



On appeal counsel asserts that the medical evidence of record establishes that being forced to sit in awkward positions aggravated appellant's preexisting back condition.

### **FACTUAL HISTORY**

On June 11, 2014 the employing establishment filed a traumatic injury claim (Form CA-1) for appellant. The claim form noted that the injury at issue occurred on April 16, 2014. The employing establishment added comments that appellant's e-mail was illegible as to the cause of injury, other than not having an ergonomic chair caused further injury to his lumbar spine. Appellant had stopped work on April 18, 2014. The employing establishment indicated that appellant was provided assistance and an ergonomic survey had been scheduled but not completed. The form was signed by E.W., a supervisory contract specialist.

In letters dated June 13, 2014, OWCP informed appellant of the evidence needed to support his claim and requested that the employing establishment respond. Appellant was informed of the necessity of providing medical evidence that included a physician's opinion with a medical explanation as to how the reported work incident caused or aggravated a medical condition.

Copies of e-mails between appellant and the employing establishment dated April 24 to June 17, 2014 were submitted. On April 24, 2014 appellant wrote to E.W. requesting an ergonomic chair. On June 11, 2014 T.W. of the employing establishment's human resources office informed appellant that his Form CA-1 was being completed, but that OWCP needed a clear statement of how his injury occurred. Appellant replied that day, alleging that discs in his lower back were further injured which, his physician advised, was caused by not having an ergonomic chair or an ergonomic workplace study performed, and this caused his back to give out. He noted undergoing medical treatment and that his physician estimated that his recovery could take 3 to 12 weeks or longer. A second traumatic injury claim (Form CA-1), dated May 20, 2014, was not signed by the employing establishment. Appellant alleged that he injured his lumbar spine because he did not have a proper ergonomic chair and that this caused lumbar spondylosis at L4, L5, and S1 with foraminal stenosis at L4-5 and L5-S1. He also submitted a partially completed unsigned occupational disease claim (Form CA-2). Appellant noted having lumbar spondylosis with foraminal stenosis at L4-5 and L5-S1 and that he first became aware of the condition and its relationship to work on April 16, 2014.

In a report dated April 24, 2014 Dr. Gilo Kawasaki, a Board-certified internist with the Veterans Health Administration (VA), noted that appellant had long-standing lower back pain, prone to episodic flares. He advised that appellant was recovering from such an episode and could return to unrestricted duty on Monday, April 28, 2014. A May 1, 2014 note from the VA with an illegible signature noted that appellant was seen at the physical medicine and rehabilitation clinic for severe back pain and would benefit from an ergonomic assessment.

On a disability slip dated April 29, 2014, Dr. Richard J. Sanders, Jr., a Board-certified family physician, advised that appellant was undergoing treatment with a guarded prognosis and was on medical leave until further notice. On June 18, 2014 he prescribed an ergonomic work environment and seating to accommodate lumbar spine pain secondary to spondylosis and foraminal stenosis at L5-S1. Dr. Sanders noted on June 24, 2014 that appellant had been under

his care beginning April 29, 2014 for lumbar disc disease and that he could return to work after physical therapy and rehabilitation. He noted that appellant was also under the care of a VA orthopedic surgeon and neurologists who would provide restrictions and recommend treatment. On May 16, 2014 Dr. Sanders prescribed physical therapy. He further related that appellant was under psychiatric care for workplace harassment and resultant anxiety, neurosis, and exacerbation of his lumbar condition by the work environment. Dr. Sanders advised that appellant was being seen by a cardiologist for angina pectoris and a release to work could not be determined.

On May 21 and June 27, 2014 Dr. Sanders completed forms requesting a reasonable accommodation. On the May 21, 2014 form, he diagnosed anxiety and neurosis secondary to work harassment, noting that appellant was limited by chronic pain and this caused distraction from job duties. He indicated that appellant was further limited by prolonged sitting, standing, or complex decision making while on narcotic analgesics. Dr. Sanders advised that it would be inappropriate to attempt to accommodate appellant while he was in chronic pain and under the influence of narcotic medication, and that he could not return to work until fully recovered. On the June 27, 2014 form, he diagnosed lumbar spondylosis with foraminal stenosis and anxiety mood disorder, noting that appellant was restricted in bending, climbing, sitting, lifting, self-care, walking, performing manual tasks, and working, and was expected to be incapacitated for duty in the short term. Dr. Sanders advised that pain limited appellant's ability to function properly, noting that he had complained of inadequate work seating and had aggravated a presumably preexisting lumbar spine condition. He further commented that appellant's anxiety was associated with agitation, mood swings, and that people worked against him instead of with him.

