

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

J.D., Appellant)

and)

**DEPARTMENT OF THE NAVY,)
PUGET SOUND NAVAL SHIPYARD,)
Bremerton, WA, Employer**)

**Docket No. 11-131
Issued: December 21, 2011**

Appearances:

*Howard L. Graham, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 24, 2010 appellant, through his attorney, filed a timely appeal from a June 24, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) finding that appellant's accepted condition of aggravation of degenerative disc disease had resolved. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 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 OWCP met its burden to establish that the employment-related temporary aggravation degenerative disc disease had resolved.

On appeal appellant, through his attorney, contends that the impartial medical examiner's opinion is unrationalized, that OWCP used leading questions of the impartial medical specialist and an incorrect standard on causation.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 24, 2002 appellant, then a 53-year-old supervisory general engineer, filed an occupational disease claim alleging a low back condition as a result of riding the shipyard's handicapped vehicles. He had a prior plantar fasciitis foot injury in September 2001. While riding in the vehicles, appellant was exposed to pronounced bumps in the route due to numerous conditions such as railroad tracks, utility service entrances, storm drains, ramps, mechanisms for protecting hoses and cables crossing the roads, transitions to concrete sections due to repairs, maintenance and irregular surfaces. Appellant's medical history is significant for obesity, diabetes, asthma, sleep apnea and hypertension.

Appellant was treated by Dr. Michael J. Benoit, a Board-certified family practitioner, for chronic low back pain secondary to injuries and a herniated disc. In a June 11, 2003 report, Dr. Benoit noted that in 1977 appellant suffered from a T12-L1 compression fracture back injury and had chronic back pain. He noted that in December 2001 appellant was hit by a moving vehicle and his low back pain increased. Dr. Benoit opined that appellant's increased symptoms were due to a combination of stress while riding over bumps in vehicles at the shipyard following his foot injury and by having been bumped and twisted by the passing truck. The shock while riding in the handicapped vehicle transmitted through the vehicle's structure to his back, particularly in the L4-L5-S1 region. Dr. Benoit noted that this type of impact caused the discs between the vertebrae to rupture/tear or significantly aggravated a preexisting condition.

Appellant was referred to Dr. Sarah D. Beshlian, a Board-certified orthopedic surgeon with a subspecialty in surgery of the hand, for a second opinion. In a November 20, 2003 report, Dr. Beshlian noted that appellant's work activities of September 18, 2001 caused his plantar fasciitis and that the herniated L4-5 disc and chronic low back pain was aggravated by the twisting injury that occurred on December 15, 2001. She opined that the ongoing use of the handicapped vehicles and jarring may have caused enough stress on the back to prevent recovery from the twisting injury of December 15, 2001, but she did not see how it would have caused any structural injury, exacerbation or aggravation of a back problem.

In a June 30, 2004 report, Dr. Benoit noted that appellant had no chronic low back pain prior to 2001; rather, he experienced occasional mild low back muscle pain after his 1977 injury that resolved with a TENS unit. Appellant had no known or documented repetitive or continuous lower back problems until he sustained a twisting injury when struck by a passing truck while at a gas station in December 2001. He noted that repetitive riding over sharp bumps in shipyard vehicles at other than very slow speeds caused him significant discomfort and contributed to his nonrecovery. The repeated bumps experienced while riding in the handicapped vehicles resulted in exacerbation and aggravation to his lower back pain and may have contributed to some of the structural changes by moving disc fragments into proximity of the spine or nerves.

Appellant was referred for an impartial medical examination by William T. Thieme, M.D., who issued reports on March 31 and December 16, 2005 and April 18, 2006. OWCP found that the reports and clarifications of Dr. Thieme were nonresponsive. Appellant underwent a new impartial medical examination with Dr. Donald Hubbard, a Board-certified orthopedic surgeon. In an opinion dated July 14, 2006 and a supplemental opinion of

November 2, 2006, Dr. Hubbard stated that any aggravation of appellant's herniated disc or lumbar strain/sprain would be considered temporary and ceased within two weeks.

On November 15, 2006 OWCP accepted appellant's claim for lumbar strain -- resolved. In a separate decision of the same date, it declined to accept his claim for herniated disc at L4-L5.

