United States Department of Labor
Employees' Compensation Appeals Board

C.S., Appellant	)	
and	)	**Docket No. 06-64**
	)	**Issued: August 10, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Spokane, WA, Employer	)	

Appearances:
Norman R. McNulty, Jr., Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 11, 2005 appellant filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs' decision dated July 22, 2005, which denied modification of a prior decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether the Office properly terminated appellant's compensation on May 2, 2003 on the grounds that she refused an offer of suitable work.

FACTUAL HISTORY

On October 3, 2000 appellant, then a 27-year-old rural mail carrier, filed a traumatic injury claim alleging that on October 2, 2000 she twisted her left knee while picking up mail in the performance of duty. She returned to limited-duty work on October 3, 2000.[1] An

[1] The limited-duty position was comprised of answering telephones, filing and above the waist casing.

October 13, 2000 magnetic resonance imaging (MRI) scan of the left knee revealed a normal patellofemoral department and a tear of the anterior aspect of the medial meniscus.

On October 18, 2000 the Office accepted the claim for left knee sprain and lumbar strain. On November 30, 2000 it authorized a surgical repair of the left knee, which appellant underwent on December 15, 2000. Appellant accepted a limited-duty position comprised of casing mail, filing, answering telephones and editing on January 23, 2001 for four hours a day.

In a January 23, 2001 emergency room report, Dr. Thomas E. Brodie, Board-certified in emergency medicine, noted that appellant fell down the stairs after her left knee hyperextended. He diagnosed multiple contusions and a sprain of the "right" knee.

A January 23, 2001 x-ray of the left knee and right shoulder, read by Dr. Richard A. Beren, a Board-certified diagnostic radiologist, were negative for abnormalities. In a February 13, 2001 report, Dr. Alex R. Verhoogen, a Board-certified orthopedic surgeon and treating physician, saw appellant for follow up of her knee surgery. He advised that appellant would return to light duty for four hours a day for two weeks, then eight hours a day for two weeks. Dr. Verhoogen opined that she would probably be released to regular duty in a month. He noted lost range of motion in the left knee that he attributed to her fall. On March 5, 2001 Dr. Verhoogen released appellant to regular work without restrictions.

In August 8 and November 12, 2001 reports, Dr. Patrick Z. Pearce, Board-certified in family medicine and a treating physician, noted that appellant was seen for thoracic and lumbar strains and probable mild connective tissue disorder. He noted appellant's fall down stairs and that this may have been caused by the employment injury. Dr. Pearce advised that appellant could continue to work in her modified position to avoid stress on her back and diagnosed chronic lumbar and thoracic back pain and mild connective tissue disorder.

Appellant stopped work again on November 13, 2001.

On November 16, 2001 Dr. Pearce repeated his diagnoses and placed appellant off work for a week. In a January 4, 2002 report, Dr. Pearce opined that appellant should continue light-duty work. A December 7, 2001 MRI scan of the thoracic spine read by Dr. Robert M. Farner, a Board-certified diagnostic radiologist, was normal. A January 9, 2002 cervical spine MRI scan, read by Dr. Farner, revealed minimal degenerative disc disease without nerve root impingement.

On January 10, 2002 the Office referred appellant to Dr. Scott V. Linder, a Board-certified orthopedic surgeon, for a second opinion. In a January 31, 2002 report, he reviewed appellant's history and provided findings. Dr. Linder explained that there were no objective findings to support appellant's subjective symptoms and noted that she had a negative arthroscopy of the left knee, as well as a normal MRI scan. Furthermore, he indicated that he did not identify any "residual pathology from the injuries under concern." Dr. Linder did not believe that "it was possible to state that her knee injury somehow caused the fall on the stairs." He opined that appellant did not have any residuals from her claimed injuries and opined that she could return to her regular work. Dr. Linder stated that the "real continued problem is that of a chronic pain syndrome" and recommended psychiatric evaluation if this continued.

In a February 15, 2002 report, Dr. Pearce released appellant to full duty on a trial basis.

