

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

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**E.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Jacksonville, FL, Employer**

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**Docket No. 11-657  
Issued: February 9, 2012**

*Appearances:*  
*Capp Taylor, Esq.*, for the appellant  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 26, 2011 appellant, through his attorney, filed a timely appeal of the November 18, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) 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 appellant sustained a recurrence of disability on November 10, 1999 causally related to his accepted bilateral foot condition.

**FACTUAL HISTORY**

Appellant, a 31-year-old mail carrier, filed a Form CA-2 claim for benefits on February 24, 1982, alleging a bilateral foot condition causally related to employment factors. On April 11, 1982 he underwent surgery for excision of large limpana, axilla and excision of calloused formations of

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

both soles. OWCP accepted that the surgery to remove the calluses caused a permanent aggravation of the scar tissue of both feet. It further stated that appellant had a preexisting Baker's cyst on his left knee. OWCP paid wage-loss compensation and placed him on the periodic rolls. It subsequently accepted bilateral foot sprains.

A Form CA-17, received by OWCP on September 26, 1995, indicated that appellant had the following work restrictions: no lifting or carrying exceeding 10 pounds at a sedentary position for more than two to four hours per day, intermittently; light lifting or carrying, not exceeding 20 pounds for more than two to four hours per day, intermittently; moderate lifting or carrying, not exceeding 20 to 50 pounds for more than one hour per day, intermittently; intermittent sitting, not exceeding one to two hours per day; intermittent standing and fine manipulation, not exceeding two to four hours per day; intermittent walking, not exceeding two to five hours per day; intermittent stair climbing, bending, stooping and twisting, not exceeding one hour per day; intermittent kneeling, pulling and pushing, not exceeding one half hour per day; intermittent simple grasping, not exceeding three to five hours per day; intermittent reaching above the shoulder, not exceeding one to three hours per day and no stair climbing.

On February 20, 1996 appellant returned to work as a full-time modified distribution clerk. The duties of the position required him to distribute, sort and case mail one piece at a time, with assistance provided as needed. Appellant could alternate standing or using a restbar to case mail; his supervisor would assign other duties, if needed, within the physical restrictions listed by his treating physician. The physical restrictions of the position entailed sitting for up to eight hours per day; walking, lifting, bending, climbing, kneeling and standing intermittently for four hours per day; and squatting and twisting two hours per day, with no lifting over 40 pounds.

On June 26, 1996 Dr. Robert O. Pohl, a treating Board-certified orthopedic surgeon, examined appellant for a new injury to his right wrist on June 25, 1996. The injury occurred when appellant grabbed a bundle of mail and experienced a sharp pain in his right hand which radiated toward his right elbow, mainly along the volar aspect of the wrist and proximal forearm. Dr. Pohl stated that appellant had some numbness in his right thumb, forefinger and long finger, though he noted on examination that he had full flexion and extension of his fingers. Appellant underwent x-rays of the navicular bone, which were normal. Dr. Pohl diagnosed probable acute tenosynovitis of the right forearm and recommended that appellant avoid repetitive activities like sorting.

In a disability slip dated July 9, 1997, Dr. Pohl stated that appellant could return to work with restrictions of no reaching above the shoulder and no repetitive activity.

The employing establishment offered appellant a light-duty job as a modified distribution clerk on July 23, 1997. The job description stated that the offer pertained to his job-related conditions of April 24 and May 9, 1997. The duties of the position required appellant to enter key operation numbers and weights of mail into a computer, which would generate a ticket for him to give to a coworker. Appellant could sit or stand according to his needs and would be allowed a stool or chair for personal comfort. The keying time was intermittent and he could use either hand or both, to enter on the keypad. Appellant's job duties would comply with his treating physician's restrictions. The physical requirements of the position entailed sitting eight hours per day; walking, lifting, bending, climbing, kneeling and standing intermittently for four

hours per day; squatting and twisting two hours per day; no lifting over 10 pounds; no above shoulder activity and no repetitive activity.

On March 16, 1998 appellant filed a Form CA-2a claim for a recurrence of disability, alleging that his inability to work as of March 6, 1998 was caused or aggravated by his work-related bilateral foot condition. He contended that his accepted foot condition was aggravated when management changed his work duties, forcing him to exceed the medically imposed limitations on prolonged walking at his workstation. Appellant asserted that constantly walking on a hard surface to reach a break area had aggravated his accepted condition.

Appellant submitted disability slips from Dr. John H. Jun, a Board-certified family practitioner, who excused him from work due to arthritis in both feet on several days in May, July and August 1998.