In a July 16, 2007 decision, the hearing representative found that Dr. Hubbard's opinion could not be given the special weight of an impartial medical examiner as it was not consistent with the factual background. She set aside the November 15, 2006 decision that the disc herniation was not related to the accepted employment factors and remanded for referral to a new impartial medical examiner.

Based on the unresolved opinion, on October 22, 2007 OWCP referred appellant to Dr. Dennis Kvidera, a Board-certified orthopedic surgeon, for an impartial medical examination. However, OWCP determined that the opinions of Dr. Kvidera dated November 12 and December 20, 2007 and February 11, 2008 were insufficient to resolve the conflict.

In a May 8, 2008 report, Dr. Benoit indicated that he had been appellant's primary physician since 1983. He noted that on May 21, 1977 appellant had a back injury T12-L1 compression fracture but was able to work and never had radicular symptoms from this injury. Dr. Benoit stated that in September 2001 appellant developed plantar fasciitis while walking at the shipyard, which required him to use the handicap shuttle. He indicated that, after having to use these shuttles, appellant began having low back pain. Dr. Benoit stated that the pain was increased by the trauma of going over bumps, crane/train tracks and service lines crossing the roadways. He noted that appellant tried to minimize the pain by standing on the shuttles. Dr. Benoit noted that in August 2002 appellant had a magnetic resonance imaging (MRI) scan which showed an L4-5 disc with L4 right nerve impingement and L5-S1 annular tear. He stated that this pain had clearly been of the radicular type and unrelated to the type of pain people get from diabetes or chronic neuropathy. Dr. Benoit noted that there were no notes in his chart that described pain in that area of appellant's back prior to having to ride this shuttle. He opined that although one may not be able to say that the shuttle use caused all of appellant's L4-L5-S1 problems, it clearly aggravated his symptoms. Dr. Benoit assessed appellant's conditions as follows: chronic mid (thoracic) back pain from 1977 accident; and chronic low (lumbar) back pain due to disc disease which started with shuttle use in the shipyard. He also noted that the shuttle use was caused by his chronic plantar fasciitis. Dr. Benoit stated that in his view appellant was disabled because of his plantar fasciitis and lumbar disc disease.

By letter dated April 22, 2008, OWCP referred appellant to Dr. Lance Brigham, a Board-certified orthopedic surgeon, for an impartial medical examination. In a May 8, 2008 report, Dr. Brigham listed diagnoses of history of plantar fasciitis of the left heel, administratively accepted as secondary to walking on uneven ground on December 17, 2001; history of low back injury, December 21, 2001, not industrially related; and alleged injury to low back secondary to repetitive riding in handicapped vehicles at work from September 2001 though August 2002. He stated, "It is felt that the alleged back condition occurring from riding in the handicapped vehicles from September 2001 through August 2002 would have been only a temporary aggravation of the preexisting back condition." Dr. Brigham explained that the medical records

are quite explicit, but multiple different physicians indicated that the back condition was caused solely by appellant being hit by a glass truck on December 21, 2001, and it is felt that any other injury after that was a temporary aggravation and has long since returned to the preexisting status and that there was no acceleration and no precipitation. He noted that on physical examination there were no findings for radiculopathy or orthopedic findings of any neural damage. This would only be mechanical back pain which would be along with the previous injury stemming originally from the compression fractures at T12-L1 in 1977, as well as the December 21, 2001 incident.

In a May 29, 2008 letter, OWCP asked Dr. Brigham to clarify what preexisting condition was aggravated as a result of riding in the handicapped vehicles. It asked him to clarify the preexisting condition, the clinical findings that support the conclusion and to explain why he believed that this aggravation was temporary. OWCP also asked Dr. Brigham to indicate an approximate date that the temporary aggravation ceased and how he arrived at that conclusion. In a June 3, 2008 addendum, Dr. Brigham opined that appellant sustained “just a temporary aggravation of pain in the lumbar area, where there were preexisting degenerative changes.” He noted that this was supported by OWCP notes that there was a low back injury sustained when appellant was hit by a glass truck on December 21, 2001. Dr. Brigham continued, “It is felt by this examiner that this is the cause of the low back pain and any incident of riding on vehicles for the disabled on uneven ground would only be a temporary aggravation and would not be a permanent aggravation of the preexisting condition of the low back pain.” He opined that any complaints due to riding in the vehicles for the disabled would have resolved within a period of a day or two, and that the present treatment is solely due to appellant being struck by the glass truck.

