

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHARON M. POWELL and U.S. POSTAL SERVICE,
POST OFFICE, Wichita, KS

*Docket No. 00-1130; Oral Argument Held April 5, 2001;
Issued January 25, 2002*

Appearances: *Beth Regier Foerster, Esq.*, for appellant; *Paul J. Klingenberg, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated authorization for continued medical treatment of appellant's employment-related psychiatric condition; and (2) whether the Office properly determined that the selected position of real estate broker reasonably represented appellant's wage-earning capacity.

On August 27, 1976 appellant, then a 23-year-old clerk, filed a traumatic injury claim, which the Office accepted for back strain and later included nerve root involvement and discectomy at L3-4 and L4-5. She underwent surgery for her accepted back condition in 1976, 1979 and 1982. The Office also accepted aggravation of depression due to appellant's physical condition and surgeries. In April 1981, appellant resigned from the employing establishment to pursue a career in real estate. She received wage-loss compensation and medical benefits for her employment-related injuries.

In the late 1980s, the Office referred appellant for vocational rehabilitation and, as a result, the employing establishment offered her a part-time position as a modified clerk-typist. The Office found this position to be suitable. Due to appellant's failure to report for duty, the Office terminated her compensation effective April 8, 1990. However, in a decision dated June 12, 1990, the Office's hearing representative set aside the March 5, 1990 decision and reinstated appellant's disability compensation.

After a hiatus of several years, appellant resumed work as a realtor in late 1990.¹ In November 1995, the Office again referred appellant's claim for vocational rehabilitation services with a particular emphasis on identifying suitable employment within the real estate industry. At the Office's request, appellant underwent both psychiatric and orthopedic evaluations in April 1997 to ascertain the extent of any continuing employment-related disability. Additionally, in November 1998, appellant underwent an impartial medical examination to resolve a conflict in medical opinion regarding her employment-related psychiatric condition.

On March 26, 1999 the Office terminated appellant's medical benefits with respect to her accepted psychiatric condition. In a second decision, the Office found that the selected position of real estate broker was medically and vocationally suitable and reasonably represented appellant's wage-earning capacity. As a result, the Office reduced appellant's wage-loss compensation to zero.² She subsequently requested an oral hearing, which was held on September 20, 1999. In a decision dated January 7, 2000 and finalized January 11, 2000, the Office hearing representative affirmed the prior decision dated March 26, 1999.

The Board finds that the Office properly terminated authorization for continued medical treatment of appellant's employment-related psychiatric condition.

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

Dr. Stephen E. Peterson, a Board-certified psychiatrist and Office referral physician, examined appellant on April 10 and 11, 1997 and in a report dated July 10, 1997, he found that appellant was malingering. He specifically found that appellant was not suffering an emotional condition. Appellant's treating psychologist, Samuel N. Harrell, Ph.D., reviewed Dr. Peterson's findings and in a report dated February 26, 1998, diagnosed dysthymic disorder and psychological factors affecting medical conditions. Additionally, Dr. Harrell specifically rejected Dr. Peterson's diagnosis of malingering and he attributed appellant's current condition to her employment injury. He further commented that appellant was unable to seek or maintain full-time employment due to her psychological disability.

¹ Appellant is currently employed as a real estate broker with Best Choice Suburban Homes (BCSH), a business owned by her husband. She began her tenure with BCSH in 1990.

² In its February 23, 1999 notice of proposed termination, the Office determined that appellant had an income potential of \$40,000.00 per year as a real estate broker, which represented potential weekly earnings of \$769.23. The current weekly pay rate for the job appellant held when injured was calculated to be \$713.71.

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*; *Calvin S. Mays*, 39 ECAB 993 (1988).

In light of the differing opinions of Drs. Peterson and Harrell, the Office determined that a conflict of medical opinion existed.⁵ The Office referred appellant to Dr. John M. Schmitz, a Board-certified psychiatrist and impartial medical examiner. In a report dated November 23, 1998, Dr. Schmitz diagnosed dysthymic disorder. He further stated that he saw no objective findings to indicate that appellant continued to suffer from residuals of her accepted condition of aggravation of depression. Dr. Schmitz explained that there was no evidence of a major depressive episode and at most, appellant satisfied the criteria for a dysthymic disorder. Additionally, he noted inconsistencies with Dr. Harrell's diagnosis of psychological factors affecting medical condition. He suggested a possible alternative diagnosis of mental disorder not otherwise specified due to a general medical condition.