On March 22, 2002 the Office proposed to terminate appellant's compensation on the basis that the weight of the medical evidence, as represented by Dr. Linder, established that appellant had fully recovered from the October 2, 2000 work injury. Appellant was allotted 30 days to submit the additional evidence.[2]

In a March 25, 2002 report, Dr. Pearce diagnosed chronic right neck and shoulder strain. Appellant stopped work in May 2002.

On August 15, 2002 the Office referred appellant, together with a statement of accepted facts and the medical record, to Dr. William T. Thieme, a Board-certified orthopedic surgeon, for an impartial medical evaluation. It found a medical conflict between Dr. Pearce, for appellant, who supported that appellant's accepted knee strain caused her fall down the stairs and that she had continued residuals of her employment injuries, and Dr. Linder, the Office referral physician, who opined that the accepted knee injury did not cause the fall on the stairs and that she had no residuals and could return to regular duty.

In an August 29, 2002 report, Dr. Thieme reviewed appellant's history of injury and treatment and conducted a physical examination. He noted a full range of motion in flexion, extension, lateral bending and turning. On left lateral bending, appellant had discomfort on the right side of her neck. She had a normal lumbar spine and that the left knee was normal with no evidence of a meniscal tear or ligamentous injury or cartilaginous abnormality. Dr. Thieme diagnosed a work-related sprain of the left knee with residual pain and quadriceps wasting. He also diagnosed a work-related sprain to the right shoulder and lumbar sprain as a result of her left knee giving way. Regarding the right shoulder, Dr. Thieme opined that appellant continued to have mild irritation in the shoulder and a limited range of motion in her back. He advised that appellant was partially disabled and "should not engage in heavy or repetitive bending, lifting or carrying." Dr. Thieme determined that appellant should not be on painkillers but could continue active exercises for the left knee and low back. He advised that appellant's residuals did not render her totally disabled for work.

On September 26, 2002 the Office requested clarification from Dr. Thieme as to the January 23, 2001 fall and whether any other conditions were related to the accepted employment injury. It requested further opinion regarding appellant's ability to work and provided him with a work capacity evaluation form. In a November 7, 2002 response, he opined that appellant's left knee strain had resolved. Dr. Thieme explained that appellant's knee sprain caused her fall; however, he opined that, as the knee sprain was not an accepted condition, it was not work related. He noted that there was no objective evidence of any residuals of her left knee sprain, except for minimal quadriceps wasting. Dr. Thieme explained that the only residual from her lumbar sprain was mild limitation of flexion. He opined that the absence of complaints relating to appellant's spine at the time of her fall, led him to conclude that she did not injure her spine at the time of the fall.

[2] On January 14, 2002 appellant filed a claim for a recurrence of January 28, 2001. This claim was denied by the Office on March 1, 2002. In a March 22, 2002 decision, the Office rescinded its denial of the recurrence because it did not wait 30-calendar days before making the decision. However, by decision dated March 22, 2002, the Office denied the claim for recurrence and rescinded acceptance of the left knee meniscal tear. The Office also denied appellant's claim for disability for the period November 13 to December 31, 2001.

On November 22, 2002 the Office requested further opinion as to whether the fall on January 23, 2001 was due to her employment-related left knee sprain. The Office also requested Dr. Thieme to address the injuries appellant sustained on January 23, 2001 and whether she had consequential injuries or residuals of her accepted injuries.

In a November 26, 2002 disability certificate, Dr. Tamara K. Grim, a Board-certified family practitioner and a treating physician, advised that appellant was unable to "carry out job duties of rural carrier any time in foreseeable future."