On June 16, 2008 OWCP accepted appellant’s claim for resolved temporary aggravation of lumbar degenerative disc disease.

On July 7, 2008 appellant requested an oral hearing. However, by decision dated October 6, 2008, the hearing representative remanded the case for OWCP to ask Dr. Brigham for clarification of his opinion with regard to the extent and degree of the aggravation of the degenerative disc disease. However, in an addendum dated October 23, 2008, the hearing representative noted that Dr. Brigham did respond to the inquiry on clarification but found that his opinion could not carry the weight of the medical evidence as although he made statements that were clear and unequivocal, he offered little if any medical reasoning to support his conclusion. The hearing representative stated that OWCP must again request clarification from Dr. Brigham.

In a November 21, 2008 letter, OWCP asked Dr. Brigham for a clarification of his opinions. It asked Dr. Brigham to, *inter alia*, provide a specific diagnosed medical condition and explain results confirming the diagnosis. OWCP noted that pain was not considered a condition under FECA but rather a symptom of a condition. It also asked Dr. Brigham to explain, if aggravation was assessed, whether such aggravation was permanent or temporary, and to explain if the condition had resolved, if it resolved immediately upon appellant’s removal from the employment environment and if not, at what point the symptoms resolved.

On December 16, 2008 Dr. Brigham responded, explaining why he believed that the repetitive use of the shipyard's handicapped vehicles from September 2001 to August 2002 was not the cause of appellant's present back conditions or complaints. He opined that any repetitive jostling of the low back from riding in the handicapped vehicles would only cause a temporary aggravation and would not be the cause of any of the findings noted on the MRI scan dated August 15, 2002. Dr. Brigham noted that riding in the handicapped vehicles may have caused short periods of symptomatic aggravation of appellant's preexisting degenerative low back condition, however, there were no objective changes in the degenerative low back condition. He noted that all of appellant's medical records up until the December 24, 2002 note increasing low back symptoms secondary to being struck by a glass truck in December 2001. Dr. Brigham opined that the medical records clearly indicate that the major precipitating event for his pain complaints was the December 2001 glass truck collision.

On March 13, 2009 OWCP accepted appellant's claim for resolved temporary aggravation of lumbar degenerative disc disease.

On April 12, 2009 appellant requested an oral hearing.

By decision dated August 24, 2009, the hearing representative found that the case was not in posture for decision as the reports of Dr. Brigham neither provided medical rationale for his opinion nor did he conduct a full or accurate review of the reports which would support his opinion.

By letter dated September 21, 2009, OWCP asked Dr. Brigham to provide further information.

In an October 1, 2009 addendum, Dr. Brigham noted that appellant had pain in his left foot due to the planar fasciitis which has been administratively accepted as work related. He opined, "It is felt that the condition of aggravation of the low back secondary to repetitive riding in handicapped vehicles over uneven ground does not meet the standards of modern science for degenerative joint disease of the lumbar spine. Dr. Brigham referred to an article in *The Spine Journal* which found that there was no evidence to suggest that exposure to whole-body vibration through motorized vehicles leads to accelerated disc degeneration. He further noted that more recent results indicate that the effect on anthropometric factors, such as body weight and muscle strength, on disc degeneration, although modest, appear to be greater than those of occupational physical demands. Dr. Brigham also noted a study in *The Lancet* which found that although driving may exacerbate symptoms of back problems, it does not damage discs. He concluded that there has been no aggravation to the low back, either temporary or permanent, due to riding on uneven ground.

By decision dated November 27, 2009, OWCP found that the temporary aggravation of appellant's degenerative disc disease due to the effects of the employment factor (riding in the van for the disabled) from September 2001 to August 2002 had resolved.

