



sexual harassment by her coworker, L.H., who held the position of an injury compensation specialist.<sup>2</sup> As a result of her menorrhagia condition, appellant underwent surgery on October 28, 1994 to stop the severe bleeding. She reported that she became depressed and experienced stress upon learning that no discipline would be taken against him.

In an April 18, 1994 decision, the Equal Employment Opportunity Commission (EEOC) found that appellant had established a *prima facie* case of sexual harassment by L.H. sufficient to cause a hostile work environment. The employing establishment transferred him to a different facility from July 25 to October 10, 1994. On September 14, 1994 the employing establishment modified L.H.'s proposed reduction in grade from September 24 to October 7, 1994 to a suspension. L.H. returned to duty at the same facility where appellant worked on October 10, 1994 in his regular position.

In an October 18, 1994 letter, appellant demanded L.H.'s removal from the employing establishment. She asserted that working in the same employing establishment as L.H. caused a recurrence of her mental and physical symptoms.

By decision dated March 6, 1995, OWCP denied appellant's emotional condition claim. On April 4, 1995 appellant requested an oral hearing, which was held on February 14, 1996.

In a November 14, 1995 report, Dr. F.A. Silva, appellant's treating psychiatrist, indicated that appellant was unable to perform all of her job duties commencing September 13, 1995 due to generalized anxiety disorder and possible post-traumatic stress disorder (PTSD) related to work stress which had been aggravated by having to work at the same location as L.H. Dr. Silva advised that her onset of symptoms occurred in August 1995. He opined that appellant could return to full-time work if she did not have to work at the same facility as L.H. and was able to obtain work within her orthopedic restrictions.

By decision dated May 15, 1996, an OWCP hearing representative set aside the March 6, 1995 decision. He remanded the case for further development of the medical evidence and directed the district office to refer appellant to a Board-certified psychiatrist for a second opinion examination.

In an August 13, 1996 statement of accepted facts (SOAF), OWCP accepted EEOC's finding that L.H. sexually harassed appellant from 1985 to 1988. It accepted as factual, but not compensable, her frustration over what she felt was insufficient disciplinary action against L.H. The SOAF indicated that appellant returned to work on October 24, 1988 and missed little or no time from work due to the harassment until November 1994, when she filed her occupational disease claim.

To determine whether appellant had a gynecological condition caused by employment factors, she was referred to Dr. Louis Cenac, a Board-certified psychiatrist. Dr. Cenac advised in an August 27, 1996 report that she was experiencing insomnia, crying spells, hostile thoughts toward L.H, difficulty concentrating, and loss of interest in activities. He diagnosed factitious disorder with combined psychological and physical signs and symptoms and histrionic

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<sup>2</sup> Appellant related that she previously experienced the same symptoms beginning in February 1988 due to sexual harassment at work by L.H. for which she previously filed an occupational disease (Form CA-2) claim.

personality. Dr. Cenac found that appellant's current condition was not work related since she was able to return to work after the harassment ceased in 1988.

In a September 18, 1996 report, Dr. Cenac advised that based on appellant's complaints she should have been symptom-free from the stressors caused by L.H. by 1990. He noted that she had a long history of histrionic personality disorder and was considered uncomfortable in situations where she was not the center of attention. Dr. Cenac advised that appellant's symptoms recurred when L.H. was promoted. This promotion caused more attention to be focused on him than on her, which triggered her recurrence.

By decision dated September 19, 1996, OWCP accepted, based on Dr. Cenac's reports, that appellant sustained a condition, *i.e.*, a psychological factor, affecting a medical condition secondary to sexual harassment. It found, however, that the effects of this condition had ceased no later than December 31, 1989.

In a September 24, 1996 report, Dr. Silva noted that he began treating appellant on September 13, 1995, when she was referred for emergency treatment due to stress symptoms related to her return to work at the employing establishment. He advised that her symptoms and efforts to avoid activities that arouse recollections of the trauma were characteristic of PTSD. Dr. Silva advised that appellant had an extreme physiological reaction intensified when she had to work in the same building as L.H. and had to come in contact with him. He diagnosed PTSD and major depression, single episode, which required hospitalization on September 21, 1996. Dr. Silva opined that appellant's current condition arose from incidents of sexual harassment which occurred between 1985 and 1988.

On September 30, 1996 appellant requested reconsideration of the September 19, 1996 decision. She alleged that her depression, PTSD, and menorrhagia persisted after December 31, 1989. By decision dated October 22, 1996, OWCP denied modification of the September 19, 1996 decision.