In a December 7, 1998 report, Dr. Pohl treated appellant for painful callosities of his feet located on the plantar aspect of the proximal phalanx of both great toes and the fifth metatarsal heads. He advised that this problem had worsened since March 1998. On examination, appellant had significant callosities and Dr. Pohl advised that appellant needed to engage in less walking. He was limited to walking two hours per day, for no more than 15 minutes at a time. Dr. Pohl also restricted appellant from repetitive lifting above the shoulder level and limited all above the shoulder lifting to no more than 30 minutes per day.

By letter dated May 14, 1999, OWCP noted that appellant attributed his foot condition to excessive walking at the worksite to and from break areas. This constituted a basis for a new occupational disease claim rather than a recurrence of disability, given that he cited new factors responsible for his worsening foot condition. OWCP advised appellant that it would take no further action on his claim for recurrence and to file a CA-2 form for this condition.

OWCP also noted that appellant's treating physician had reduced appellant's walking restriction from four to two hours and that the employer stated that his present limited-duty job was totally sedentary. The employer advised that it took approximately 18 seconds for appellant to walk from his work area to the nearest men's room, 15 seconds to the nearest water fountain and one minute and 10 seconds to the cafeteria and break area. Appellant received two 10-minute breaks and one 30-minute lunch period for each eight-hour workday. According to management's calculations, he would spend approximately seven minutes per day traveling to and from the cafeteria for his lunch period and breaks. OWCP concluded that, even given additional restroom and water breaks, walking to and from breaks would fall well within Dr. Pohl's two-hour walking limitation.

In a December 6, 1999 letter, the employing establishment advised that appellant had resigned effective November 4, 1999, pursuant to a settlement agreement before the Merit Systems Protection Board (MSPB). The agreement, dated December 8, 1999, stated in pertinent part:

"1. The parties mutually agree that it is in the best interest of [appellant] and the United States Postal Service that [his] employment with the [employing establishment] be severed. By signing this agreement [appellant] voluntarily

resigns from the [employing establishment] effective immediately. His final PS Form 50 shall reflect that he resigned for personal reasons.”

\* \* \*

“4. By entry into this settlement agreement, the [employing establishment] ... in no way admit[s] to any wrongdoing, liability or discrimination against appellant and appellant agrees that this agreement shall not be construed as an admission of wrongdoing, liability or discrimination by the [employing establishment]....”

\* \* \*

“5. It is understood by the undersigned that this agreement is in full and complete settlement of all outstanding administrative [Equal Employment Opportunity] (EEO) complaints or appeals, in this or any other forum, filed by the below named appellant or on his behalf relating to any matters that occurred prior to the execution of this settlement agreement. By signing this agreement appellant voluntarily withdraws any outstanding administrative complaint or appeal and to request that any grievance be withdrawn.... *It is further stipulated that the withdrawals re made without any threat, coercion, intimidation, promise or inducement other than the terms set forth in the agreement....* [Emphasis added.]”

\* \* \*

“7. It is understood and agreed that neither party will seek to set aside this settlement agreement or account of any dispute which arises over the implementation of the terms of this agreement....”

\* \* \*

“9. It is understood and agreed that appellant shall receive four thousand five hundred dollars and that neither [he] nor his representative shall seek or accept any other benefits, fees or costs with regard to the instant appeals or settlement of the underlying matters therein.”

By letter to the MSPB dated December 10, 1999, appellant requested review of the December 8, 1999 settlement agreement, alleging that he signed it under duress.

In a February 24, 2009 report, Dr. Howard Groshell, a specialist in podiatry, reviewed appellant’s history of injury, noted the diagnoses and opined that there was a possible relationship between the accepted conditions and his congenital biomechanics. The congenital structure of appellant’s foot, in combination with multiple microtrauma from excessive ambulation, could certainly lead to the accepted condition of anesopathy of the ankle and tarsal areas. Dr. Groshell stated that the structure of appellant’s foot was such that the fifth metatarsals were in a plantar declination or plantar flexed position, that caused excessive pressure underneath the fifth metatarsals during ambulation, leading to excessive callus formation. A temporary condition of enthesopathy could have been aggravated by the congenital condition of the plantar flexed metatarsals and the painful hyperkeratosis. Dr. Groshell advised that

aggravation of the preexisting conditions of plantar flexed metatarsals, resulting in painful hyperkeratosis, was the present cause of appellant's condition. He stated that there was a condition called porokeratotic-hyperkeratosis, which was the result of chronic long-term repetitive trauma and hyperkeratosis. Dr. Groshell explained that hyperkeratosis produced a chronic irritation and inflammation that resulted in a very severe condition. He opined that the congenital conditions of plantar declination metatarsals were permanently aggravated by prolonged ambulation.