In a May 6, 2010 report, Dr. Benoit stated that he reviewed Dr. Brigham's report. He noted that, although OWCP approved appellant's claim for resolved temporary aggravation of lumbar disc condition, the more significant duration and injury occurred from January to

August 2002. Dr. Benoit reviewed appellant's history noting that appellant had thoracic back pain following an original injury of May 21, 1977, which was controlled with a TENS unit. However, he noted that the effects of appellant's riding in the handicapped vehicles were compounded when he sustained increased pain caused by a glancing bump from the side of a glass truck, for which the TENS unit did not help his pain. Dr. Benoit noted that, after this, appellant developed worsening pain from riding in the transport buses in the shipyard for an additional eight months. Appellant now had ruptured discs and experienced occasional radiculopathy. Dr. Benoit noted that Dr. Brigham's application of the *Spine* and *Lancet* journal studies on whole body vibration was not applicable to appellant's case. Appellant's lumbar back had been healthy and without injury prior to riding the shipyard's handicapped vehicles. Dr. Benoit stated that appellant started experiencing low back discomfort, which escalated in severity and lasted 11 months, causing him to stand and cushion his body over the sharpest bumps. The majority of appellant's injury was incurred within a controlled industrial area, the study's conclusions were not applicable. Dr. Benoit addressed several of Dr. Brigham's comments directly. He noted that Dr. Brigham referred to annular tears found in normal individuals but Dr. Benoit noted that appellant had no lumbar back pain prior to riding the handicapped vehicles. Dr. Benoit noted that Dr. Brigham mentioned only subjective complaints and concluded that there appeared to be no neurologic findings to support ongoing complaints of radiculopathy. Dr. Brigham did not address the objective records from the MRI scans and those made by shipyard medical staff and written testimonials by fellow handicapped vehicle riders and did not note that appellant tried to make every effort to exhibit as little negative effect of his injury and pain as possible. He noted that the cited reports were limited to drivers and not riders and that there is little parallel or even similarity to appellant's circumstances. Dr. Benoit further noted that Dr. Brigham had "tremendously oversimplified" appellant's condition despite statements to the contrary provided by other orthopedic specialists. He concluded that, on a more probable than not basis, the worsening of appellant's disc condition at L4-5 is demonstrated by appellant's March 20, 2006 MRI scan and that riding in the handicap van for 11 months contributed, to a reasonable medical certainty, to the acceleration and permanent aggravation of appellant's disc disease at L4-5. Dr. Benoit further noted that, on a more probable than not basis, appellant's riding in the handicap van for 11 months contributed to and accelerated the worsening of symptoms of pain. He concluded that clearly a causal connection existed between appellant's riding in the handicapped vans in the industrial work area and his permanent injury.

By decision dated June 24, 2010, the hearing representative affirmed the November 27, 2009 decision.

LEGAL PRECEDENT

The United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Once OWCP accepts a claim it has the burden of justifying modification or termination of compensation. After it has determined that an employee has disability causally related to his employment, it may not terminate compensation without establishing that the disability has ceased or is no longer related

² 5 U.S.C. § 8102(a).

to the employment injury.³ The fact that OWCP accepted an employee's claim for a specified period of disability does not shift the burden of proof to the employee. The burden is on OWCP to demonstrate an absence of employment-related disability or residuals in the period subsequent to the date of termination or modification.⁴

Section 8123(a) provides that, if there is 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 evaluation.⁵ In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is properly referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on proper factual and medical background, must be given special weight.⁶ When OWCP obtains an opinion from an impartial medical specialist for the purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, OWCP must secure a supplemental report from the specialist to correct the defect in his original report.⁷ However, when the impartial specialist is unable to clarify or elaborate on the original report or if a supplemental report is also vague, speculative or lacking in rationale, OWCP must submit the case record and a detailed statement of accepted facts to another impartial specialist for the purpose of obtaining a rationalized medical opinion on the issue.⁸

ANALYSIS

OWCP accepted appellant's claim for resolved temporary aggravation of lumbar degenerative disc disease for the period September 2001 through August 2002. As noted, OWCP's acceptance of a claim for a specified period does not shift the burden of proof to the claimant. It is OWCP's burden to establish that appellant did not have residuals from the accepted injury. It based its decision to terminate compensation and medical benefits on Dr. Brigham's reports. The Board finds that OWCP properly terminated benefits.