On December 9, 1996 appellant underwent a hysterectomy and bilateral salpingo-oophorectomy (removal of the ovaries and fallopian tubes).

Appellant filed an appeal with the Board on December 19, 1996. In an October 23, 1998 decision,<sup>3</sup> the Board set aside OWCP's September 19 and October 22, 1996 decisions. The Board found a conflict in the medical evidence between Dr. Cenac and Dr. Silva, regarding whether appellant's current physical and psychological symptoms on and after December 31, 1989 were causally related to sexual harassment by L.H. from 1985 to 1988, the accepted psychiatric condition, or other factors of her employment. The Board remanded the case and directed OWCP to refer her to an impartial medical examiner to resolve the conflict in the medical evidence.

In an impartial medical examination report dated August 31, 1999, Dr. James H. Blackburn, a Board-certified psychiatrist, advised that appellant's current condition was directly related to factors of her employment and precluded her from any form of employment with the employing establishment. He opined that there was sufficient information in the record to

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<sup>3</sup> Docket No. 97-566 (issued October 23, 1998).

document a continuum of emotional upset and disorder from 1989 through the present, noting that the employing establishment's records indicated that she barely worked for extensive periods since 1988 until she returned during the year in 1995. Dr. Blackburn diagnosed major depression, recurrent, and some residual PTSD directly related to appellant's working conditions.

By letter dated September 9, 1999, OWCP informed appellant that the prior decision which denied benefits after December 31, 1989 was vacated and her claim was reopened for benefits secondary to her 1988 employment injury.

On July 1, 2000 appellant filed a (Form CA-7) claim for a schedule award. In a memorandum dated January 23, 2001, an OWCP claims examiner noted that he had advised her that if she wanted to claim a schedule award for her hysterectomy, she needed to submit a report from her treating physician, which included a reasoned medical opinion indicating how/whether the hysterectomy was related to any accepted conditions.

In an April 26, 2001 report, Dr. Francis H. Henderson, Board-certified in obstetrics and gynecology, stated that appellant had a severe case of menorrhagia, which was causally related to her diagnoses of severe depression, anxiety disorders, and PTSD caused by sexual harassment on the job.

By letter dated July 13, 2001, OWCP asked Dr. Henderson for an evaluation of whether appellant had any permanent impairment stemming from an accepted condition.

By letter dated August 24, 2001, OWCP informed appellant that her claim for a schedule award could not be processed. It advised her that her only accepted conditions were depression and PTSD and that there was no provision under FECA for schedule awards for nonphysical impairments.

In a March 15, 2002 report, Dr. Henderson advised that appellant sustained a severe case of menorrhagia, which was causally related to her severe depression, anxiety disorders, and PTSD caused by sexual harassment on the job. He asserted that her history made it necessary to perform a total abdominal hysterectomy and bilateral salpingo-oophorectomy. Dr. Henderson found that as a result of the surgical procedure appellant had 35 percent permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), because she was of childbearing age, was no longer able to bear children, and had to remain on hormonal therapy for the rest of her life.

In a July 29, 2004 report, an OWCP medical adviser reviewed Dr. Henderson's March 15, 2002 report and the medical history. He found that there was inadequate evidence in the record to support a causal relationship between appellant's accepted conditions of PTSD and major depressive disorder, and her menorrhagia and subsequent surgical procedures. The medical adviser advised that menorrhagia was a common disorder of females that was thought to be due to hormonal imbalances. He opined that the hysterectomy was not related to appellant's job or to the accepted conditions related to the sexual harassment from 1985 to 1988.

By letter dated August 12, 2004, OWCP advised appellant that to be entitled to a schedule award she needed to establish that she had permanent impairment due to a work-related physical condition. It found that there was a conflict in the medical evidence regarding whether

her alleged physical condition was causally related to her employment and that it was referring her for a referee medical examination to resolve the conflict in medical opinion.

OWCP referred appellant for an impartial medical examination with Dr. James D. Boyd, Board-certified in obstetrics and gynecology, who advised in a one-page responsive report dated May 9, 2005, that the hysterectomy was not causally related to the January 1, 1998 employment incident.<sup>4</sup>

By decision dated May 16, 2005, OWCP denied appellant's claim for a schedule award, finding, based on Dr. Boyd's referee opinion, that she did not have any permanent impairment causally related to an accepted employment condition.