On April 15, 2010 OWCP noted that it accepted bilateral foot sprain, bilateral enthesopathy of the ankle and talus and bilateral congenital pes planus or aggravation of pes planus.

On April 26, 2010 appellant filed a Form CA-7 claim for wage loss, seeking compensation as of November 10, 1999 and continuing. The employing establishment controverted the claim, as he had voluntarily resigned from federal employment on November 4, 1999 due to personal reasons.

By letter dated May 4, 2010, OWCP advised appellant that it required additional factual and medical evidence to support his claim that his condition/or disability as of November 10, 1999 was causally related to his accepted bilateral knee condition. It stated that the evidence of record indicated that at the time of appellant's resignation, he had been working full time in a limited duty, sedentary capacity since February 20, 1996 and that he was fully capable of performing the duties of the position. OWCP asked him to submit medical evidence supporting his contention that commencing November 10, 1999 he had been unable to work in any capacity as a result of his accepted work-related conditions. Appellant did not submit any additional medical evidence.

By decision dated June 14, 2010, OWCP denied appellant's claim. It found that the medical and factual evidence was not sufficient to establish the claimed recurrence of disability.

On June 16, 2010 appellant requested a hearing, which was held on September 27, 2010. He testified that after leaving work in November 1981 due to his accepted bilateral foot condition, he returned to work in February 1996 as a modified distribution clerk in the rehabilitation section. Appellant's job duties entailed sitting down casing mail, pulling the case down when it became full and putting it into a container which received the mail. He stated that the job required him to be on his feet for no more than 30 minutes for an entire eight-hour workday. Appellant alleged that his job changed during the latter part of 1998 when he was assigned by his supervisors to "walking duty," which violated the work restrictions imposed by his physician. He alleged being told that this job would lead to him getting out of the rehabilitation section and possibly promotions.

Appellant stated that his revised modified job required him to walk around the entire workroom floor every hour on the hour and that it took approximately 30 minutes to count all the mail in the operations. He spent approximately half of his eight-hour workday on his feet, walking. Appellant was initially able to perform the new job but his foot condition became aggravated by the excessive walking. When he informed his supervisors of this problem, they put him on a removal list. Appellant thereafter resigned. Although he filed a petition for review

of the December 1999 settlement agreement with the MSPB, he had yet to receive a decision on his petition.

In an October 13, 2010 letter, Carolyn Ballou, human resources manager for the employing establishment, denied that management forced appellant to exceed his walking restrictions. The job he was offered on July 23, 1997 was more sedentary and more consistent with his restrictions than the one he accepted on February 20, 1996. The new job entailed duties which could be performed while appellant was seated and did not require him to stand or walk at all unless he wished to stand and stretch his legs or move about for his own personal comfort. Ms. Ballou noted that this position was closer to the men's room and the break area than his previous job. The employing establishment's records indicated that it took approximately 18 seconds to walk from appellant's work area to the nearest men's room, 15 seconds to the nearest water fountain and 1 minute and 10 seconds to the cafeteria and break area. Appellant received two 10-minute breaks and one 30-minute lunch period for each eight-hour workday. Taken together, he spent approximately seven minutes per day traveling to and from the cafeteria for his lunch period and breaks. Ms. Ballou noted that OWCP wrote appellant a letter dated May 14, 1999, which indicated that the job offer was well within the two-hour walking limitations imposed by Dr. Pohl.

According to Ms. Ballou, appellant's supervisor, Al Dejesus attempted to reassign appellant back to mail casing duty in December 1998 but he refused this request. The employer attempted to have him terminated due to an inadequate attendance record and unexcused absences, which were not supported by medical documentation. Appellant voluntarily signed the MSPB settlement agreement providing for his removal. The agreement provided that he signed his assent without reservation, duress or coercion on the part of anyone and agreed to abide by the terms of the agreement.

In an October 19, 2010 report, Dr. Groshell reiterated that the diagnosed conditions he discussed in his February 24, 1999 report would have existed prior to 1999. The callous deformities and aggravation of the preexisting plantar flexed metatarsals could have been ongoing since November 1981, the date appellant became totally disabled due to his work-related conditions. Dr. Groshell would have placed appellant on sedentary duty due to these conditions, with a minimal amount of walking and standing.

