

**United States Department of Labor
Employees' Compensation Appeals Board**

D.V., Appellant)	
)	
and)	Docket No. 09-1109
)	Issued: March 3, 2010
U.S. POSTAL SERVICE, POST OFFICE, Lake Mary, FL, Employer)	
)	

<i>Appearances:</i> Capp P. Taylor, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
---	-------------------------------------

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 18, 2009 appellant filed a timely appeal from a January 23, 2009 merit decision of the Office of Workers' Compensation Programs affirming a June 17, 2008 merit 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 appellant satisfied her burden of proof to establish that she sustained a recurrence of total disability on or after May 13, 2005 causally related to her accepted employment injury.

FACTUAL HISTORY

On July 18, 2000 appellant, a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) for right shoulder and hand pain that she sustained while handling a bag of mail on July 13, 2000. The Office accepted her claim for cervical strain and right shoulder strain.¹

On January 9, 2004 appellant's treating physician, Dr. Graham F. Whitfield, an orthopedist, performed right shoulder arthroscopic surgery with debridement, bursal endoscopy, decompression, ligament release and partial acromionectomy.

On February 9, 2004 appellant filed a claim for a January 14, 2004 recurrence of disability alleging she experienced pain and was "having problems doing my duties."

Appellant filed a schedule award claim and by decision dated March 18, 2004 the Office granted appellant's schedule award claim for five percent impairment of her right arm.

On June 1, 2004 Dr. Whitfield reported findings on examination and diagnosed extensive debridement of the right shoulder with subacromial decompression, cervical sprain and right carpal tunnel syndrome. On July 5, 2004 he reported that appellant continued to have residual symptoms from her accepted employment injury. On August 3, 2004 Dr. Whitfield released appellant to modified-duty work for four hours per day and could increase her hours to six hours per day.

On August 4, 2004 the employing establishment offered appellant a modified-duty position as a mail handler. The position consisted of patching mail and facing letters and flats for four to six hours. The offer restricted lifting to less than 10 pounds and involved four to six hours of intermittent sitting, standing and walking, as tolerated by appellant. Appellant accepted this position.

Appellant returned to modified duty in a part-time status on August 5, 2004, missing brief intermittent periods.

In a report dated August 5, 2004, Dr. Whitfield expanded his work restrictions, limiting pushing and lifting activities to no more than 20 pounds. All other activities were limited to four to six hours, as tolerated.

On August 24, 2004 Dr. Whitfield diagnosed cervical sprain.

On August 30, 2004 the employing establishment offered appellant a modified-duty position as a mail handler. The position consisted of patching mail, facing letters and flats and prepping flats for zero to six hours. This offer restricted lifting to less than 10 pounds and involved six hours of intermittent sitting, standing and walking. Appellant refused this position.

¹ The November 19, 2004 and April 20, 2005 statement of accepted facts prepared by the Office included right shoulder rotator cuff tear as an accepted condition. In its June 17, 2008 decision, the Office listed rotator cuff sprain as an accepted condition.

On September 28, 2004 Dr. Whitfield opined that appellant could perform modified-duty work five hours per day. He restricted appellant from performing work activities involving repetitive motions using her right upper extremity.

On October 1, 2004 Dr. Whitfield reported:

“[Appellant] has informed me that her regular assignment at the [employing establishment] involves repetitive heavy lifting up to and including 70 (seventy) [sic] pounds. A functional capacity assessment performed [May 27, 2004] revealed that she is unable to work in this classification.... In addition [appellant] has advised me that she has been given assignments to work on a flat belt machine, which involves cutting bundles of mail and shrink wrap and repetitive use of the right upper extremity. This type of work is clearly contraindicated [sic] on a medical basis.”

Dr. Whitfield restricted activities involving repetitive motions requiring appellant to use her right upper extremity and any heavy lifting. He opined that she could lift up to 20 pounds on an occasional basis only. On November 1, 2004 Dr. Whitfield took appellant off work until November 29, 2004.

The Office referred appellant, together with a statement of accepted facts and a list of questions, to Dr. Robert Green, a Board-certified orthopedic surgeon, for a second opinion examination. In a December 14, 2004 report, Dr. Green reported findings on examination and opined:

“Diagnosis of the [July 13, 2000] work injury: cervical strain and shoulder strain with possible partial rotator cuff tear. This is based on the records that I have reviewed and the MRI [magnetic imaging resonance] [scan] findings and x-ray findings.