Dr. Schmitz explained that appellant exhibited pattern of depressive behavior prior to her 1976 employment injury and that her general pattern seems to be one of periodic bouts with mild depression that cannot be linked in causal fashion to her work-related injury. With respect to a diagnosis of malingering, Dr. Schmitz noted that he too saw many inconsistencies with appellant's presentation, however, he was unable to make a specific diagnosis of malingering. He explained that while there was evidence of secondary gain from the determination of appellant's disability, this evidence did not preclude psychiatric diagnoses other than malingering. Dr. Schmitz also stated that appellant was capable of performing the job of real estate agent and broker. He surmised that appellant's involvement in real estate would be therapeutic in treating her alleged self-esteem problem and would also seem preventative, rather than causative, with regard to future issues related to depression.

In a report dated March 17, 1999, Dr. Harrell reiterated his prior diagnosis of dysthymic disorder and psychological factors affecting medical condition. He further stated that appellant was permanently, partially disabled and could work part time from 8 to 10 hours per week. Dr. Harrell also stated that appellant's psychiatric condition was exacerbated by legal proceedings initiated in 1994 by the employing establishment and that the currently unresolved legal proceedings continue to affect her mental condition.⁶

In cases where the Office has referred appellant to an impartial medical examiner to resolve a conflict in the medical evidence, the opinion of such a specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

The Board finds that the Office properly relied on the impartial medical examiner's opinion as a basis for terminating appellant's psychiatric medical benefits. Dr. Schmitz's opinion is sufficiently well rationalized and based upon a proper factual background. He not only examined appellant, but also reviewed her medical records. Dr. Schmitz also reported

⁵ The Federal Employees' Compensation Act provides that if there is disagreement between the physician making the examination for the Office and the employee's physician, the Office shall appoint a third physician, who shall make an examination. 5 U.S.C. § 8123(a); *Shirley L. Steib*, 46 ECAB 309, 317 (1994).

⁶ Dr. Harrell issued a similar report dated October 15, 1999.

⁷ *Gary R. Sieber*, 46 ECAB 215, 225 (1994).

accurate medical and employment histories. Therefore, the Office properly accorded determinative weight to Dr. Schmitz's opinion.⁸

Dr. Harrell's reports dated March 17 and October 15, 1999 are insufficient to overcome the weight properly accorded Dr. Schmitz's opinion. While both Dr. Harrell and Dr. Schmitz diagnosed dysthymic disorder, it is not entirely clear from Dr. Harrell's report why this condition precluded appellant from working more than 10 hours a week. He did not specifically reference or comment on Dr. Schmitz's findings. Furthermore, Dr. Harrell clearly attributed appellant's current condition in part to her reaction to investigative and legal actions initiated against her in 1994, which to date remain unresolved.⁹ Although he also attributed appellant's psychiatric condition to her 1976 employment injury, it is unclear from his reports how he was apparently able to distinguish the various employment and nonemployment-related causative factors and apportion their relative impact on appellant's current condition.

In a report dated October 18, 1999, clinical psychologist, Harold J. McNamara, Ph.D., diagnosed depressive reaction, prolonged, with anxiety and stress secondary to physical injury. He explained that appellant was still suffering from recurrent physical pain that must be tolerated as well as psychological pain as a reaction to her physical condition and the limitations required. Additionally, Dr. Harold M. Voth, a Board-certified psychiatrist, submitted an October 15, 1999 report wherein he diagnosed depression. Although he attributed appellant's condition to her 1976 employment injury, he further stated that the subsequent investigations by the employing establishment, which appellant viewed as a serious attack on her honesty and integrity, "have contributed in a major way to her current condition."

