facts. Thus, his conclusion, that the employee's accepted injuries were not the cause of his eventual death, is afforded special weight.¹¹

Appellant subsequently submitted a February 19, 2002 medical report by Dr. Gorden, who opined that the employee did not fully recover from his second cervical fusion and only a short time after the surgery experienced a heart attack and stroke, leading to pneumonia. The Board finds that Dr. Gorden's subsequent report was not sufficient to overcome the special weight afforded to Dr. Berman's report, as he was on one side of the resolved conflict and did not provide any new rationale to support his opinion on causation.¹²

Appellant further provided medical reports dated October 21 and December 28, 2004, October 31, 2006 and February 7, 2008 by Dr. Zavoral, who opined that the employee's cervical injuries and cervical fusions were an aggravating cause of the subsequent heart attack, stroke and pneumonia, precipitating his death. Dr. Zavoral stated that the stress of any operation, particularly a cervical fusion would place stress on the heart, which is etiologically related to heart attacks. He further stated that the time between the cervical fusion, coronary bypass and stroke was significant based on morbidity statistics and the employee's young age.

The Board finds that Dr. Zavoral's medical reports not of equal weight to those of Dr. Berman's and, thus, are insufficient to create a new conflict of medical opinion. Dr. Zavoral premised most of his opinion on probabilities, citing to literature and statistics, rather than objective facts in the employee's medical record. He speculatively referred to the medical records and supported his opinions primarily with statistical probabilities, thus his reports are of diminished probative value.¹³ Further, Dr. Zavoral did not provide a fully rationalized chain of causation between the cervical injuries and the employee's death. While he discussed at length the connection between the cervical surgeries and subsequent heart attack and stroke, he failed to relate these conditions to the employee's pneumonia or eventual death.¹⁴ Moreover, Dr. Zavoral is Board-certified in pediatrics and not a relevant specialty, thus his reports are not of equal weight to those of Dr. Berman, a Board-certified cardiologist.¹⁵ Therefore, Dr. Berman's

¹¹ See *Gloria E. Godfrey*, *supra* note 9.

¹² A physician on one-side of a conflict in medical opinion that is resolved by an impartial medical examiner cannot come back and create a new conflict without submitting new rationale or medical evidence to support his opinion. See *Dorothy Sidwell*, 41 ECAB 857 (1990).

¹³ Medical opinions which are speculative in nature are of limited probative value on the issue of causal relationship. See *Jennifer Beville*, 33 ECAB 970 (1982).

¹⁴ See *Francis J. Herring (George F. Herring)*, *supra* note 2.

¹⁵ The opinion of a physician who has special training and knowledge in a specialized medical field has greater probative value than the opinion of an individual who is not a specialist. See *Earl J. Mills*, 12 ECAB 462 (1961).

opinion, that the employee's death was unrelated to his employment conditions, remains the special weight of the medical evidence.

The Board notes appellant's objection to the special weight given to Dr. Berman's medical reports because she did not participate in his selection. As correctly stated in the March 31, 2005 decision of the hearing representative, appellant is not provided an unqualified right to participate in the selection of an impartial medical examiner.¹⁶ Under Office procedures, a claimant who asks to participate in the selection of an impartial medical examiner or who objects to the selected physician must provide a valid reason.¹⁷ By Office letter dated November 20, 2002, appellant was invited to provide a valid, written, reason for participation in the selection process. The only reason provided by appellant was that she had a legal right to participate in selecting the impartial medical examiner. This does not constitute a valid reason because, as stated above, she does not have an unqualified right to participate in the selection process. Thus, the Board finds that the Office properly selected Dr. Berman as the impartial medical specialist without appellant's participation and his reports are entitled to the special weight of an impartial medical examiner.¹⁸

The Board finds that appellant did not establish that the employee's death was causally related to his work-related conditions.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹⁹ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.²⁰ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.²¹ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.²²

¹⁶ See *Irene M. Williams*, 47 ECAB 619 (1996).

¹⁷ See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examination*, Chapter 3.500.4(b)(4) (October 1990).

¹⁸ See *Miguel A. Muniz*, 54 ECAB 217 (2002) (where the Board determined that the Office properly refused appellant's request to participate in the selection of the impartial medical examination, finding that "assuring an impartial evaluation" was not a valid reason to allow participation).

¹⁹ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

²⁰ 20 C.F.R. § 10.606(b)(2).

²¹ *Id.* at § 10.607(a).

²² *Id.* at § 10.608(b).

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record²³ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.²⁴ While a reopening of a case may be predicated solely on a legal premise not previously considered, such reopening is not required where the legal contention does not have a reasonable color of validity.²⁵

ANALYSIS -- ISSUE 2

Appellant did not submit any relevant and pertinent new evidence. Therefore, the issue is whether she raised previously unconsidered, relevant legal arguments or showed the Office erroneously applied a specific point of law.

In support of her reconsideration request, appellant, through counsel, argued that Dr. Berman's reports were not entitled to special weight because he did not have access to all relevant medical records and did not provide a well-rationalized opinion.

Appellant raised identical issues in a February 15, 2005 letter. In the March 31, 2005 decision, the hearing representative addressed these issues, finding that Dr. Berman's medical report was well rationalized and based on a complete medical and factual background. Thus, the Board finds that the Office properly denied appellant's request for reconsideration on the merits, as the arguments set forth as the basis for the request had been previously raised and adjudicated.

CONCLUSION

The Board finds that appellant did not establish that the employee's death on November 27, 1999 was causally related to his accepted employment injuries. Further, the Board finds that the Office properly denied appellant's request for further merit review pursuant to 5 U.S.C. § 8128(a).

²³ *D.I.*, 59 ECAB ___ (Docket No. 07-1534, issued November 6, 2007); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

²⁴ *D.K.*, 59 ECAB ___ (Docket No. 07-1441, issued October 22, 2007); *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

²⁵ *M.E.*, 58 ECAB ___ (Docket No. 07-1189, issued September 20, 2007); *John F. Critz*, 44 ECAB 788, 794 (1993).

ORDER

IT IS HEREBY ORDERED THAT the July 11 and April 9, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 22, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board