The initial conflict in medical evidence was between the opinions of Dr Benoit, appellant's treating physician, and the second opinion physician, Dr. Beshlian, with regard to the impact that riding in the employing establishment's handicapped vehicles had on appellant's back. Appellant saw Dr. Theime to resolve this conflict. However, after repeated attempts to get a rationalized opinion from Dr. Theime, OWCP referred appellant to Dr. Hubbard who also

³ *Edwin Lester*, 34 ECAB 1807 (1983); *D.M.*, Docket No. 10-857 (issued January 3, 2011).

⁴ See *Elsie L. Price*, 54 ECAB 734, 739 (2003); *Raymond M. Shulden*, 31 ECAB 297 (1979); *Anna M. Blaine (Gilbert H. Blaine)*, 26 ECAB 351 (1975).

⁵ 5 U.S.C. § 8123(a).

⁶ Federal (FECA) Procedure Manual, *Medical, Medical Examinations*, Chapter 3.500.4b(3)(b) (March 1994, October 1995, May 2003), citing *Raymond E. Heathcock*, 32 ECAB 2004 (1981).

⁷ *Raymond A. Fondots*, 53 ECAB 637, 641 (2002); *Nancy Lackner (Jack D. Lackner)*, 40 ECAB 232 (1988); *Rayon K. Ferrin, Jr.*, 39 ECAB 736 (1988).

⁸ *Nancy Keenan*, 56 ECAB 687 (2005); *R.G.*, Docket No. 11-79 (September 9, 2011).

submitted a June 17, 2008 medical opinion and a clarification. However, a hearing representative determined that Dr. Hubbard's opinions were not consistent with the factual background and appellant was referred to Dr. Kvidera for an impartial opinion. OWCP determined that Dr. Kvidera's opinions were conflicting and provided no substantiating rationale, so OWCP prepared a new statement of accepted facts, and referred appellant to Dr. Brigham for a new impartial medical examination.

Dr. Brigham conducted an impartial medical examination and issued reports dated May 8, June 3 and December 16, 2008 and October 1, 2009. He concluded that if appellant did have any aggravation of his back condition while riding in the handicapped vehicles from September 2001 through August 2002, this would have only been a temporary aggravation of the preexisting conditions. Dr. Brigham gave a variety of reasons for this conclusion throughout his multiple reports. In his initial report of May 8, 2008, he explained that the medical records indicate that many different physicians found that the back condition was caused solely by appellant being hit by a glass truck on December 21, 2001 and that any other injury after that was just a temporary aggravation. Dr. Brigham noted that on physical examination there were no findings for radiculopathy or orthopedic findings of any neural damage. In his June 3, 2008 addendum, he opined that riding in vehicles for the disabled on uneven ground would only cause a temporary aggravation of preexisting low back pain and would have resolved in a day or two, and that appellant's present treatment for her low back was solely related to his being struck by the glass truck. In his December 16, 2008 report, Dr. Brigham further explained that any repetitive jostling of the low back from riding in the handicapped vehicles would only cause a temporary aggravation and would not be the cause of findings noted on the MRI scan, noting that riding in the handicapped vehicles may have caused short periods of symptomatic aggravation of appellant's preexisting degenerative low back condition, but there were no objective changes in the degenerative back condition. He reiterated that the medical records clearly indicate that the major precipitating event for appellant's pain complaints was the December 2001 glass truck collision. In his October 1, 2009 report, Dr. Brigham opined that repetitive riding in handicapped vehicles over uneven ground does not meet these standards of modern science for degenerative joint disease of the lumbar spine. In addition to the rationale provided in earlier reports, he further referenced articles in *The Spine Journal* and *The Lancet* which he indicated suggested that there was no evidence to suggest that exposure to whole body vibration through motorized vehicles leads to accelerated disc degeneration. Dr. Brigham further noted that more recent results indicate that the effect of anthropometric factors on disc degeneration, such as body weight and muscle strength, appear to be greater than those of occupational physical demands. Accordingly, OWCP's conclusion that any aggravation of appellant's degenerative disc disease had resolved was supported by the well-rationalized medical opinion of Dr. Brigham. Dr. Brigham's conclusion that appellant no longer had any residuals from any temporary aggravation caused by riding in the handicapped vehicle was supported by his medical evaluation of appellant, his review of the medical record including objective tests, appellant's work history, and Dr. Brigham's further research in medical journals. Although appellant submitted multiple reports by Dr. Benoit wherein he concluded that a causal connection existed between appellant's riding in the handicapped vans at the employing establishment and his permanent back injury, and although Dr. Benoit raised specific objections with the reports of