On December 4, 2002 Dr. Thieme noted the accepted conditions including the left knee sprain and lumbar sprain. He also noted that the accepted condition of a left knee meniscal tear was rescinded on March 22, 2002. Dr. Thieme opined that it was "probable that her fall was the consequence of her left knee sprain, which occurred at work on [October 2, 2000] until the time of her fall in January 2001." He added that it would not be unusual for the sprain to be symptomatic, especially because she had an arthroscopy during that time frame. Dr. Thieme opined that appellant had injuries to her cervical spine, her right shoulder, her left knee and the lumbar spine. He indicated that the left knee sprain had resolved; however, the lumbar sprain had not. Dr. Thieme opined that appellant continued to have residuals from the injuries incurred by the fall. In a December 22, 2002 work capacity evaluation, he advised that appellant was capable of working eight hours per day with restrictions, including two 15-minute breaks, and no pushing or pulling over 40 pounds, a 25-pound lifting restriction, and no squatting, kneeling or climbing.

On January 23, 2003 the employing establishment offered appellant a limited-duty job based on Dr. Thieme's work restrictions. The duties consisted of answering the telephones, filing of forms and forwarding cards, updating edit books and case labels and casing mail for the rural carriers. The physical requirements included no lifting over 25 pounds, pushing and pulling limited to 40 pounds of force, and no kneeling, climbing or squatting. Appellant declined the limited-duty offer on January 31, 2003.

In a January 31, 2003 disability certificate, Dr. Grim advised that she was trying to obtain a work ability assessment and explained that appellant would only be able to work after it was finished. Dr. Grim treated appellant for chronic neck and upper back pain. In a February 3, 2003 disability certificate, she advised that appellant needed to undergo a "PCE" to determine her work restrictions as a result of her upper back and neck pain. On February 10, 2003 she indicated that appellant felt she was "unable to perform the activities described by previous "IME [impartial medical examiner]."

In a February 10, 2003 report, Dr. Gregory J. Charboneau, a licensed clinical psychologist, noted that appellant had learned to reduce her pain while improving function. He explained that "[a]s a rural letter carrier, she needs to be able to lift large cases of mail and packages and extend her arm to reach letterboxes." Dr. Charboneau advised that appellant needed additional sessions to prepare her return to work.

By letter dated February 10, 2003, the Office advised Dr. Grim of the accepted conditions and noted that appellant had not requested authorization to obtain treatment from her. The

Office requested that she provide a medical report explaining the necessity of prolonged treatment.

By letter dated February 12, 2003, the Office advised appellant that the modified clerk position had been found to be suitable to her work capabilities and was currently available. Appellant was advised that she should accept the position or provide an explanation for refusing the position within 30 days. The Office informed her that if she failed to accept the offered position and failed to demonstrate that it was justified, her compensation could be terminated. Appellant did not respond to this notice.

In a February 28, 2003 report, Dr. Pearce noted that appellant had returned for follow-up of her chronic myofascial back pain. He noted that she had an exhaustive evaluation but basically nothing was found. Dr. Pearce recommended continued biofeedback and physical therapy. The Office also received physical therapy reports dating from November 2002 to February 2003. A January 7, 2003 electrodiagnostic report, read by Dr. Scott Carlson, a Board-certified psychiatrist and neurologist, was normal. The Office also received an October 17, 2002 report from Dr. Grim diagnosing chronic myofascial pain.

By letter dated April 15, 2003, the Office informed appellant that her refusal of suitable work was not justified and granted her an additional 15 days to accept the position without penalty. She was advised that no further reason for refusal would be considered. Appellant was also advised that if she continued to refuse the position, the provisions of 5 U.S.C. § 8106(c) would be enforced.

By letter dated April 30, 2003, appellant's representative submitted a copy of Dr. Grim's February 10, 2003 report, contending that appellant refused the offered position because she was "very unclear" as to her medical release from her attending physician. The representative alleged that the position needed to be identified so that appellant could present it to her physician.

In a May 2, 2003 decision, the Office terminated appellant's entitlement to monetary compensation benefits on the basis that she had refused suitable work.