The employing establishment submitted an unsigned statement of controversion. This statement indicated that on April 16, 2014 appellant requested sick leave to address a back problem when reporting to work, but then continued to work several hours, including attending a meeting where he was questioned about communications with other personnel. The employing establishment continued that appellant was notified by several e-mails beginning on April 17, 2014 regarding the requested ergonomic assessment, but that this could not be conducted as appellant did not return to work. It noted that Dr. Kawasaki advised that appellant could return to work without restriction on April 28, 2014.

On July 17, 2014 appellant submitted a claim for compensation (Form CA-7) for the period April 16, 2014 to present. However, only the first page of the form was completed.

By decision dated July 18, 2014, OWCP denied the claim finding that, as appellant did not establish that the claimed events occurred as alleged, fact of injury was not established.

On October 29, 2014 appellant, through counsel, requested reconsideration and maintained that the evidence of record established that sitting in an improper chair aggravated appellant's back condition.

In an undated statement, appellant maintained that E.W. knew he was having back problems because appellant told him that he had service-connected herniated discs, that he observed that appellant started wearing a transcutaneous electrical nerve stimulation (TENS) unit, and that he knew appellant was taking medication to treat muscle spasms. He indicated that

he had asked E.W. numerous times for an ergonomic chair, but E.W. harassed him about this. Appellant related that he could only return to work if he had a proper chair for his service-connected injury, noting that not having a proper chair further damaged his back. He stated that he had not been informed of any ergonomic assessment.

In response to an OWCP questionnaire dated October 17, 2014, appellant indicated that he told E.W. that he was injured and in a great deal of pain and needed to go to his doctor, and his only injury was that sustained at work. Appellant related that he still had radiating pain from the neck down both legs, and that physical therapy did not help. He was unable to stand for longer than 30 minutes and could sit in a chair for more than an hour. Appellant reported that he was a disabled veteran, but maintained that his current injury was due to not being provided a proper chair, which caused further damage to his spine. He stated that he had requested an ergonomic chair from E.W. on multiple occasions and was turned down. Appellant noted that E.W. came into his cubical and bumped his chair approximately three times, which injured his back, and he reported this to security. He concluded that he had never been given a reasonable accommodation and had not recovered from this injury.

On July 18, 2014 Dr. Sanders noted seeing appellant for back pain. He related that appellant had seen an orthopedic surgeon who recommended surgery and epidural injections, and that appellant had been to the emergency room for difficulty breathing. Dr. Sanders listed appellant's medications and diagnosed hypertension and lumbar spondylosis. In an October 2, 2014 treatment note, he advised that after appellant's first army enlistment, he was discharged due to L4-5 disc disease, pinched nerves in the neck, degenerative arthritis of both knees, and ankle fracture complications. Dr. Sanders continued that appellant later developed new low back pain that he felt was related to his work chair. He indicated that a magnetic resonance imaging (MRI) scan showed lumbar disc disease and lumbar spondylosis with presumed diagnosis of spondylosis aggravated by workplace ergonomics.<sup>3</sup> Physical therapy was not successful. Appellant was seen by Dr. James Butler, an orthopedist, a Dr. Houser, a neurologist, and a Dr. Braxton, a physiatrist, and was under treatment by a psychiatrist for an anxiety disorder related to back pain. Dr. Sanders reported a review of systems, noted that appellant complained of chronic lower back pain, described his history, and medications. He described general findings of the head, eyes, ears, nose, oral cavity, throat, neck, lymph nodes, and heart. Dr. Sanders did not note examining appellant's extremities or his back. He diagnosed lumbar spondylosis and failed back syndrome.

In undated statements, former coworkers J.E., R.L., and R.C. indicated that they worked with appellant at a previous command where he had a chair with full back support, did not complain about his back, and worked without limitations.

