

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

B.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Rockwall, TX, Employer**

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**Docket No. 15-1709
Issued: August 16, 2016**

Appearances:

*Michael E. Woods, for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On August 13, 2015 appellant, through her representative, filed a timely appeal from an April 29, 2015 nonmerit decision and a May 12, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly determined that appellant's December 16, 2014 reconsideration request was untimely filed and failed to establish clear evidence of error; and (2) whether it properly reduced appellant's compensation effective August 24, 2014 based on her capacity to earn wages in the constructed position of appointment clerk.

FACTUAL HISTORY

This case has previously been before the Board regarding the issue of appellant's failure to participate in vocational rehabilitation.³ The facts and circumstances outlined in the Board's prior decision are incorporated by reference. The facts relevant to the present appeal are set forth below.

On April 23, 2004 appellant, then a 51-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging osteoarthritis due to repetitive motion. OWCP assigned the claim file number xxxxxx260 and accepted osteoarthritis of the left thumb and hand. It subsequently accepted an open wound of the left wrist with tendon involvement and mechanical complications from the implant of an internal orthopedic device and graft.⁴ In March 2005, appellant returned to modified-duty work under physical limitations performing light office duties. By decision dated December 21, 2005, OWCP reduced her monetary benefits to zero as her actual earnings fairly and reasonably represented her wage-earning capacity.

In June 2005, appellant filed a subsequent occupational disease claim (Form CA-2) alleging that the repetitive motion of her job and left wrist and hand injury caused overuse of her right shoulder. OWCP assigned the claim file number xxxxxx470 and accepted right rotator cuff syndrome.

As of November 24, 2010, the employing establishment could no longer accommodate appellant's work restrictions under OWCP file number xxxxxx470 under the National Reassessment Process (NRP). Accordingly, OWCP placed her on the periodic compensation rolls, effective January 5, 2011. In May 2011, it combined appellant's two occupational disease claims, with file number xxxxxx260 designated as the master file.

On January 3, 2012 OWCP referred appellant to the nurse intervention program, and on March 27, 2012 it referred her to vocational rehabilitation.

By decision dated April 11, 2013, OWCP suspended appellant's compensation under section 8113(b) of FECA and 20 C.F.R. § 10.519 because she failed to participate as required with vocational rehabilitation efforts. Although appellant contended that she could not participate with vocational rehabilitation due to fatigue, bilateral knee problems, kidney disease and seizure disorder, the medical evidence of record did not establish that her total disability was

³ Docket No. 14-0372 (issued November 12, 2014).

⁴ On July 18, 2007 OWCP granted appellant a schedule award for 14 percent permanent impairment of her left arm.

due to her accepted conditions. Her compensation was reduced to zero as of May 5, 2013, but was reinstated on June 3, 2013 after she returned to vocational rehabilitation.

By decision dated September 11, 2013, an OWCP hearing representative affirmed the April 11, 2013 decision suspending appellant's compensation from May 5 to June 3, 2013. Appellant appealed the September 11, 2013 decision to the Board.

After a period of educational training, the positions of appointment clerk, information clerk, and telephone solicitor were identified by the vocational rehabilitation counselor. In a letter dated January 7, 2014, OWCP advised appellant that these positions were suitable to her medical and work restrictions. Appellant was advised that she would receive 90 days of placement assistance to help locate suitable work in one of those positions provided she cooperated with such effort. She was also advised that her wage-loss compensation benefits would be reduced based upon the salary of one of those positions at the end of the 90-day placement assistance period.