Drs. McNamara and Voth devoted a good portion of their respective reports to refuting Dr. Peterson's diagnosis of malingering.¹⁰ However, neither physician addressed the relevant issue of whether appellant was capable of working as a full-time real estate broker and neither physician specifically addressed Dr. Schmitz's findings regarding causal relationship.¹¹ Dr. Voth's analysis of the issue of causal relationship is akin to a simple chronology of events

⁸ The Board rejects appellant's contention that Dr. Schmitz's opinion should be accorded no probative value based upon his review of an allegedly tainted statement of accepted facts dated March 4, 1998. The inaccuracies noted by appellant and the alleged procedural missteps taken by the Office in preparing the statement of accepted facts do not appear to have substantially effected Dr. Schmitz's opinion. Specifically, Dr. Schmitz did not attach any particular significance to the timing of appellant's claimed aggravation of depression. His analysis regarding the severity of appellant's current condition focused primarily on the type of treatment she received in the past and the sporadic nature of her treatment in comparison with her current level of treatment and Dr. Schmitz's own findings on examination. Consequently, the question of whether appellant initially sought treatment for her psychiatric condition in November 1980 or at some later date did not factor into Dr. Schmitz's opinion regarding the extent and cause of appellant's current psychiatric condition.

⁹ While these legal matters are related to appellant's receipt of disability compensation, the issue of whether appellant received disability compensation while simultaneously earning unreported income from her employment activities at BCSH is not before the Board.

¹⁰ Dr. Harrell similarly devoted a significant portion of his most recent report to the question of whether appellant was malingering. The emphasis on refuting Dr. Peterson's diagnosis of malingering is a bit misplaced in light of the fact that Dr. Schmitz's opinion represented the weight of the medical evidence.

¹¹ Both physicians indicated that they reviewed Dr. Schmitz's November 23, 1998 report.

rather than a rationalized opinion on the relationship between appellant's current condition and her accepted employment injury. Furthermore, he clearly implicated unrelated legal matters as the primary causative factor in appellant's current psychiatric condition. Dr. Voth failed to explain how he was able to apportion the employment related and nonemployment-related causative factors of appellant's current psychiatric condition.

Dr. McNamara's report is similarly deficient in that he simply concludes that appellant's current condition is related to her accepted employment injury without providing any explanation. While he went to great lengths to explain the basis for his disagreement with Dr. Peterson's diagnosis of malingering, he offered no similarly detailed explanation for his opinion on causation. It is also noteworthy that, unlike Drs. Harrell and Voth, Dr. McNamara did not specifically comment on the impact of appellant's legal problems on her current psychiatric condition.

The recent reports of Drs. Harrell, McNamara and Voth are insufficient to overcome the weight accorded Dr. Schmitz's November 23, 1998 opinion. They failed to provide a rationalized medical opinion demonstrating a causal relationship between appellant's current psychiatric condition and her accepted employment injury. In fact, the reports of Drs. Harrell and Voth clearly indicate that appellant's current psychiatric condition is due in large part to factors unrelated to her accepted employment injury.¹² As the weight of the medical evidence establishes that appellant no longer has residuals of an employment-related psychiatric condition, the Office properly terminated appellant's authorization for further medical treatment.

The Board also finds that the Office properly determined that the selected position of real estate broker was medically and vocationally suitable and reasonably represented appellant's wage-earning capacity.

An injured employee who is either unable to return to the position held at the time of injury or unable to earn equivalent wages, but who is not totally disabled for all gainful employment, is entitled to compensation computed on loss of wage-earning capacity.¹³ Under section 8115(a) of the Act, wage-earning capacity is determined by the actual wages received by an employee if the earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity, or if the employee has no actual wages, the wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, the employee's usual employment, age, qualifications for other employment, the availability of suitable employment and other factors and circumstances which may affect the employee's wage-earning capacity in his or her disabled condition.¹⁴

¹² Appellant's emotional reaction to her current legal imbroglio for alleged fraudulent receipt of disability compensation has not been accepted as related to her 1976 employment injury. Thus, any disability arising from these unrelated factors is not compensable under the current claim.

¹³ 20 C.F.R. §§ 10.402, 10.403(1999); see *Alfred R. Hafer*, 46 ECAB 553, 556 (1995).