Dr. Brigham, these objections are not sufficient to overcome the special weight given the opinion of the impartial medical examiner.⁹

Addressing specific concerns raised by appellant's attorney on appeal, the Board initially rejects the argument that the hearing representative's decision is unrationalized and contradictory. Although the hearing representative does not give a specific date that the aggravation ceased, the hearing representative relied upon the report of Dr. Brigham, who stated that the aggravation had resolved within a day or two of exposure to the employment factor of riding in the handicapped vehicle. The Board also rejects the argument that Dr. Brigham's opinion is unrationalized, speculative and not probative. As previously discussed, Dr. Brigham's opinion is supported by his evaluation of appellant's history, evaluation of the medical evidence, physical examination and discussion of medical journal articles, nor does the Board find that OWCP used leading questions in asking Dr. Brigham for clarification of his opinion in its November 21, 2008 letter. OWCP asked Dr. Brigham to provide the specified diagnosed medical conditions found on examination and, in asking the question, noted that pain is not considered a condition under FECA but rather a symptom of a condition. Appellant's counsel argues that a diagnosis of pain based upon work factors is compensable. The Board does not find that this question is misleading. The Board has frequently held that a diagnosis of pain does not constitute a basis for payment of compensation as pain is considered to be a symptom rather than a specific diagnosis.¹⁰ Appellant argues that pain due to an employment factor can be the basis for payment of compensation under FECA. However, there must be a proven basis for the pain in that a specific diagnosis must be made referencing a specific medical condition. Therefore, OWCP did not err in this question. The Board also rejects the argument that OWCP erred in asking Dr. Brigham to indicate that, if aggravation is assessed, to explain whether the aggravation is temporary or permanent and to support his opinion with medical rationale. This question further asked Dr. Brigham to determine if appellant's symptoms would have subsided or resolved immediately upon appellant's removal from the work environment and if not at what point these symptoms would have resolved. Appellant's counsel contends that this question leads no doubt as to OWCP's desired answer. The Board does not agree that a question simply asking the physician to answer questions regarding whether a condition has resolved and if so when is leading; in fact, it is the basic question to be resolved by the physician. Accordingly, counsel's argument is without merit. The Board is further not persuaded by counsel's argument that OWCP used an incorrect standard for causation in the November 21, 2008 letter to Dr. Brigham. OWCP asked Dr. Brigham whether the diagnosed conditions were causally related to the accepted work factors either through direct causation or aggravation, precipitation, exacerbation or acceleration. Contrary to counsel's argument, this does not indicate an improper causal relationship standard, it recognizes that the employment conditions need not be the direct cause of appellant's condition. Further, the Board notes that an appropriate conflict in the medical evidence existed and the case was properly referred to Dr. Brigham for an impartial medical examination after the previous impartial medical examiners did not resolve the conflict.¹¹

⁹ *Richard O'Brien*, 53 ECAB 234 (2001).

¹⁰ *Robert Broome*, 55 ECAB 339 (2004); *R.S.*, Docket No. 11-323 (issued September 15, 2011).

¹¹ *See supra* note 8.

Therefore, the Board finds that OWCP properly determined that appellant's employment-related aggravation of degenerative disc disease had resolved.

CONCLUSION

The Board finds that OWCP met its burden to establish that the employment-related temporary aggravation of degenerative disc disease had resolved.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2010 is affirmed.

Issued: December 21, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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