Following the 90-day placement assistance period, vocational rehabilitation services were closed on April 9, 2014, as appellant failed to obtain employment. Despite appellant's inability to secure employment, the vocational rehabilitation specialist found her vocationally capable of performing all targeted positions. He advised that, based on the November 20, 2012 opinion of referee physician Dr. Bernie L. McCaskill, a Board-certified orthopedic surgeon, all targeted positions remained vocationally and medically appropriate as they were within appellant's medical restrictions and existed in sufficient numbers within the reasonable commuting area. The vocational rehabilitation specialist indicated that the Occupational Information Network (O*NET) and the Occupational Employment Statistics from the U.S. Department of Labor, Bureau of Labor Statistics confirmed availability of such positions in appellant's geographical area and provided numerous job leads and job fair information for appropriate positions.

On July 17, 2014 OWCP proposed reducing appellant's compensation to reflect her ability to earn wages as an appointment clerk at the pay rate of \$328.00 per week. It indicated that the evidence of record revealed that she was vocationally and physically capable of working as an appointment clerk, that the position was reasonably available in her commuting area and that it represented her wage-earning capacity. Appellant was advised that, if she disagreed with this proposal, she had 30 days to respond.

Evidence submitted in response to the proposal to reduce her compensation included a June 24, 2014 report of Dr. Jeff Fritz, an anesthesiologist, which contained an assessment of chronic left shoulder injury with decreasing range of motion. The report noted that appellant did not have transportation and driving was a problem for her.

In an August 15, 2014 telephone call, appellant stated that: she had been applying for jobs but no one had returned her calls for employment, that she wanted another referee examination performed as Dr. McCaskill was biased, and that her left thumb was functionally limited.

In an August 13, 2014 statement, appellant's representative contended that OWCP utilized improper selection procedures to select Dr. McCaskill as the referee physician. He noted that the case records contained an October 10, 2012 screen-shot bypass note indicating that

Dr. Benzel McMasters was bypassed because his appointment scheduler was unable to schedule an appointment within a reasonable time and was given the bypass code 0. The representative argued that OWCP selected Dr. McCaskill without waiting the mandatory two hours before moving on to the next physician on the list. He further noted that Dr. McCaskill and Dr. McMasters share the same office and staff. The representative additionally contended that Dr. McCaskill's report was vague and speculative and did not provide medical reasoning when he found that the etiology of appellant's condition was unknown. He further argued that the medical record indicated that appellant had epilepsy as well as kidney disease and dysfunction and she was unable to comply with the requirements of vocational rehabilitation. The representative argued that OWCP should take into account both preexisting and subsequently acquired conditions.

By decision dated August 18, 2014, OWCP reduced appellant's compensation effective August 24, 2014 based on her ability to earn wages as an appointment clerk. It found that the evidence and arguments submitted did not alter its determination to reduce appellant's compensation. OWCP found appellant's representative's request for a new impartial medical examiner was not supported by the evidence of file. It indicated that the position was sedentary and that the physical requirements did not exceed the work restrictions as provided by Dr. McCaskill in his referee report of November 20, 2012. OWCP noted that the position was reasonably available in appellant's commuting area and that the entry pay level for the position was \$328.00 per week. Using the *Shadrick* formula,⁵ it calculated the percentage of her loss of wage-earning capacity (LWEC) based on this position.⁶

On September 11, 2014 appellant, through her representative, requested an oral hearing before an OWCP hearing representative with regard to the August 18, 2014 LWEC determination. In a September 11, 2014 letter, appellant's representative set forth duplicative arguments previously of record pertaining to Dr. McCaskill's selection as the impartial medical specialist and requested a new referee examination.

By decision dated November 12, 2014, the Board affirmed the September 11, 2013 decision, but found that there had been no conflict in medical opinion between appellant's treating physician, Dr. Mike Shah, a specialist in pain management, and OWCP's second opinion physician, Dr. Charles Mitchell, a Board-certified orthopedic surgeon, as to appellant's capacity for work due to the accepted work-related conditions. Therefore, the opinion of Dr. McCaskill, the Board-certified orthopedic surgeon selected as the impartial medical specialist, was reduced to that of a second opinion referral physician. The Board noted neither Dr. Shah, Dr. Mitchell, nor Dr. McCaskill found appellant totally disabled from work due to residuals of her accepted conditions and that the medical evidence of record did not support that appellant's nonwork-related medical conditions preexisted her injuries of 2004 or 2005. The Board therefore affirmed OWCP's September 11, 2013 decision which found that appellant had failed to cooperate in the early stages of vocational rehabilitation efforts and thus properly reduced her compensation to zero for the period May 5 to June 3, 2013.