In a letter dated October 27, 2010, appellant's attorney stated that contrary to Ms. Ballou's statement appellant's newly assigned work duties after July 23, 1997 required him to violate his walking restrictions. Counsel stated that he had submitted statements from three of appellant's coworkers which corroborated his testimony regarding this issue. He asserted that Dr. Pohl's June 26, 1996 report corroborated appellant's testimony that his modified job duties were changed due to his right wrist problem, requiring him to engage in excessive walking which violated his work restrictions. Appellant's attorney stated that, because the employing establishment could not accommodate his right wrist injury with a sedentary job, his modified duty was changed to require more walking. Counsel asserted that the July 23, 1997 limited-duty offer required intermittent walking up to four hours per day, a requirement which exceeded his walking restrictions.

Appellant submitted statements by coworkers Doris Orr-Richardson, Thomas J. Young and Cyler Thompson, Jr., all of whom stated that between April 1997 and December 1998 they observed appellant walking and counting mail at the employing establishment.

By decision dated November 18, 2010, an OWCP hearing representative affirmed the denial of appellant's claim. The hearing representative found that appellant had voluntarily resigned his employment effective November 4, 1999, in connection with the settlement of grievance, disciplinary and EEO complaints matters and his resignation was not made under duress. The hearing representative concluded that appellant performed appropriate light duty until his resignation and the evidence did not establish a recurrence of disability.

### **LEGAL PRECEDENT**

A 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.<sup>2</sup> This term also means an inability to work 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.<sup>3</sup>

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements.<sup>4</sup>

OWCP's procedure manual defines recurrence of disability to include withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury.<sup>5</sup> The Board has held that a claimant's showing that light-duty work was unavailable constitutes a change in the nature or extent of light-duty requirements sufficient to establish a recurrence of disability.<sup>6</sup>

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<sup>2</sup> 20 C.F.R. § 10.5(x).

<sup>3</sup> *Id.*

<sup>4</sup> *Barry C. Peterson*, 52 ECAB 120, 125 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3(b)(1)(c) (May 1997).

<sup>6</sup> *Jackie B. Wilson*, 39 ECAB 915 (1988).

## ANALYSIS

The record does not contain any medical evidence establishing a change in the nature and extent of appellant's injury-related condition. Appellant failed to submit sufficient medical opinion containing a rationalized, probative report which relates any increased degree of disability as of November 10, 1999 to his accepted bilateral foot condition.

In a June 26, 1996 report, Dr. Pohl stated that he had examined appellant for a new injury to his right wrist on June 25, 1996. The injury caused pain radiating to appellant's right elbow in addition to some numbness in his right thumb, forefinger and long finger. Dr. Pohl diagnosed probable acute tenosynovitis of the right forearm and recommended that he avoid repetitive activities like sorting. In a July 9, 1997 disability slip, he stated that appellant could return to work with restrictions of no reaching above the shoulder and no repetitive activity. Dr. Pohl advised in a December 7, 1998 report that appellant had significant callosities of his feet in the plantar aspect of both great toes and the fifth metatarsal heads, which had worsened since March 1998. He recommended that appellant reduce his walking at work and restricted him to walking two hours per day, for no more than 15 minutes at a time. Dr. Pohl's opinion on causal relationship, however, is of limited probative value in that he did not provide adequate medical rationale in support of his conclusions.<sup>7</sup> He did not describe appellant's work duties in any detail or explain how they would be competent to aggravate the claimed bilateral foot condition as of November 10, 1999. It does not appear that the physician had an accurate history of the walking involved in appellant's limited-duty work. Therefore, Dr. Pohl's reports do not adequately explain a causal connection between appellant's employment-related condition and his alleged recurrence of disability. In February 24, 2009 and October 19, 2010 reports, Dr. Groshell advised that appellant had a degenerative, osteoarthritic condition which would have been aggravated by prolonged ambulation. He would have placed appellant on sedentary duty due to these conditions, with a minimal amount of walking and standing. However, Dr. Groshell did not examine appellant at the time of the alleged recurrence of disability and relied on his representation of prolonged walking. He did not relate an accurate history of appellant's employment duties. Dr. Jun submitted several disability slips in May through August 1998 placing appellant off work due to his bilateral arthritic foot condition. These reports, however, were of limited probative value for the reason that they were generalized in nature and equivocal in that he only noted summarily that appellant's conditions were causally related to his bilateral foot condition. Causal relationship must be established by rationalized medical opinion evidence. The reports submitted by appellant failed to provide an explanation in support of his claim that he was totally disabled as of November 10, 1999. Thus, the reports did not establish a worsening of his condition and therefore do not constitute probative, rationalized evidence demonstrating that a change occurred in the nature and extent of the injury-related condition.<sup>8</sup>

The Board also finds that appellant failed to submit evidence showing that there was a change in the nature and extent of his limited-duty assignment such that he no longer was physically able to perform the requirements of his light-duty job. The record demonstrates that he returned to work on February 20, 1996 on light duty. Although appellant stopped work as of

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<sup>7</sup> *William C. Thomas*, 5 ECAB 591 (1994).