“After work[-]related cervical strain of right shoulder condition resolved. [sic] I believe the majority of [appellant’s] symptoms had resolved although she still complains of some discomfort. I do not find any objective findings however, I believe a great deal of cervical problems is [sic] related to the significant cervical degenerative changes related [sic] that are noted above. It means that the current condition is due more to the natural aging process rather than [the] 2000 work injury. This is based on the x-ray findings that I have seen and [appellant’s] complaints and physical findings. I do believe her subjective complaints outweigh the objective findings. [Appellant] has no spasm in the cervical region, [sic] she has no real tenderness around the shoulder and has good strength.

“I believe that [appellant] is not totally disabled. I believe she is capable of performing most of the duties of her position.”

Dr. Green opined that appellant could work eight hours per day and limited activities requiring reaching above her shoulder and lifting activities to no more than 20 pounds. He opined that these restrictions should be imposed for three months.

On December 20, 2004 Dr. Whitfield opined that appellant could work four hours per day with restrictions. On December 22, 2004 appellant returned to limited-duty work for five hours per day.

The Office paid compensation for intermittent wage loss subsequent to December 21, 2004. On December 28, 2004 appellant began working four hours per day. On January 20, 2005 Dr. Whitfield opined that appellant could return to modified-duty work for six hours per day. On January 22, 2005 appellant increased her work hours to six and received compensation for the remaining two hours.

In a note dated January 24, 2005, Dr. Merrill W. Reuter, a Board-certified orthopedic surgeon, expanded appellant's work restrictions, restricting activities requiring her to look down, lift and repetitive use of her upper extremities.

On February 3, 2005 Dr. Whitfield opined that appellant could work four to six hours per day with restrictions.

On February 10, 2005 the Office sought a clarifying opinion from Dr. Green concerning appellant's disability status. On February 14, 2005 Dr. Green opined:

"I feel the cervical strain resolved at some point in time before I saw [appellant]. I do not know the exact date.

"This was based on my findings of no real objective findings. There was no spasm in the neck, there was no tenderness around the shoulders, she has good strength."

In a note dated February 28, 2005, Dr. Reuter reviewed appellant's history of injury, noting that appellant attributed her neck pain to a July 13, 2000 incident and presented findings on examination.

Appellant submitted a collection of reports and notes signed by Dr. Rolando Garcia, a Board-certified orthopedic surgeon. On February 28, 2005 Dr. Garcia reported findings on examination, a review of appellant's history of injury and diagnosed cervical herniated nucleus pulposus, cervical degenerative disc disease, cervical radiculopathy and possible early myelopathy. He attributed the onset of appellant's symptoms to her July 13, 2000 work injury.

On March 11, 2005 Dr. Marc A. Engel, a radiologist, reported an MRI scan of appellant's cervical spine which revealed mild to moderate spondylosis with broad-based posterior disc bulge at the C5-C6 and C6-C7 levels.

On March 17 and May 13, 2005 Dr. Garcia took appellant off work and recommended she undergo a cervical discectomy and fusion at C5-C7.

On April 18, 2005 Dr. Whitfield took appellant off work. On May 9, 2005 he reported that an MRI scan of appellant's cervical spine revealed a large herniated nucleus pulposus at the C6-C7 level with possible cord compression. Dr. Whitfield diagnosed cervical sprain, C6-C7 nerve root irritation, bulging C3-C4 discs, herniated discs at the C4-C5, C5-C6 and C6-C7 levels,

C6-C7 spinal stenosis and neural foraminal stenosis and facet hypertrophy at the C3-C4, C4-C5, C5-C6 and C6-C7 levels.

On May 13, 2005 Dr. Michael M. Koonin, an orthopedist, reported findings on examination and diagnosed radiculopathy. He opined that appellant's symptoms, neck pain and radiating arm pain, are consistent with herniation at the C5-C6 and C6-C7 level and he recommended surgery.

On May 13, 2005 appellant accepted disability retirement.

The Office referred appellant, together with a list of questions, to Dr. Jerry S. Sher, a Board-certified orthopedic surgeon, for a second opinion examination to resolve the extent and degree of appellant's remaining disability, if any, attributable to her accepted employment injury. The statement of accepted facts provided that the limited-duty position required intermittent lifting of up to 70 pounds and, further, that all other limited activities, such as intermittent stooping, bending, reaching above the shoulder, to two hours per day.

In a June 20, 2005 report, Dr. Sher reported findings on examination, reviewed appellant's medical history and diagnosed cervical strain, cervical degenerative disc disease and a right rotator cuff tear. He opined that the degenerative disc disease was a preexisting condition and not work related. Appellant's cervical strain was work related and the July 13, 2000 incident aggravated her preexisting degenerative disc disorder which had not resolved. Her right shoulder condition resolved, with no residuals, as of August 3, 2004.