On May 20, 2005 appellant requested a hearing before an OWCP hearing representative. The hearing was held on December 6, 2006. By decision dated February 20, 2007, the hearing representative set aside OWCP's May 16, 2005 decision, finding that Dr. Boyd's opinion did not merit the weight of a referee medical examiner as it was generalized, contained no rationale, and was not based on a proper factual and medical background. She remanded for OWCP to obtain an evaluation by a female gynecologist and directed the district office to reflect the fact that appellant was off work for intermittent periods from 1991 through 1995 within the SOAF. The hearing representative instructed that if the physician did find a causal relationship, she should then be asked to determine whether appellant had any permanent impairment stemming from her hysterectomy under the fifth edition of the A.M.A., *Guides*.

OWCP scheduled appellant for an impartial medical evaluation with Dr. Xercerla A. Littles, Board-certified in obstetrics and gynecology. In an August 25, 2008 report, Dr. Littles found that appellant's gynecological conditions and hysterectomy were not causally related to her accepted psychiatric conditions and that she had no permanent impairment under the A.M.A., *Guides*.

By decision dated February 5, 2009, OWCP denied appellant's claim for a schedule award based on Dr. Littles' opinion that there was no causal relationship between appellant's accepted psychiatric conditions and her gynecological condition, and that she therefore did not have any permanent impairment causally related to an accepted employment condition.

On February 11, 2009 appellant requested a hearing before an OWCP hearing representative. By decision dated June 16, 2009, the hearing representative set aside the February 5, 2009 decision, finding that Dr. Littles' report was of diminished probative value and did not merit the weight of an impartial medical examiner as she noted within her report that she lacked sufficient information to render an informed opinion. She remanded the case and directed the district office to obtain a supplemental report from Dr. Littles to clarify whether appellant's menorrhagia and hysterectomy were causally related to work stress she experienced due to sexual harassment at the workplace from 1985 to 1988, whether treatment for the work-related menorrhagia eventually necessitated the 1996 hysterectomy, and if so, whether appellant had any permanent impairment due to the removal of female reproductive organs under the sixth edition of the A.M.A., *Guides*.

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<sup>4</sup> The date that the report was prepared is unclear from the record. The report is generalized and contains no examination history, physical findings, or medical rationale for any opinions contained in the medical report.

In an October 5, 2009 report, Dr. Littles essentially reiterated her previous findings and conclusions that there was insufficient evidence to suggest that the reason for appellant's irregular bleeding, which was refractory to hormone therapy, and two prior dilation and curettage procedures were due to sexual harassment and/or stress at work which began three years prior to appellant's first dilation and curettage and concluded eight years prior to her hysterectomy.

By decision dated October 29, 2009, OWCP again denied appellant's claim for a schedule award. It found that she had not met her burden to prove that her accepted conditions caused uterine bleeding, menorrhagia, or the need for hysterectomy. On November 3, 2009 appellant again requested a hearing before the Branch of Hearings and Review. The hearing was held on March 10, 2010.

By decision dated April 21, 2010, an OWCP hearing representative set aside the October 29, 2009 decision and remanded the case to obtain further clarification from Dr. Littles regarding whether appellant's emotional condition contributed in any part to her menorrhagia and subsequent hysterectomy. He also directed that the SOAF be corrected to include appellant's assertion that she did not work from November 1991 until she was required to return to work in August or October 1995; provide further details regarding the nature of the accepted sexual harassment; stipulate that L.H. was subsequently charged with sexual assault; and delete facts pertaining to appeals and administrative actions taken in this case. Dr. Littles did not submit an additional report.

To resolve the conflict in the medical evidence regarding whether appellant's accepted psychiatric conditions were the primary cause of her claimed gynecological condition and whether the accepted condition was causally related to her menorrhagia and hysterectomy, OWCP referred her medical records and the updated SOAF to Dr. Patrick Allen, Board-certified in obstetrics and gynecology, for a referee medical evaluation. In an impartial medical report dated January 4, 2011, Dr. Allen concluded that "in all medical probability "that her original work injury was not the primary cause of her gynecologic condition.

By decision dated January 27, 2011, OWCP denied modification of its previous decisions, finding that Dr. Allen's impartial medical opinion represented the weight of the medical evidence.

On January 29, 2011 appellant requested an oral hearing before an OWCP hearing representative, which was held on May 25, 2011.