On November 4, 2014 Dr. Sanders completed a medical summary of appellant's care. He reported that on April 29, 2014 appellant presented with severe lower back pain, severe anxiety, and chest pain, stating that he had a difficult time concentrating at work due to back pain, and that he had requested an ergonomic chair and an accommodating workplace but the request was denied. Appellant described ongoing harassment and stopped work when the accommodation

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<sup>3</sup> A copy of a lumbar spine MRI scan is not found in the case record.

request was denied. Dr. Sanders noted that appellant had preexisting service-connected disc disease at L4-5 which became acutely active and was exacerbated at work. He again reported MRI scan findings, and that appellant was seen in consultation by Dr. Butler, Dr. Braxton, neurology, and a psychologist, and that in September 2014 Dr. Kawasaki recommended that he not work. Dr. Sanders concluded that appellant's prognosis was poor.

In a merit decision dated January 16, 2015, OWCP denied modification of the prior decision. It noted that appellant did not provide a statement explaining how the claimed April 16, 2014 injury occurred.

On February 11, 2015 appellant, through counsel, requested reconsideration. She maintained that because appellant's work chair lacked proper lumbar support, his preexisting back condition was exacerbated, and therefore fact of injury was established. Appellant submitted copies of e-mails previously of record.

In a sworn affidavit dated February 6, 2015, appellant asserted that his personal statements and Dr. Sanders' November 6, 2014 report supported his claim. He further maintained that the VA orthopedic doctor also agreed that he needed an ergonomic chair or ergonomic study performed, and that his injury occurred because he was not given a proper chair with back support which exacerbated a previous condition.

By decision dated March 5, 2015, OWCP modified its previous decisions. It noted that the claim was now considered an occupational disease claim because appellant described an injury that occurred over a period of time. OWCP accepted the factual portion of the claim, *i.e.*, "that sitting in an uncomfortable chair ... caused back pain" and that he had requested an ergonomic chair to assist him with his back problems. However, it found that the claim remained denied because the medical evidence of record was insufficient to differentiate between the effects of the claimed injury and appellant's preexisting condition.

Appellant, through counsel, requested reconsideration on October 13, 2015. Counsel provided a September 21, 2015 report from Dr. John W. Ellis, Board-certified in family medicine, and asserted that his opinion was sufficient to perfect appellant's claim.

In the September 21, 2015 report, Dr. Ellis noted conducting a telephone interview with appellant. Appellant reported radicular symptoms down both legs, which became numb if he drove more than 25 miles, and that he would then develop a panic attack. Dr. Ellis related that appellant injured his back in the army in 1996. After discharge, the VA treated him with back injections that did not relieve the pain, and he had continued leg numbness. Appellant began work with the employing establishment in 2006 in a job where he moved around, but continued to have back pain and numbness which stayed about the same. In 2013 he began working a job sitting at a standard desk with a standard chair on rollers. Appellant's back pain increased and he requested a chair with lumbar support. He related that on April 18, 2014 his supervisor twirled his chair. This caused severe radiating pain that kept appellant from working the next day. He also reported service-connected injuries to the knees, left ankle, and left hand, as well as sleep apnea. Dr. Ellis reviewed records provided, beginning with Dr. Sanders' June 25, 2015 report. He noted that, although appellant was concerned that sitting in a nonergonomic chair caused back pain, a lumbar support may not have helped because sitting caused greater pressure on

lumbar discs. Dr. Ellis advised that appellant's sudden onset of low back pain with increased radiation into his lower legs on April 18, 2014 was consistent with an acute herniation and disc bulging with pinching of the spinal nerves. He opined that it was medically reasonable that sitting in a chair, whether ergonomic or not, put greater pressure on lumbar discs, and this caused the discs to protrude backwards, causing the acute worsening of his symptoms consistent with an acute new change and new anatomical changes of the discs in his lower back. Dr. Ellis concluded that appellant's preexisting condition was exacerbated and aggravated by sitting at work which caused increased pressure on his lumbar discs, leading to disc derangement and impingement on the spinal nerves into his legs.