Dr. Sher opined that appellant's latest work stoppage was related to her accepted work injury because her symptoms and his findings were consistent with aggravation of preexisting degenerative disc disease. He diagnosed cervical strain superimposed on underlying cervical degenerative disc disease with cervical spasm. This condition precluded appellant from meeting the lifting requirements of the mail handler position. Dr. Sher opined that appellant could perform sedentary office-type work. He limited work activities requiring pushing, pulling and lifting to .5 hours per day and to no more than five pounds. Dr. Sher also restricted appellant from performing activities requiring squatting, kneeling and climbing. He also opined that appellant was a candidate for cervical spine surgery which could allow her to return to work with decreased restrictions.

By decision dated August 19, 2005, the Office accepted appellant's claim for aggravation of cervical degenerative disc disease. Appellant received total disability compensation from March 17 through May 13, 2005, less that previously paid for partial disability for the same period. Further, the Office authorized the requested cervical fusion surgery. The record contains no evidence that appellant had cervical spine surgery.

On September 7, 2005 appellant submitted a collection of wage-loss (CA-7) claims for wages lost during 2003, 2004 and 2005 attributable to her neck condition. She requested that the Office compute the difference between the benefits she would receive from the Office of Personnel Management (OPM) and what she could receive from the Office under the Federal Employees' Compensation Act.

On July 14, 2006 appellant filed a claim for compensation for leave without pay incurred August 5, 2004 through July 14, 2006.

In an August 6, 2006 report, Dr. Gabriella Gerstle, a Board-certified neurologist, reported that a nerve conduction study was suggestive of bilateral cervical radiculopathy.

By report dated August 11, 2006, Dr. Engel diagnosed, among other conditions, mild to moderate spondylosis with slight retrolisthesis and disc bulge.

On October 19, 2006 Dr. Whitfield reported that appellant was involved in a motor vehicle accident. He stated:

“Another vehicle hit the drivers [sic] side front [sic] of [appellant’s] vehicle. [Appellant’s] vehicle was thrown airborne across the highway and onto the grass. Her car landed on top of a cement utility pole. [Appellant] sustained injuries to her neck and [low back].”

Dr. Whitfield diagnosed lumbosacral sprain, sacroiliitis, radiculitis and facet arthropathy. He released appellant to full-time work, as tolerated, for 25 to 35 hours per week provided she did not do any heavy lifting, bending or stooping. In subsequent reports, Dr. Whitfield diagnosed several conditions including cervical and lumbosacral sprain, rhomboid levelator, trapezius myalgia, neck sprain and shoulder sprain.

On January 12, 2007 Dr. Gerstle reported that a nerve conduction study revealed active denervation in the right triceps, endoscopic retrograde cholangiography (ERC) and right C6-C7 paraspinous muscles consistent with active right cervical radiculopathy.

By decision dated February 7, 2007, the Office denied appellant’s compensation claim as it pertained to the period August 5, 2004 through May 13, 2005 because the record demonstrated that appellant was previously compensated for this period.

On February 20, 2007 appellant, through her attorney, requested that the Office review the record and issue a decision concerning the period May 14, 2005 through July 14, 2006. Counsel also requested proof of the amount of wage-loss compensation paid August 5, 2004 through May 13, 2005.

On March 13, 2007 appellant, through her attorney, elected to receive benefits for the period May 14, 2005 through July 14, 2006 from the Office rather than OPM.

By decision dated April 5, 2007, the Office denied the claim because she received payment from OPM for the period May 14, 2005 through July 14, 2006 because appellant had elected OPM disability retirement benefits and could not receive benefits from both the Office and OPM.

Appellant disagreed and on April 10, 2007, through her attorney, requested a hearing.

In a narrative report dated April 11, 2007, Dr. Whitfield noted that the chief conditions requiring appellant’s retirement were “primarily the injuries to the neck and right shoulder sustained in the work-related accident [on July 13, 2000].” He noted:

“[Appellant’s] bid position involves repetitive heavy lifting up to and including 70 pounds. A functional capacity assessment however performed [sic] [May 27, 2004], revealed that the patient is unable to work in this classification.

[Appellant] was noted to be capable of lifting approximately 20 pounds on an occasional basis only. Accordingly, from a medical perspective, it would be inadvisable for the patient to return to a position similar to the one from which she retired. In addition ... [appellant] has sustained additional injuries in an MVA [motor vehicle accident] (neck and lower back injuries). This is another factor which would render it inadvisable for the patient to return to a position similar to the one from which she retired.”