By decision dated July 7, 2011, an OWCP hearing representative set aside the January 27, 2011 decision and remanded the case for further development. She found that Dr. Allen did not present a clear, nonspeculative opinion regarding the relationship of the claimant's menorrhagia and her employment. The hearing representative noted that he opined that the original work injury was not the primary cause of her gynecological condition, but did not indicate whether the employment exposure contributed in any way to the condition by aggravation, precipitation, or acceleration. She therefore remanded the case to obtain further clarification from Dr. Allen regarding whether appellant's emotional condition contributed in any manner to her menorrhagia and subsequent hysterectomy.

In a supplemental report dated January 4, 2011,<sup>5</sup> Dr. Allen opined that the January 1, 1998 work injury did not cause or contribute to appellant's menorrhagia and subsequent hysterectomy. He noted that she could no longer bear children, but stated that this stemmed from her 1983 tubal ligation and second Caesarian section. Dr. Allen further opined that appellant's hysterectomy was unrelated to stress causing her bleeding issues. He advised that since her original incident was in 1985 to 1988 and she did not experience her hysterectomy until 1996, it was unlikely that she experienced stress for this prolonged amount of time to cause her anovulation and resulting menorrhagia. Dr. Allen attributed appellant's anovulatory bleeding to the hormonal therapy she underwent.

By decision dated March 28, 2012, OWCP denied appellant's claim for a schedule award. It found, based on Dr. Allen's opinion, that there was no causal relationship between her accepted psychiatric conditions and her subsequent uterine bleeding, menorrhagia, or her need for a hysterectomy, and that she therefore did not have any permanent impairment causally related to an accepted employment condition.

On March 31, 2012 appellant requested an oral hearing before the Branch of Hearings and Review. By decision dated September 26, 2012, an OWCP hearing representative affirmed the March 28, 2012 decision.

On November 5, 2012 appellant appealed to the Board. In a September 17, 2013 decision,<sup>6</sup> the Board found that Dr. Allen's impartial medical opinion constituted the weight of the medical opinion evidence. The Board found that appellant failed to submit sufficient medical evidence to establish that her claimed menorrhagia condition was causally related to her accepted psychiatric conditions and that she did not established a schedule award. The Board therefore affirmed OWCP's September 26, 2012 decision. The facts of this case as set forth in the Board's October 23, 1998 and September 17, 2013 decisions are incorporated herein by reference.

By letter dated July 8, 2014, received by OWCP on July 14, 2014 appellant requested reconsideration of her claim. Appellant submitted handwritten chart notes from May 2012 to July 2013. These notes are illegible and do not contain a signature of a physician. Appellant also submitted handwritten progress notes dated September 25, 2013 and March 6, 2014 from Dr. Zahid Imran, a specialist in psychiatry. Dr. Imran noted findings on examination, reviewed appellant's current prescribed medications, and documented her responses to these medications. While Dr. Imran's notes are generally illegible, references were made to a cardiology consult and an eye condition. These notes did not provide further information as to the cause of appellant's menorrhagia.

By decision dated January 8, 2015, OWCP denied modification of its September 26, 2012 decision.

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<sup>5</sup> The date of this report appears to have been a typographical error. It appears that it should have been dated January 4, 2012.

<sup>6</sup> Docket No. 13-0208 (issued September 17, 2013).

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>7</sup> has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an “employee of the United States“ within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>8</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>9</sup>

Appellant has the burden of establishing by the weight of the substantial, reliable, and probative evidence, a causal relationship between her claimed gynecologic condition and her federal employment. This burden includes providing medical evidence from a physician who concludes that the alleged condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant failed to submit sufficient medical evidence to establish that her claimed menorrhagia condition and subsequent hysterectomy were causally related to her accepted psychiatric conditions. For this reason, appellant has not discharged her burden of proof.

In a September 17, 2013 decision,<sup>11</sup> the Board found that appellant failed to submit sufficient medical evidence to establish that her claimed menorrhagia condition was causally related to her accepted psychiatric conditions. The Board also found that she had not established that she was entitled to a schedule award for this condition. The impartial medical opinion of Dr. Allen, Board-certified in obstetrics and gynecology, was found to constitute the weight of the medical opinion evidence. The Board affirmed OWCP’s decision dated September 26, 2012. The Board’s review of the previous medical evidence of record is *res judicata*.<sup>12</sup>

Following the Board’s September 17, 2013 decision, appellant submitted to OWCP the September 25, 2013 and March 6, 2014 chart notes from Dr. Imran and the handwritten chart notes from May 2012 to July 2013. These reports did not contain probative, rationalized medical opinion regarding the issue of causation of the menorrhagia condition, or the necessity for

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<sup>7</sup> *Supra* note 1.