⁵ *Albert C. Shadrick*, 5 ECAB 376 (1953).

⁶ *See Dennis D. Owen*, 44 ECAB 475, 479-80 (1993); *Wilson L. Clow, Jr.*, 44 ECAB 157, 171-75 (1992).

On December 16, 2014 appellant requested reconsideration of the September 11, 2013 suspension decision for her failure to participate in the early stages of vocational rehabilitation efforts. Her representative noted that the Board had affirmed the finding that appellant had failed to cooperate with the early stages of vocational rehabilitation and had reduced referee physician Dr. McCaskill's opinion to that of a second opinion physician. He contended that there continued to be a conflict of medical opinion as to appellant's ability to participate in vocational rehabilitation and OWCP failed to meet its burden of proving that appellant was able to participate in vocational rehabilitation. A copy of a November 27, 2012 medical report of Dr. Shah previously of record⁷ and new medical reports of Dr. Fritz dated November 3 and December 8, 2014 were submitted to demonstrate the continued conflict in medical opinion.

In his November 3, 2014 report, Dr. Fritz indicated that appellant had a right shoulder injury with an accepted condition of right rotator cuff syndrome. He reviewed the magnetic resonance imaging (MRI) scan studies of the right shoulder from May 23, 2005, November 24, 2008, and April 9, 2013 and indicated that the MRI scan dating back to 2005 demonstrated that appellant's work injury had not ceased and she still had significant pathology. On examination appellant had significantly decreased strength and decreased range of motion. Dr. Fritz advised that her prognosis was poor and she was not a surgical candidate due to other medical problems. In his December 8, 2014 report, he disagreed with Dr. McCaskill's November 20, 2012 findings that there was no hand atrophy and that appellant had full range of motion of the metacarpophalangeal joint and radial abduction of 60 degrees. Dr. Fritz cited to the evidence of record as well as his own examination findings. He also disagreed with Dr. McCaskill's findings with regard to her shoulder injury.

On March 12, 2015 a hearing was held with regard to the August 18, 2014 OWCP decision that the selected position of appointment clerk fairly and reasonably represented appellant's wage-earning capacity. At the hearing, appellant's representative noted that Dr. McCaskill's report had never been submitted to Dr. Shah for his concurrence; therefore, OWPC erred. He indicated that appellant's treatment was transferred from Dr. Shah to Dr. Fritz and resubmitted Dr. Fritz's rebuttal report of December 8, 2014. At the hearing, the hearing representative advised appellant, through her representative, that, in order to create a conflict of opinion, the actual work restriction issue had to be addressed, and that Dr. Fritz had not discussed appellant's work restrictions or whether she could perform the duties of the appointment clerk job. Appellant's representative noted that the job offer came in after Dr. McCaskill's report. He also contended that appellant's personal injury worsened so that she was totally disabled.

Following the hearing, the record was held open for 30 days. Evidence from Dr. Fritz included a prescription note dated March 24, 2015 and a progress report of the same date, which indicated that appellant had chronic work-related left hand injury that was prone to flare ups. Requests for medical authorization were also received.

By decision dated April 29, 2015, OWCP denied appellant's December 16, 2014 request for reconsideration of the April 11, 2013 decision affirming the suspension of compensation for

⁷ The record reflects that Dr. Shah's November 27, 2012 report was previously considered on September 19, 2013, December 16, 2014, and January 28, 2015.

May 5 to June 3, 2013. OWCP found that the request for reconsideration was untimely filed and failed to establish clear evidence of error.

