

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

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**J.E., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
Fort Benning, GA, Employer**

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**Docket No. 12-445  
Issued: January 14, 2013**

*Appearances:*  
*Alfonza Whitaker, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On February 1, 2012 appellant, through counsel, filed a timely appeal from the October 12, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming the denial of her claim for compensation for the period August 3 to October 26, 2009. The Board docketed the appeal as No. 12-445.

The case has previously been before the Board. The facts as set forth in the Board's prior opinion are hereby incorporated by reference.<sup>1</sup> In its April 1, 2011 decision, the Board set aside decisions dated March 30 and 31, 2010 and remanded the case for further development of the medical evidence by OWCP. The Board further remanded the case for OWCP to reconsider whether appellant's prior cervical, thoracic and lumbar spondylosis, right shoulder cuff tendinitis, right carpal tunnel syndrome and lumbar radiculopathy were aggravated by the January 12, 2009 incident. The Board noted that there were two conflicting versions of what occurred on January 12, 2009 and instructed OWCP to further develop the factual evidence to include obtaining the report from the military police with regard to the January 12, 2009 employment injury. The Board also noted that OWCP erred when, in discussing the factual

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<sup>1</sup> Docket No. 10-1527 (issued April 1, 2011). OWCP accepted that on January 12, 2009 appellant sustained a sprain of her shoulder, upper arm and right acromioclavicular joint as well as a sprain of the lumbar region of the back.

evidence, it made a statement which it attributed to Sergeant First Class (SFC) Garcia, but that there was no direct statement by SFC Garcia in the record.<sup>2</sup>

On remand, OWCP proceeded to further develop the medical evidence; however, there is no indication that OWCP conducted any further factual development of the claim in accordance with the Board's instructions. As the Board noted in its prior opinion, further development of the factual evidence was necessary in order to properly analyze the medical evidence. Accordingly, the Board remands this case for further development of the factual evidence in accordance with the Board's April 1, 2011 decision. After further development of the factual evidence, OWCP shall develop a new statement of accepted facts and refer appellant to an appropriate physician for further development of the medical evidence to be followed by a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated October 12, 2011 is set aside and the case is remanded for further proceedings consistent with this order.

Issued: January 14, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>2</sup> *Id.*