<sup>8</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>11</sup> Docket No. 13-0208 (issued September 17, 2013).

<sup>12</sup> *See R.L.*, Docket No. 15-1010 (issued July 21, 2015). *See also A.P.*, Docket No. 14-1228 (issued October 15, 2014). As the Board has previously reviewed the evidence of record submitted prior to OWCP’s April 8, 2013 decision, the issue of its weight is *res judicata* and not subject to further consideration by the Board.

treatment of the condition. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.<sup>13</sup> The Board found in its September 17, 2013 decision that Dr. Allen's impartial opinion negated a causal relationship between appellant's accepted psychiatric conditions and her claimed menorrhagia condition and subsequent hysterectomy. The medical evidence appellant submitted from Dr. Imran, following the Board's September 17, 2013 decision, was largely illegible and did not address the cause of her menorrhagia condition. The other progress notes she submitted were also unsigned, illegible, and of little probative value.<sup>14</sup> The medical evidence appellant submitted does not constitute probative, rationalized medical opinion, and is insufficient to overcome the weight afforded to the referee opinion. The Board therefore finds that Dr. Allen's opinion continues to constitute the weight of medical opinion and supports the finding that appellant's claimed gynecological conditions were not causally related to her accepted psychiatric conditions.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is sufficient to establish causal relationship.<sup>15</sup> Causal relationship must be established by rationalized medical opinion evidence and she failed to submit such evidence.

OWCP advised appellant of the evidence required to establish her claim. However, appellant failed to submit such evidence. Accordingly, OWCP properly found in its January 8, 2015 decision that she did not substantiate that her menorrhagia condition was sustained in the performance of duty.

### **LEGAL PRECEDENT -- ISSUE 2**

The schedule award provision of FECA<sup>16</sup> and its implementing regulations<sup>17</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members, or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the

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<sup>13</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>14</sup> See *James A. Long*, 40 ECAB 538 (1989).

<sup>15</sup> *Supra* note 8.

<sup>16</sup> 5 U.S.C. § 8107.

<sup>17</sup> 20 C.F.R. § 10.404.

appropriate standard for evaluating scheduled losses.<sup>18</sup> The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to her employment.<sup>19</sup>

No schedule award is payable for a member, function or organ of the body that is not specified in FECA or in the implementing regulations.<sup>20</sup> The list of scheduled members includes the eye, arm, hand, fingers, leg, foot, and toes.<sup>21</sup> Additionally, FECA specifically provides for compensation for loss of hearing and loss of vision.<sup>22</sup> By authority granted under FECA, the Secretary of Labor expanded the list of scheduled members to include the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix, and vulva/vagina.<sup>23</sup> FECA and its implementing regulations do not specifically authorize payment of a schedule award for loss of cognitive function.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

In the instant case, the accepted conditions are psychiatric in nature. However, schedule awards are not payable under FECA for psychiatric conditions.<sup>25</sup> Appellant claimed a schedule award based on her alleged menorrhagia condition and subsequent hysterectomy. As noted above, however, a claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.<sup>26</sup> In light of the Board's finding that Dr. Allen's impartial medical opinion that her claimed gynecological conditions were not causally related to her accepted psychiatric conditions continued to constitute the weight of the medical evidence, OWCP's finding that there is no basis for a schedule award in this case is affirmed. The Board finds that there is no probative medical evidence establishing that appellant sustained any permanent impairment from an accepted condition.

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 sustain a gynecological condition in the performance of duty, causally related to her accepted psychological conditions. The Board also

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<sup>18</sup> *Id.*

<sup>19</sup> *Veronica Williams*, 56 ECAB 367, 370 (2005).

<sup>20</sup> *Supra* note 16 at § 8107(c).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at § 8107(c)(22); 20 C.F.R. § 10.404(a).

<sup>24</sup> *Brent A. Barnes*, 56 ECAB 336, 339 (2005).

<sup>25</sup> *Id.*; *see also A.S.*, Docket No. 12-1375 (issued February 12, 2013).

<sup>26</sup> *Supra* note 17.

finds that she has not sustained any permanent impairment to a scheduled member of her body entitling her to a schedule award under 5 U.S.C. § 8107.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 8, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

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

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