By decision dated May 12, 2015, OWCP's hearing representative affirmed OWCP's August 18, 2014 decision which reduced appellant's compensation effective August 24, 2014 based on her ability to earn wages as an appointment clerk.

LEGAL PRECEDENT -- ISSUE 1

OWCP, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a) of FECA. It will not review a decision denying or terminating a benefit unless the application for review is received within one year of the date of that decision.⁸ The one-year period begins on the date of the original decision. However, a right to reconsideration within one year accompanies any subsequent merit decision on the issues. This includes any hearing or review of the written record decision, any denial of modification following reconsideration, any merit decision by the Board, and any merit decision following action by the Board, but does not include prerecoupment hearing decisions.⁹

Its regulations state that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth section 10.607 of OWCP regulations, if the claimant's application for review shows clear evidence of error on the part of OWCP.¹⁰ In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.¹¹

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP. The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error. Evidence that does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to establish clear evidence of error. It is not enough to merely show that the evidence could be construed so as to produce a contrary conclusion. This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP. To show clear evidence of error, the evidence submitted must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.¹²

⁸ 20 C.F.R. § 10.607(a) (2011).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (October 2011).

¹⁰ 20 C.F.R. § 10.607(b) (2011); *Cresenciano Martinez*, 51 ECAB 322 (2000).

¹¹ *See Alberta Dukes*, 56 ECAB 247 (2005).

¹² *Robert G. Burns*, 57 ECAB 657 (2006).

ANALYSIS -- ISSUE 1

In its April 29, 2015 decision, OWCP improperly determined that appellant had failed to file a timely application for review. The Board has reviewed the record on appeal and remands the case to OWCP for application of the correct standard of review because appellant's request for reconsideration was timely submitted.

An application for reconsideration must be received by OWCP within one year of the date of a merit review of the claim, including any merit review by the Board.¹³ The last merit decision of record, regarding appellant's failure to participate in vocational rehabilitation, was the Board's November 12, 2014 decision, which affirmed OWCP's September 11, 2013 decision. The Board found that OWCP properly reduced appellant's compensation to zero from May 5 to June 3, 2013 for failing to cooperate with the early stages of vocational rehabilitation. Because appellant's reconsideration request on that issue was received on December 16, 2014, within one year of the last merit decision dated November 12, 2014, the Board concludes that the request was timely.¹⁴

The Board notes that OWCP's April 29, 2015 decision erroneously noted that appellant requested reconsideration of its April 11, 2013 decision. As reflected in the procedural history, on September 11, 2013 an OWCP hearing representative had affirmed the April 11, 2013 decision which suspended appellant's compensation from May 5 to June 3, 2013. By merit decision dated November 12, 2014, the Board affirmed the September 11, 2013 decision.

In its April 29, 2015 decision denying appellant's reconsideration request, OWCP applied the clear evidence of error legal standard. This standard is the appropriate standard only for cases in which a reconsideration request is untimely filed.¹⁵ Since OWCP erroneously reviewed the evidence submitted by appellant in support of her reconsideration request under the clear evidence of error standard, the Board will remand the case to OWCP for application of the standard for reviewing a timely request for reconsideration as set forth at 20 C.F.R. § 10.606(b)(3).

LEGAL PRECEDENT -- ISSUE 2

Once OWCP accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹⁶ An injured employee who is either unable to return to the position held at the time of injury or unable to earn equivalent wages, but who is not totally

¹³ 20 C.F.R. § 10.607.

¹⁴ *C.V.*, Docket No. 14-1293 (issued February 23, 2015); *J.N.*, Docket No. 12-1543 (issued February 12, 2013).

¹⁵ See *Donna M. Campbell*, 55 ECAB 241 (2004).