Dr. Whitfield opined that appellant could perform a light-duty position as a substitute teacher with restrictions limiting the amount of time spent sitting and standing.

Appellant submitted copies of notes and reports from Drs. Garcia and Whitfield.

By decision dated May 17, 2007, the hearing representative vacated the Office’s April 5, 2007, remanding the case to the Office to determine whether appellant’s alleged disability subsequent to May 13, 2005 was causally related to her July 13, 2000 accepted injury.

On July 21, 2007 Dr. Whitfield reported that appellant’s right shoulder condition and neck injury was causally related to her July 13, 2000 injury. He noted that appellant sustained additional neck injuries from a motor vehicle accident. Dr. Whitfield also opined that this accident exacerbated her original neck injury. He opined that appellant was permanently disabled from work because of conditions caused by her July 13, 2000 work-related injury.

In a July 23, 2007 report, Dr. Whitfield opined that appellant was permanently disabled. He diagnosed neck, shoulder, upper arm and rotator cuff sprain. Dr. Whitfield opined that appellant could occasionally lift up to 30 pounds.

On July 26, 2007 the Office reversed its April 5, 2007 decision and granted compensation for the period May 14, 2005 through July 14, 2006.

By decision dated June 17, 2008, the Office denied the claim because the evidence of record demonstrated that appellant’s disability after March 17, 2005 was not causally related to her accepted injury.

On July 2, 2008 appellant requested a hearing.

On July 11, 2008 Dr. Whitfield reported findings on examination, reviewed appellant’s medical history and diagnosed conditions including cervical sprain, nerve root irritation, herniated disc with compression, spinal stenosis, lumbosacral sprain and facet hypertrophy.

A hearing was conducted on November 4, 2008 at which appellant described her job duties and responsibilities. Appellant accepted disability retirement on May 13, 2005 because she was trying to get a job that was better for her, the employing establishment did not accommodate her and the employing establishment was “pressur[ing] ... [her] to take a regular job and mentally [she] was very disturbed.” She testified the limited-duty position to which she was assigned occasionally required lifting trays of mail that she estimated weighed “like around 25 pounds.” Appellant also testified that these trays weighed “between 30 and 25 [*sic*] pounds.” Her representative asserted that the employment duties performed by appellant at the time of retirement exceeded her medical restrictions and that the evidence of record demonstrated a

change in appellant's employment-related condition sufficient to establish entitlement to recurrent disability compensation.

On December 8, 2008 the employing establishment reported that appellant's position was not withdrawn nor had it advised her that the position was no longer available. It noted that repairing mail is considered the most sedentary position within its operation, requiring merely applying tape to a damaged parcel. Employees assigned to this task work at their own pace, are not timed, and are not subject to production requirements concerning the number of parcels repaired per day. It noted that the medical evidence established that she was capable of working eight hours per day.

Appellant also submitted a November 13, 2008 report in which Dr. Eric S. Grimm, an orthopedist, reported findings on examination following an MRI scan of appellant's cervical spine. Dr. Grimm diagnosed degenerative disc disease and other conditions.

By decision dated January 23, 2009, the hearing representative affirmed the Office's June 17, 2008 decision, finding that the evidence of record did not establish that appellant sustained a recurrence of disability on or after May 13, 2005 causally related to her accepted employment injury.² The hearing representative noted that its holding modified the Office's prior decision to reflect denial of recurrent disability on or after May 13, 2005 rather than May 17, 2005.

LEGAL PRECEDENT

The Office's regulations defines the term recurrence of disability as follows: "Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."³

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he or she can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he or she cannot perform such light duty. As part of this burden, the employee must show either a change in the nature and extent of the injury-related condition or a

² Appellant submitted additional evidence on appeal. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). *See J.T.*, 59 ECAB ___ (Docket No. 07-1898, issued January 7, 2008) (holding the Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision.)

³ *J.F.*, 58 ECAB 124 (2006); *Elaine Sneed*, 56 ECAB 373, 379 (2005); 20 C.F.R. § 10.5(x).

change in the nature and extent of the light-duty requirements.⁴ To establish a change in the nature and extent of the injury-related condition, there must be probative medical evidence of record. The evidence must include a medical opinion, based on a complete and accurate factual and medical history supported by sound medical reasoning, that the disabling condition is causally related to employment factors.⁵

ANALYSIS

The Board finds this case is not in posture for a decision.