¹⁴ 5 U.S.C. § 8115(a); see *Mary Jo Colvert*, 45 ECAB 575 (1994); *Keith Hanselman*, 42 ECAB 680 (1991).

When the Office makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to an Office wage-earning capacity specialist for selection of a position listed in the Department of Labor's *Dictionary of Occupational Titles*, or otherwise available in the open labor market, that fits the employee's capabilities with regard to his or her physical limitations, education, age and prior experience. Once this selection is made, a determination of wage rate and availability in the open labor market should be made through contact with the state employment service or other applicable service. Finally, application of the principles set forth in the *Shadrick* decision will result in the percentage of the employee's loss of wage-earning capacity.¹⁵

In this case, while appellant is a licensed real estate broker and currently employed, she reported no net income from her employment activities as a broker. As appellant reported no actual earnings, the Office determined her wage-earning capacity based upon the selected position of real estate broker.

As previously discussed, the Office accorded determinative weight to Dr. Schmitz's November 23, 1998 opinion and properly found that appellant no longer suffered from residuals of her employment-related psychiatric condition. Additionally, Dr. Schmitz found from a psychiatric standpoint, appellant was capable of performing the duties of a real estate broker.

In concluding that appellant was physically capable of performing the duties of a full-time real estate broker, the Office relied primarily upon the April 8, 1997 opinion of Dr. Richard E. Whitehead, a Board-certified orthopedic surgeon and Office referral physician. He diagnosed degenerative disc disease from L1 to the sacrum. Dr. Whitehead also noted disc protrusion at L1-2 and disc protrusion and/or extrusion at L2-3 with narrowing of the spinal canal. However, he found no signs of nerve compromise or radiculopathy. Dr. Whitehead attributed the diagnosed condition to appellant's employment injury. He specifically noted "[t]here is medical evidence that [appellant's] work[-]related condition is currently active and causing objective findings." Regarding the issue of appellant's work limitations, Dr. Whitehead stated:

"I believe [appellant] is capable of performing the duties of real estate assistant/clerk. It is expected that she will have some lumbar discomfort. However[,] in view of the negative electrical studies showing no sign of nerve compromise, it is felt that those occupations which do not involve lifting or pushing/pulling could be tolerated on an [eight] hour [a] day basis. In my experience the vast majority of people that have protruding lumbar discs are able to do sedentary work on a full-time basis when (sic) they do not have actual radiculopathy, which she does not have."

He further indicated that the amount of lumbar discomfort he would expect appellant to experience "should be tolerable." In closing, Dr. Whitehead stated: "Having read the information ... provided regarding [appellant's] long hours of work in the private sector, it would certainly be further evidence that she is capable [of] working [eight] hours daily."

¹⁵ *Albert C. Shadrick*, 5 ECAB 376 (1953).

Dr. Whitehead also submitted an October 17, 1997 work-capacity evaluation (Form OWCP-5c), wherein he noted permanent restrictions of lifting, pulling and pushing. He explained that lifting should be limited to 10 pounds and there should be no intense pulling or pushing. Dr. Whitehead stated appellant was capable of working eight hours a day while observing these limitations.

Appellant argues that Dr. Whitehead's opinion is of no probative value because he relied upon a January 21, 1997 statement of accepted facts that was fraught with inaccuracies, particularly with respect to the amount of time she previously worked while employed at BCSH. While appellant has submitted a number of affidavits and statements from individuals who were purportedly misquoted when providing information regarding appellant's work schedule,¹⁶ the question of the accuracy of the information provided Dr. Whitehead is a moot issue. As evidenced by the above-quoted passages from Dr. Whitehead's report, it is clear that his opinion regarding appellant's ability to work eight hours a day while observing certain physical restrictions was based primarily on his physical examination of appellant and other pertinent medical records. Although Dr. Whitehead also referenced information regarding appellant's "long hours of work in the private sector," he viewed this information as merely "*further evidence* that she [was] capable [of] working eight hours daily." Dr. Whitehead specifically referenced the absence of signs of "nerve compromise" as a pertinent factor in his determination of appellant's work tolerance level. As such, the question of whether Edwin R. Hill stated that BCSH worked "tons of hours" on his Highlands project rather than appellant herself working "tons of hours" is not dispositive on the issue of the probative value to be accorded Dr. Whitehead's April 8, 1997 opinion.