In a February 28, 2003 report, Dr. Pearce diagnosed chronic myofascial back pain, poor core stability and advised that appellant was overweight. He also noted that appellant was not performing light duty. In a September 19, 2003 report, Dr. Grim noted that appellant had ongoing musculoskeletal pain and no new symptoms. On November 10, 2003 she advised that a back to work note was required. She wrote a note for appellant and advised that appellant would let her know how she was doing. In a disability certificate of the same date, Dr. Grim advised that appellant could return to full duty on November 11, 2003. In a January 9, 2004 report, Dr. Grim advised that appellant was seen for follow up after "another slipping injury at work."[3] She noted that appellant was seen at an urgent care facility twice and was back to her "routine and overall doing well."

[3] The Board notes that the record does not contain a claim for this incident.

By letter dated April 30, 2004, appellant's representative requested reconsideration, contending that Dr. Thieme's work release was questionable as the release to light duty and restrictions were not provided until five months after his examination and after several requests for clarification. The representative argued that the limited-duty job offer was declined because he had not released appellant for work and had not received or reviewed the light-duty offer. Appellant's representative asserted that a conflict existed between the impartial medical examiner and the attending physician.

By decision dated May 19, 2004, the Office denied modification of the May 2, 2003 decision.

By letter dated March 25, 2005, appellant's representative requested reconsideration, arguing that the Office misled the impartial medical examiner. He noted that Dr. Thieme did not know that the right shoulder problem was accepted and his restrictions did not address appellant's right shoulder condition.

In a March 23, 2005 statement, appellant alleged that the January 23, 2003 job offer included casing mail, which she described as sorting around 2,500 letters and repetitively extending her right arm and reaching above her shoulder for about 3.5 hours. She described pressure on her right arm and shoulder because of the repetitive nature of the activity and mid back pain because of the twisting. Appellant further alleged that, after her fall down the stairs on January 23, 2001, she experienced chronic pain in her shoulder, neck and back.

On April 11, 2005 the Office received an undated note from Dr. Grim advising that appellant was seen for ongoing back and shoulder pain on November 10, 2003, January 9 and July 30, 2004 and February 3, 2005. She provided copies of her treatment notes. However, Dr. Grim did not address the light-duty position or appellant's ability to perform the light-duty position.

In a July 21, 2005 memorandum of telephone call, the Office determined that appellant returned to full duty on May 22, 2004 and worked continuously until she resigned on June 4, 2005.

By decision dated July 22, 2005, the Office again denied modification of the May 2, 2003 termination decision.

LEGAL PRECEDENT

Once the Office accepts a claim it has the burden of justifying termination or modification of compensation benefits.[4] This includes cases in which the Office terminates compensation under section 8106(c)(2) of the Federal Employees' Compensation Act for refusal to accept suitable work.

[4] *Betty F. Wade*, 37 ECAB 556, 565 (1986); *Ella M. Garner*, 36 ECAB 238, 241 (1984).

Section 8106(c)(2)[5] of the Act provides that a partially disabled employee who refuses or neglects to work after suitable work is offered to, procured by, or secured for the employee is not entitled to compensation. Section 10.517(a)[6] of the Office's regulations provides that an employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified. After providing the two notices described in section 10.516,[7] the Office will terminate the employee's entitlement to further compensation under 5 U.S.C. §§ 8105, 8106 and 8107, as provided by 5 U.S.C. § 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. § 8103 or justified. To justify termination, the Office must show that the work offered was suitable,[8] and must inform appellant of the consequences of refusal to accept such employment.[9] According to Office procedures, certain explanations for refusing an offer of suitable work are considered acceptable.[10] Unacceptable reasons include appellant's preference for the area in which he or she resides, personal dislike of the position offered or the work hours scheduled, lack of promotion potential or job security.[11]

ANALYSIS

The Office properly found a conflict in the medical opinion. Appellant's physician, Dr. Pearce who stated that appellant's accepted injury resulted in her being totally disabled for work after falling down the stairs. He identified consequential neck, right shoulder, right hip and low back injuries. Dr. Linder, the second opinion physician, opined that the accepted knee injury did not cause the fall on the stairs and that appellant did not have any residuals and could return to regular duty.[12]

Title 5 U.S.C. § 8123(a) provides in pertinent part: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

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[5] 5 U.S.C. § 8106(c)(2).