¹⁶ *H.N.*, Docket No. 09-1628 (issued August 19, 2010); *T.F.*, 58 ECAB 128 (2006); *Kelly Y. Simpson*, 57 ECAB 197 (2005).

disabled for all gainful employment, is entitled to compensation computed on loss of wage-earning capacity.¹⁷

Under section 8115(a) of FECA, wage-earning capacity is determined by the actual wages received by an employee, if the earnings fairly and reasonably represent his or her wage-earning capacity. If the actual earnings do not fairly and reasonably represent the employee's wage-earning capacity or if the employee has no actual wages, the wage-earning capacity is determined with due regard to the nature of the injury, the degree of physical impairment, the employee's usual employment, age, qualifications for other employment, the availability of suitable employment, and other factors and circumstances which may affect his or her wage-earning capacity in his or her disabled condition.¹⁸ Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions.¹⁹ The job selected for determining wage-earning capacity must be a job reasonably available in the general labor market in the commuting area in which the employee lives.²⁰ The fact that an employee has been unsuccessful in obtaining work in the selected position does not establish that the work is not reasonably available in her commuting area.²¹

When OWCP makes a medical determination of partial disability and of specific work restrictions, it may refer the employee's case to an OWCP wage-earning capacity specialist for selection of a position, listed in the Department of Labor, *Dictionary of Occupational Titles* (DOT) or otherwise available in the open market, that fit the employee's capabilities with regard to his or her physical limitations, education, age, and prior experience. Once this selection is made, a determination of wage rate and availability in the labor market should be made through contact with the state employment service or other applicable service. Finally, application of the principles set forth in *Albert C. Shadrick*²² and codified by regulations at 20 C.F.R. § 10.403²³ should be applied. Subsection(d) of the regulations provide that the employee's wage-earning capacity in terms of percentage is obtained by dividing the employee's actual earnings or the pay rate of the position selected by OWCP, by the current pay rate for the job held at the time of the injury.²⁴

In determining an employee's wage-earning capacity based on a position deemed suitable, but not actually held, OWCP must consider the degree of physical impairment,

¹⁷ 20 C.F.R. §§ 10.402, 10.403.

¹⁸ 5 U.S.C. § 8115(a); see *N.J.*, 59 ECAB 171 (2007); *T.O.*, 58 ECAB 377 (2007); *Dorothy Lams*, 47 ECAB 584 (1996).

¹⁹ *Albert L. Poe*, 37 ECAB 684, 690 (1986).

²⁰ *Id.* The commuting area is to be determined by the employee's ability to get to and from the work site. See *Glen L. Sinclair*, 36 ECAB 664, 669 (1985).

²¹ See *Leo A. Chartier*, 32 ECAB 652, 657 (1981).

²² *Supra* note 5.

²³ 20 C.F.R. § 10.403.

²⁴ *Id.* at § 10.403(d).

including impairments resulting from both injury-related and preexisting conditions, but not impairments resulting from postinjury or subsequently acquired conditions.²⁵ Any incapacity to perform the duties of the selected position resulting from subsequently acquired conditions is immaterial to the loss of wage-earning capacity that can be attributed to the accepted employment injury and for which appellant may receive compensation. Additionally, the job selected for determining wage-earning capacity must be a job reasonably available in the general labor market in the commuting area in which the employee lives.²⁶ OWCP is not obligated to actually secure employment for appellant.²⁷ Additionally, the Board has held that a wage-earning capacity determination must be based on a reasonably current medical evaluation.²⁸

ANALYSIS -- ISSUE 2

In 2004 OWCP accepted that appellant sustained osteoarthritis of the left thumb and hand, an open wound of left wrist with tendon involvement and mechanical complications of internal orthopedic device, implant, and graft. In 2005 under claim, file number xxxxxx470, it accepted right rotator cuff syndrome. Appellant continued to work as a modified rural letter carrier until November 24, 2010 when the employing establishment could no longer accommodate her work restrictions. She was placed on the periodic rolls in receipt of compensation for total disability as of January 5, 2014. OWCP reduced appellant's compensation benefits effective August 24, 2014 based on her ability to earn wages as an appointment clerk, a decision that was affirmed by the hearing representative on May 12, 2015.