Alternatively, appellant argues that there is an unresolved conflict of medical opinions between Dr. Whitehead and her treating physician, Dr. Robert L. Eyester. The Board finds no such conflict to exist. A mere disagreement between an Office referral physician and appellant's physician does not, of itself, create a conflict of medical opinion. To constitute a true conflict, the opposing physicians' reports must be of virtually equal weight and rationale.¹⁷ In this case, Dr. Eyester's opinion does not rise to the level of rationalized medical opinion evidence and, therefore, is insufficient to create a conflict of medical opinion when juxtaposed with Dr. Whitehead's April 8, 1997 opinion.

Dr. Eyester's most recent report dated March 11, 1999 provides permanent restrictions of no lifting over 15 pounds and no repetitive forward bending. He further noted that appellant is not to exceed "15 hours a week."¹⁸ Dr. Eyester's examination revealed "negative straight leg

¹⁶ One such example is a March 15, 1999 notarized statement from Edwin R. Hill, a local builder and owner of Hillcrest Homes, who in 1994 employed BCSH as the listing agent for his Highlands project in Andover, KS. After describing the frequency of his interactions with appellant and other BCSH employees, Mr. Hill stated: "I would estimate 'Best Choice' to be working 'tons of hours,' not [appellant] specifically." Mr. Hill further stated that "[b]ecause of the irregular times I see [appellant], I could say with no accuracy or certainty what-so-ever (sic), how many hours she actually works." The January 21, 1997 statement of accepted facts indicates that Mr. Hill stated "he knew that the claimant worked 'a ton' of hours ... approximately 64 hours a week."

¹⁷ *Robert D. Reynolds*, 49 ECAB 561, 566 (1998).

¹⁸ Dr. Eyester imposed similar restrictions in December 1995.

raising ... no atrophy ... [and] no specific reflex, motor or sensory change[s].” Additionally, x-rays were noted to reveal “degenerative changes of the disc and marked narrowing at two to three with fusion of the lower three vertebra.” Dr. Eyster stated: “I believe [appellant] is still disabled ... and the restrictions as stated before are still necessary.” Although he stated appellant was still disabled, Dr. Eyster offered no explanation OF why appellant’s x-ray results and the negative findings on physical examination limited her to working only “15 hours a week.” Absent such an explanation, Dr. Eyster’s report cannot be considered rationalized. Accordingly, the Board does not find a conflict of medical opinion between Drs. Whitehead and Eyster.¹⁹

Appellant next argues that the selected position of real estate broker exceeds the 10-pound lifting restriction imposed by Dr. Whitehead. Appellant correctly notes that the real estate broker position description provides for maximum lifting of 20 pounds whereas Dr. Whitehead imposed a 10-pound lifting restriction in his October 17, 1997 Form OWCP-5c. The position descriptions the Office provided Dr. Whitehead in April 1997 were prepared in December 1995 and while this information notes maximum lifting restrictions of 20 pounds it further clarifies that the real estate agent position requires frequent lifting/carrying up to 10 pounds. Dr. Whitehead reviewed this information at the time of his April 1997 examination and found that appellant could perform the duties of “real estate assistant/clerk.” However, his April 8, 1997 report did not identify any specific weight limitations with respect to lifting. Approximately 6 months later and apparently without benefit of further review of the record, Dr. Whitehead submitted his October 17, 1997 Form OWCP-5c, which noted a lifting restriction of 10 pounds.