<sup>8</sup> *Id.*



November 4, 1999, he did not submit sufficient factual evidence to establish a change in the nature and extent of his limited-duty assignment for the period claimed. The record demonstrates that he accepted a light-duty position within Dr. Pohl's restrictions of no walking more than four hours on February 20, 1996. Appellant was able to work at this position until June 1996, when he apparently sustained a right wrist injury. The employing establishment accommodated this injury and transferred him to another, sedentary position on July 23, 1997. Although appellant alleged in his March 1998 claim for recurrence that his accepted bilateral foot condition was aggravated by excessive walking, he submitted no documentation to support this assertion. In contrast, the employing establishment provided a detailed description of his new work duties and the amount of walking he was required to perform.<sup>9</sup> This letter, submitted six months prior to appellant's alleged recurrence of disability, noted that Dr. Pohl had reduced his permitted hours of walking from four to two hours and that the employing establishment indicated that appellant's new, revised light-duty job was almost totally sedentary in nature. The employer calculated that the total amount of daily time he would spend walking to and from the cafeteria for his lunch period and breaks was approximately seven minutes. Even allowing for additional restroom and water breaks, the total amount of daily walking appellant was required to do was far less than the two hours Dr. Pohl prescribed. Ms. Ballou's October 13, 2010 letter, reiterated that the job appellant was offered on July 23, 1997 was more sedentary and more consistent with his restrictions than that he accepted on February 20, 1996. The walking requirements of the July 1997 job were well within the two-hour walking limitations imposed by Dr. Pohl. While appellant submitted statements from coworkers who observed him walking in the mail facility in 1997 and 1998, none of the witnesses reported seeing him walk for half of his work shift, as alleged. Consequently, the record does not establish that the assigned limited-duty exceeded prescribed restrictions.

The Board has held that, when a claimant stops work for reasons unrelated to his accepted employment injury, he has no disability within the meaning of FECA.<sup>10</sup> Ms. Ballou noted that appellant voluntarily signed the December 8, 1999 MSPB settlement agreement. Appellant stipulated in this agreement that he had resigned without reservation, duress or coercion. His resignation does not establish a recurrence of disability on or about November 10, 1999 because it had nothing to do with his ability to perform the limited-duty requirements of his position.<sup>11</sup>

On appeal, appellant's attorney argues, that appellant's modified job duties were changed in July 1997 due to his right wrist problem, requiring him to engage in excessive walking which violated his work restrictions. Counsel stated that, because the employing establishment could not accommodate his right wrist injury with a sedentary job, his modified duty was changed to

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<sup>9</sup> The evidence submitted by an employer on the basis of its records will generally prevail over the assertions of a claimant, unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, *supra* note 5, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

<sup>10</sup> *Supra* note 5; *see also John W. Normand*, 39 ECAB 1378 (1988); *Carolyn R. Gray*, Docket No. 05-1700 (issued June 20, 2006).

<sup>11</sup> *See* 20 C.F.R. § 10.5(x); *see also Lester Covington*, 47 ECAB 539, 542 (1996); *Major W. Jefferson, III*, 47 ECAB 295, 298 (1996).

require more walking. He asserted that the July 23, 1997 limited-duty offer required intermittent walking up to four hours per day, a requirement that exceeded appellant's walking restrictions and that the statements from appellant's coworkers corroborated such walking duties. As noted above, however, the employing establishment submitted OWCP's March 14, 1999 letter and Ms. Ballou's October 13, 2010 letter, which refuted these assertions. The statements from appellant's coworkers lacking probative value although they observed appellant walking at the worksite they did not specify the amount of time he was required to do so.

The Board will affirm the November 18, 2010 OWCP decision denying compensation based on a recurrence of his work-related disability.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

**CONCLUSION**

The Board finds that appellant did not establish a recurrence of disability as of November 10, 1999 causally related to his accepted bilateral foot condition.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 18, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 9, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board