The Board finds that OWCP improperly determined that appellant was physically capable of performing the selected position of an appointment clerk. The Board notes that the opinion of Dr. McCaskill is not that of an impartial medical specialist, but that of a second opinion referral physician. In its November 12, 2014 decision, the Board had determined that there was no conflict in medical opinion at the time appellant was referred to Dr. McCaskill, which rendered his opinion that of a second opinion referral physician.²⁹

²⁵ *James Henderson, Jr.*, 51 ECAB 268 (2000).

²⁶ *Id.*

²⁷ *Phillip S. Deering*, 47 ECAB 692 (1996).

²⁸ *See M.A.*, 59 ECAB 624 (2008). *See Carl C. Green, Jr.*, 47 ECAB 737, 746 (1996) (six-month-old medical reports are reasonably current for purposes of wage-earning capacity determination); *Cf. Keith Hanselman*, 42 ECAB 680 (1991) (two-year-old medical report and year-old work restriction evaluation forms were not reasonably current for wage-earning capacity determination); *Anthony Pestana*, 39 ECAB 980 (1988) (three-year-old medical evaluation is not reasonably current for wage-earning capacity determination).

²⁹ *See* Docket No. 14-372 (issued November 12, 2014). The Board specifically found that Dr. Shah offered insufficient medical reasoning pertaining to appellant's residuals and work limitations to warrant application of section 8123 of FECA.

The appointment clerk position was listed as sedentary and the duties do not exceed the restrictions set forth by Dr. McCaskill. In this case, however, the medical evidence upon which OWCP relied to determine appellant's ability to work an appointment clerk was stale.³⁰

Dr. McCaskill's November 20, 2012 opinion regarding appellant's ability to work was based on an examination of appellant conducted nearly nine months prior to OWCP's reduction of compensation effective August 24, 2014. His opinion would not provide a reasonably accurate assessment of appellant's medical condition and ability to work around the time OWCP adjusted her compensation. While the Board has had occasion to evaluate the probative value of older medical reports and, because cases differ, it has never adopted a rigid standard.³¹

The Board further notes that Dr. McCaskill's November 20, 2012 report, as well as older medical reports previously of record, did not discuss appellant's disability as of August 24, 2014 when her compensation was reduced. While Dr. McCaskill opined that appellant's restrictions were related to difficulties grasping with her left hand because of thumb dysfunction and pain, none of the physicians of record, including Dr. Shah, Dr. Mitchell, Dr. McCaskill, found appellant totally disabled for work due to residuals of her accepted conditions. The Board has held that stale medical evidence cannot form the basis for current evaluation of residual symptomology or disability determination.³² For this reason, the Board finds that Dr. McCaskill's reports are of limited probative value regarding appellant's ability to work as an appointment clerk in August 2014. OWCP therefore improperly reduced appellant's compensation effective August 24, 2014 based on her capacity to earn wages as an appointment clerk.³³

CONCLUSION

The Board finds that since OWCP evaluated appellant's timely reconsideration request under the wrong standard the April 29, 2015 decision of OWCP will be set aside and the case remanded to OWCP for proper consideration of appellant's timely request for reconsideration. The Board further finds that OWCP improperly reduced appellant's compensation effective August 24, 2014 based on her capacity to earn wages as an appointment clerk.

³⁰ See *R.B.*, Docket No. 14-0594 (issued September 4, 2015).

³¹ *Id.*

³² See *Keith Hanselman*, *supra* note 28; see also *Ellen G. Trimmer*, 32 ECAB 1878 (1981).

³³ In light of the disposition of this case, appellant's contentions on appeal will not be addressed.

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this opinion and the May 12, 2015 OWCP decision is reversed.

Issued: August 16, 2016
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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