The issue is not whether Dr. Whitehead specifically found that appellant was capable of performing the duties of a real estate broker, but whether the Office properly determined that the position is medically suitable based upon the evidence of record. From December 1995 to as recently as March 1999, appellant’s treating physician, Dr. Eyster maintained that she was capable of lifting up to 15 pounds. While Dr. Eyster’s limitation exceeds the 10-pound limitation imposed by Dr. Whitehead, it still falls short of the maximum lifting limitation of 20 pounds set forth in the *Dictionary of Occupational Titles*. It bears noting that the selected position of real estate broker is one that appellant has actually performed for at least a decade. Presumably, she has observed the 15-pound lifting restriction imposed by her own physician. While the broker’s position requires a maximum lifting capability of 20 pounds, appellant would more readily be called upon to lift up to 10 pounds. As this latter requirement is consistent with the limitations imposed by both Dr. Whitehead and Dr. Eyster, the Board finds that the Office properly concluded that appellant was physically capable of performing the duties of a full-time real estate broker.²⁰

Appellant also challenges the Office’s determination that a full-time real estate broker in her local community is capable of earning \$40,000.00 annually. The Office’s rehabilitation counselor indicated that her contacts with the local real estate market revealed a range of compensation from \$30,000.00 to \$50,000.00 plus for a broker with up to 5 agents working for

¹⁹ *Robert D. Reynolds, supra* note 17.

²⁰ In November 1999, Dr. Eyster, without explanation, imposed a five-pound lifting restriction and reduced appellant’s work to two hours a week.

her. She further explained that \$40,000.00 was a reasonable, midrange figure based upon the information and feedback received. Although appellant alleged that the Office's determination is based upon gross earnings, she has not provided any evidence demonstrating that the data compiled by the Office rehabilitation counselor represented gross, rather than net income potential. In fact, appellant submitted evidence that further supports the Office's finding.

In a letter dated October 19, 1999, Colleen J. Read, a local broker with Plaza Real Estate, Inc., stated that "\$50,000.00 [plus] ... is in the ballpark of what a Plaza agent could make." Ms. Read further explained that "[e]xpenses run around 1/3 of gross income; and gross income could be anything over \$50,000.00"²¹ Additionally, appellant submitted a compensation survey from *Realtor Magazine* (September 1999), which reported 1998 median gross income for brokers of \$59,000.00 and median out-of-pocket expenses of \$8,400.00. Thus, contrary to appellant's contention, the high range of \$50,000.00 of annual income noted by the rehabilitation counselor and confirmed by Ms. Read, represents net income potential.

Notwithstanding the apparent success of other local realtors, appellant contends that her own personal experience as a realtor should serve as a benchmark for what the local real estate market will bear. Appellant indicated that unlike the assumptions relied upon by the rehabilitation counselor, BCSH does not currently employ five full-time real estate agents from which she might otherwise draw a proportionate share of sales commissions. However, the size of appellant's staff and her purported inability to garner any net income from her employment as a real estate broker is not dispositive of whether the local market would support an average annual income of \$40,000.00. The issue is not whether appellant's current business operations are profitable.²² The determination of wage rate and availability is based upon consideration of the open labor market. The Office is not required to ensure that appellant obtain a position at the stated income level. If the evidence establishes that jobs in the selected position are reasonably available, the selection of such a position is proper even though the employee has been unsuccessful in obtaining work.²³

As further proof of her inability to earn \$40,000.00 annually as a real estate broker, appellant submitted an October 18, 1999 report from Dick Santner, an employment disability consultant. Mr. Santner stated that while it was possible for appellant to earn \$40,000.00 as a real estate broker, it was not probable. This report has little probative value inasmuch as Mr. Santner's opinion regarding appellant's earning potential is based on the erroneous assumption that she cannot work full time.

²¹ The Office's rehabilitation counselor identified Ms. Read as one of several local contacts that provided wage information relied upon to establish an earning potential of \$40,000.00 annually.

²² Appellant has consistently alleged that her work at BCSH has been unprofitable. However, in a letter dated December 14, 1999, Eugene Fagyal, a former BCSH customer, praised appellant for the quick and efficient manner in which she sold his property in November 1994 and further stated that "at closing, Best Choice donated the entire commission of \$2,094.00 to the church building fund in memory of my mother." Appellant's decision to donate her income does not negate the fact that she had earnings from her real estate activities.

²³ *Karen L. Lonon-Jones*, 50 ECAB 293 (1999).

In conclusion, the Board finds that the Office properly determined that the selected position of real estate broker was medically and vocationally suitable and reasonably represented appellant's wage-earning capacity.

The decision dated January 7, 2000 and finalized on January 11, 2000 of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
January 25, 2002

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member