[6] 20 C.F.R. § 10.517(a).

[7] 20 C.F.R. § 10.516.

[8] *See Carl W. Putzier*, 37 ECAB 691 (1986); *Herbert R. Oldham*, 35 ECAB 339 (1983).

[9] *See Maggie L. Moore*, 42 ECAB 484 (1991), *reaff'd on recon.*, 43 ECAB 818 (1992). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(d)(1) (July 1997).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(a)(1)-(5) (July 1997).

[11] *Arthur C. Reck*, 47 ECAB 339 (1996); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.5(c) (July 1996).

[12] The conflict with regard to whether injuries associated with the fall down stairs were employment related is not germane to the issue before the Board. For purposes of terminating monetary benefits under 5 U.S.C. § 8106(c), all medical conditions and restrictions must be considered, not just those that are employment related. *See Richard P. Cortes*, 56 ECAB ___ (Docket No. 04-1561, issued December 21, 2004).

In an August 29, 2002 report, Dr. Thieme noted his findings on examination, which included that appellant had full range of motion, a normal lumbar spine and a normal left knee with no evidence of a meniscal tear or ligamentous injury or cartilaginous abnormality. He reported his diagnoses and treatment recommendations. Dr. Thieme advised that appellant was partially disabled and "should not engage in heavy or repetitive bending, lifting or carrying." In a November 7, 2002 report, he opined that appellant's left knee strain had resolved and that she did not injure her spine in the fall. On December 4, 2002 Dr. Thieme noted the accepted conditions included the left knee sprain and lumbar sprain. He also noted that the accepted condition of a left knee meniscal tear was rescinded on March 22, 2002 and opined that her fall was the consequence of her left knee sprain, which had resolved; however, the lumbar strain had not. Dr. Thieme opined that appellant continued to experience residuals from the injuries incurred by the fall. In a December 22, 2002 report, he determined that appellant was capable of working eight hours per day with restrictions which included two 15-minute breaks, and no pushing or pulling over 40 pounds, a 25-pound lifting restriction, and no squatting, kneeling or climbing.

The Board finds that Dr. Thieme performed a thorough evaluation of appellant and noted his findings. He provided a reasoned opinion that appellant was capable of working eight hours a day, in a limited-duty capacity. Dr. Thieme also provided restrictions for sedentary duty, as noted above. When a case is referred to an impartial medical specialist for the purpose of resolving a conflict in medical opinion, the opinion of such specialist, if sufficiently well rationalized and based on a proper background, must be given special weight.[13] Dr. Thieme's opinion represented the weight of the medical evidence on the issue of appellant's ability to work and establishes that appellant was capable of working eight hours per day within restrictions.

On January 23, 2003 the employing establishment offered appellant a limited-duty position which accommodated the work restrictions given by Dr. Thieme. The duties included answering the telephones, filing of forms and forwarding cards, updating edit books and case labels and casing mail for the rural carriers. The physical requirements including no lifting over 25 pounds, pushing and pulling limited to 40 pounds of force, and no kneeling, climbing or squatting. The Office reviewed the position and found it to be suitable for appellant. Appellant refused the offer on January 31, 2003. The Board finds that the duties of the offered job are consistent with the work restrictions provided by Dr. Thieme.

To terminate compensation under section 8106, the Office must provide appellant notice of its finding that an offered position is suitable and give him an opportunity to accept or provide reasons for declining the position.[14] The Office properly followed its procedural requirements in this case. By letter dated February 12, 2003, the Office advised appellant that the position was suitable and provided her 30 days to accept the position or provide reasons for her refusal. The Office further notified her that if she failed to accept the offered position, her compensation would be terminated.

[13] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994); *Jane B. Roanhaus*, 42 ECAB 288 (1990).

[14] *See Maggie L. Moore*, *supra* note 9.