In a merit decision dated January 11, 2016, OWCP modified its March 5, 2015 decision, finding that the evidence of record was insufficient to establish the factors as described. It found that neither appellant's, nor counsel's statement "describes an injury, event, incident or accident over one day or one shift or over a period of time as the result of employment. OWCP noted that appellant, through counsel, contended that his preexisting back conditions were aggravated because he was using a regular chair and did not receive an ergonomic chair and/or ergonomic workplace study performed, and was not provided reasonable accommodations within a reasonable time. Further, it denied the claim because the record contained insufficient medical evidence in which a physician provided a rationalized opinion between the work factor and a diagnosed medical condition. It noted that clarification was also needed from a physician regarding the specifics of appellant's preexisting condition.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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, and that the claim was timely filed within the applicable time limitation period of FECA.<sup>4</sup> When an employee claims that he or she sustained an injury in the performance of duty,<sup>5</sup> he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time, place, and in the manner alleged.<sup>6</sup> The employee must also establish that such event, incident, or exposure caused an injury.<sup>7</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>8</sup> An employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>9</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however,

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<sup>4</sup> 5 U.S.C. § 8101(1); *L.M.*, Docket No. 16-0143 (issued February 19, 2016); *B.B.*, 59 ECAB 234 (2007).

<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

<sup>7</sup> *Id.*

<sup>8</sup> *R.H.*, 59 ECAB 382 (2008).

<sup>9</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>10</sup>

OWCP regulations define the term "occupational disease or illness" as a condition produced by the work environment over a period longer than a single workday or shift."<sup>11</sup> To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical opinion must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>12</sup>

Causal relationship is a medical issue, and the medical evidence required to establish a causal relationship is rationalized medical evidence.<sup>13</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>14</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.<sup>15</sup>

### ANALYSIS

The Board finds that appellant has established an employment factor. Appellant has consistently maintained that sitting in a regular or nonergonomic chair at work caused him back pain as it was uncomfortable. He and his physicians have explained that as a consequence of sitting in the uncomfortable chair, appellant requested reasonable accommodations in the form of an ergonomic chair and an ergonomic workspace to ameliorate his pain and discomfort. Additionally, appellant sought medical care for his back problems. There is no strong or

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<sup>10</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>11</sup> 20 C.F.R. § 10.5(ee).

<sup>12</sup> *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>13</sup> *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

<sup>14</sup> *Leslie C. Moore*, 52 ECAB 132 (2000); *Gary L. Fowler*, 45 ECAB 365 (1994).

<sup>15</sup> *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

persuasive evidence to the contrary. There are no inconsistencies to cast doubt on the validity of appellant's claim. As such, the Board will modify the finding in OWCP's January 11, 2016 decision to find that appellant has established that sitting in an uncomfortable chair at work has caused him back pain.

The Board further finds that appellant has not met his burden of proof to establish that his current low back condition was caused by the accepted employment factor that sitting in the chair provided by the employing establishment caused back pain.<sup>16</sup> In several merit decisions OWCP denied appellant's claim.

Based on appellant's testimony, he has a service-related lumbar spine condition. The case record before the Board, however, contains no information regarding this injury such as a discharge or VA rating decision, or any medical evidence regarding this injury or his subsequent back condition between 1996 when he was discharged from the army and the present claimed injury in April 2014. Appellant asserted that his uncomfortable chair aggravated and/or exacerbated the preexisting condition and concomitant pain. The record contains no objective medical information regarding appellant's low back condition, either past or present, such as MRI scan reports from 1996 to 2014 or other studies regarding his lumbar condition. There is no medical evidence to establish a baseline of appellant's lumbar spine condition after his army discharge prior to the claimed work-related condition in 2014. Without documentation bridging appellant's medical condition after his 1996 army discharge up to April 2014, it is difficult to assess his baseline condition prior to that time.<sup>17</sup>

Dr. Kawasaki's April 24, 2014 report is the earliest report of record. There are no reports that precede it. In the April 24, 2014 report, Dr. Kawasaki merely noted that appellant had long-standing lower back pain, prone to episodic flares, and that he could return to work on Monday, April 28, 2014. Moreover, Dr. Kawasaki did not discuss a cause of appellant's back pain. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>18</sup> Appellant did not return to work on April 28, 2014 and has not worked since.

Dr. Sanders' reports dated April 29 to November 4, 2014 are also insufficient to meet appellant's burden. He initially simply advised that appellant was undergoing medical treatment and could not work. Although Dr. Sanders later diagnosed lumbar spondylosis, foraminal stenosis, and failed back syndrome, in the few treatment notes contained in the record dated July 18 and October 2, 2014, he did not indicate that he examined appellant's back. Dr. Sanders also referenced an unknown MRI scan, which is not in the record. Dr. Sanders also advised that appellant was under the care of Dr. Butler, an orthopedist, Dr. Houser, a neurologist, and

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<sup>16</sup> The Board notes that although the claim was initially adjudicated by OWCP as a traumatic injury, as noted in the March 5, 2015 decision, the claim was found to be occupational because appellant described employment factors that occurred over a period of time.