The Office initially accepted appellant's claim for neck, shoulder and upper arm sprain, cervical strain, right shoulder strain, shoulder rotator cuff tear and rotator cuff sprain. Appellant subsequently filed a recurrence of disability claim alleging that her work-related conditions had worsened causing total disability as of May 13, 2005. Appellant's burden is to submit evidence establishing, for example, a spontaneous change in the nature and extent of the injury-related condition, without an intervening injury or new exposure to the work environment causing total disability on or after May 13, 2005.⁶ This is a medical issue.⁷

As of February 28, 2005 Dr. Garcia diagnosed herniated cervical disc and cervical degenerative disc disease. On May 9, 2005 Dr. Whitfield also diagnosed cervical bulging and herniated discs, with cervical spinal stenosis. On May 13, 2005 Dr. Koonin diagnosed cervical radiculopathy and herniation. On June 20, 2005 Dr. Sher, the Office's second opinion physician, diagnosed cervical strain, cervical degenerative disc disease and a right rotator cuff tear. He opined the cervical strain was work related and the July 13, 2000 incident aggravated appellant's preexisting degenerative disc disorder which had not resolved. Dr. Sher opined that appellant's latest work stoppage was related to her accepted work injury because her symptoms and his

⁴ *Albert C. Brown*, 52 ECAB 152, 154-155 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides, "*Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."

⁵ *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Maurissa Mack* 50 ECAB 498, 503 (1999).

⁶ *Albert C. Brown*, 52 ECAB 152, 154-155 (2000); *Terry R. Hedman*, 38 ECAB 222, 227 (1986); 20 C.F.R. § 10.5(x) provides, "*Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations."

⁷ Appellant submitted reports from a physical therapist. Because healthcare providers such as nurses, acupuncturists, physician's assistants and physical therapists are not considered physicians under the Act, their reports and opinions do not constitute competent medical evidence. (5 U.S.C. § 8101(2); *see also G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983). Thus the physical therapy reports have no evidentiary value.

findings were consistent with aggravation preexisting degenerative disc disease. He diagnosed cervical strain superimposed on underlying cervical degenerative disc disease with cervical spasm. This condition precluded appellant from meeting the lifting requirements of the mail handler position.

By decision dated August 19, 2005, the Office accepted appellant's claim for aggravation of cervical degenerative disc disease and authorized cervical fusion surgery.

In accepting this condition, the Office expanded appellant's claim. Accordingly, following this acceptance, it was required to consider whether these accepted conditions and those previously accepted resulted in her total disability on or after May 13, 2005. The subsequent Office's decisions did not acknowledge or contain findings of fact concerning these additionally accepted conditions in determining whether appellant had total disability.⁸ It concluded that in the June 17, 2008 decision appellant had not established any worsening of her condition in support of the May 13, 2005 recurrence claim. The Office essentially ignored the medical evidence of record from Drs. Garcia, Whitfield, Koonin and Sher in finding that appellant had not established any worsening of her condition on or about May 15, 2005.

On July 26, 2007 the Office granted compensation for the period May 14, 2005 through July 14, 2006. Yet the hearing representative's January 23, 2009 decision inexplicably denied appellant's claim after May 14, 2005, not acknowledging the acceptance through July 14, 2006. The issue presented was recurrence of disability, yet the Office seemingly rescinded acceptance of a period of disability. The Office did not provide proper findings of fact nor correct analysis to determine whether appellant had established total disability after July 14, 2006.

Appellant is entitled to a merit decision with proper findings of fact and a statement of reasons on the issue of her disability on or after July 14, 2006. After such further development as the Office deems necessary, the Office shall issue a *de novo* decision as to whether the employment-related conditions accepted by the Office caused or contributed to her disability on or after July 14, 2006.

The decisions of the Office dated June 17, 2008 and January 23, 2009 are set aside and the case remanded for further proceedings consistent with this decision.

CONCLUSION

The Board finds this case is not in a posture for decision.

⁸ The granting of OPM benefits is not relevant to appellant's recurrence of disability claim. The Board notes that this election is revocable. Further, even where an employee elects annuity benefits provided by OPM, they are entitled to payment of medical expenses for treatment of the accepted condition. See *Ernest J. Malagrida*, 51 ECAB 287 (2000); *Irene St. John*, 50 ECAB 521 (1999); *Wayne E. Boyd*, 49 ECAB 202 (1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000.4(4)(a) (July 1997); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Dual Benefits*, Chapter 2.1000. Exhibit 1: Restrictions on Payment of Benefits under the Act (I) (July 1997). See also 20 C.F.R. § 10.500; 5 U.S.C. § 8116.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2009 and June 17, 2008 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to the Office for further development in accordance with this decision.

Issued: March 3, 2010
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