The Office received two medical reports after the February 12, 2003 letter. The Office received a February 10, 2003 report from Dr. Charboneau. However, he did not address the limited-duty position. His report is insufficient to support her refusal of the offered position. In his February 28, 2003 report, Dr. Pearce did not address appellant's ability to perform the limited-duty position. Furthermore, he was part of the conflict in medical opinion for which appellant was referred to Dr. Thieme.[15] Therefore, his report is insufficient to support appellant's refusal of the offered position.

In an April 15, 2003 letter, the Office informed appellant that her reasons for refusing the offered position were unacceptable and provided her 15 days to accept the position.[16]

In an April 30, 2003 letter, appellant's representative provided the Office with another copy of Dr. Grim's February 10, 2003 report and indicated that appellant was unclear as to her work restrictions. The issue of whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by medical evidence.[17] Dr. Grim's report was previously considered and found not to provide a reasoned opinion as to why appellant could not perform the duties of the offered position. This evidence does not support appellant's refusal of the offered position. Moreover, the reports of Dr. Thieme addressed residuals of appellant's right shoulder condition and found that she could work within the specified restrictions.

The Board finds that appellant refused suitable work. The Office properly terminated her entitlement to monetary compensation for refusal of suitable work. At the time of the termination, the weight of the medical evidence established that appellant could perform the duties of the offered position.

An employee who refuses or neglects to work after suitable work has been offered to her has the burden of showing that the refusal to work is justified.[18] In the present case, appellant has not shown that her refusal to work was justified. The medical reports received subsequent to the termination of monetary benefits are insufficient to overcome Dr. Thieme's opinion or create a new conflict in the medical evidence.

Appellant submitted several reports from Dr. Grim. A November 26, 2002 disability certificate predated the job offer and did not address appellant's capacity to perform the duties of the offered position. In her January 31, 2003 report, Dr. Grim indicated that she was obtaining a "work ability assessment." However, she did not address the limited-duty position or explain why appellant could not perform the specific duties of the offered position. Although she

[15] Submitting a report from a physician who was on one side of a medical conflict that an impartial specialist resolved is, generally, insufficient to overcome the weight accorded to the report of the impartial medical examiner or to create a new conflict. *Jaja K. Asaramo*, 55 ECAB ___ (Docket No. 03-1327, issued January 5, 2004).

[16] *See* 20 C.F.R. § 10.516.

[17] *Kathy E. Murray*, 55 ECAB ___ (Docket No. 03-1889, issued January 26, 2004).

[18] 5 U.S.C. § 8106(c)(2).

advised on February 10, 2003 that appellant was unable to perform the duties prescribed by the impartial medical examiner, she did not provide any findings or rationale to support her opinion.[19]

Other medical reports submitted by appellant did not provide a specific opinion regarding appellant's ability to perform the offered position. The Board also notes that the record contains physical therapy reports and acupuncture reports. However, health care providers such as nurses, acupuncturists, physician's assistants and physical therapists are not physicians under the Act. Thus, their opinions on causal relationship do not constitute rationalized medical opinions and have no weight or probative value.[20]

Following the termination of her benefits, appellant has not established that the offered position was outside of her physical recommendations. The Board finds that appellant did not meet her burden to show that her refusal to accept suitable work was justified.

Appellant's representative also alleged that Dr. Thieme's reports should not be relied upon as the report was over five months old. However, the Board does not find that Dr. Thieme's work restrictions of December 22, 2002 were stated at the time the employing establishment offered appellant the position at issue on January 23, 2003. As noted above, the issue of whether an employee has the physical ability to perform a modified position offered by the employing establishment is primarily a medical question that must be resolved by medical evidence. The work restrictions provided by Dr. Thieme were reasonably contemporaneous to the job offer made in January 2003 and found suitable by the Office in February 2003.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits on May 2, 2003 and that appellant did not, thereafter, establish that her refusal of suitable work was justified.

CONCLUSION

The Office met its burden of proof to terminate appellant's compensation on May 2, 2003 on the grounds that she refused or neglected an offer of suitable work.

[19] *See George Randolph Taylor,* 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[20] *Jan A. White,* 34 ECAB 515, 518 (1983).

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 10, 2006
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board