<sup>17</sup> See *C.W.*, Docket No. 14-0730 (issued January 8, 2015).

<sup>18</sup> *Willie M. Miller*, 53 ECAB 697 (2002).

Dr. Braxton, a physiatrist, and was under management by a psychiatrist for an anxiety disorder related to back pain, but there are no reports in the record from these physicians.<sup>19</sup>

In his November 4, 2014 report, Dr. Sanders advised that appellant showed no improvement, and had severe sciatica, paresthesias, and musculoskeletal pain in his back and both lower extremities. He opined that appellant's working conditions directly impacted and exacerbated his underlying spinal condition causing great pain and suffering. The opinion of a physician supporting causal relationship must be one of reasonable medical certainty that the condition for which compensation is claimed is causally related to federal employment and such relationship must be supported with affirmative evidence, explained by medical rationale and be based upon a complete and accurate medical and factual background of the claimant.<sup>20</sup> Furthermore, a mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.<sup>21</sup> Dr. Sanders did not provide examination findings regarding appellant's back condition. He did not demonstrate specific knowledge of appellant's service-related injury, or his lumbar condition between 1996 and April 2014, and he did not submit objective testing to demonstrate that appellant had the conditions he diagnosed. Thus, Dr. Sanders' opinion on causal relationship is of insufficient probative value to meet appellant's burden of proof.

In his September 21, 2015 report, Dr. Ellis acknowledged that he did not examine appellant, rather only interviewed him by telephone. He noted appellant's service-related back injury. Dr. Ellis advised that appellant had an additional severe back injury that occurred on April 18, 2014 when his supervisor twirled his chair and this caused radiating pain so severe that he could not go to work the next day. He opined that it was medically reasonable that just sitting in a chair, whether ergonomic or not, put greater pressure on the lumbar discs, and appellant's acute onset of worsening symptoms was consistent with a new acute change and new anatomical changes in his lower back. Dr. Ellis concluded that sitting at work exacerbated and aggravated appellant's preexisting back condition, causing further spinal derangement.

To establish causal relationship, a claimant must submit a physician's report in which the physician reviews the employment factors identified as causing the claimed condition and, taking these factors into consideration as well as findings upon examination, states whether the employment injury caused or aggravated the diagnosed conditions and presents medical rationale in support of his or her opinion.<sup>22</sup> Dr. Ellis did not examine appellant. He also demonstrated no

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<sup>19</sup> The Board notes that the record contains a report from Ilsa Araki, M.A., a mental health counselor. Section 8101(2) defines the term "physician" to include surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law. 5 U.S.C. § 8101(2). As causal relationship is a medical question that can only be resolved by medical opinion evidence, the reports of a nonphysician such as Ms. Araki cannot be considered by the Board in adjudicating that issue. *See L.C.*, Docket No. 08-2271 (issued August 6, 2009).

<sup>20</sup> *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>21</sup> *J.D.*, Docket No. 14-2061 (issued February 27, 2015).

<sup>22</sup> *J.M.*, 58 ECAB 303 (2007).

specific objective knowledge of appellant's service-related injury or his back condition either in the interim from 1996 to April 2014 or since. Dr. Ellis' report is conclusory and insufficient to meet appellant's burden of proof.<sup>23</sup>

Although appellant indicated that E.W. bumped and/or twirled his chair on April 18, 2014 and that he reported the incident to employing establishment security, there is no evidence of record to support this allegation. Furthermore, he did not mention this assertion until October 2014, six months after he stopped work.

Finally, although appellant alleged managerial harassment, this claim is for a back condition only. He has not filed a claim for an emotional condition.

As none of the physicians of record provided a sufficient explanation regarding whether appellant's current back condition was a progression of his preexisting service-related lumbar injury or was caused by sitting at work, he did not meet his burden of proof.

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 meet his burden of proof to establish a back condition causally related to factors of his federal employment.

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<sup>23</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 11, 2016 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: October 3, 2016  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board