



factors of her federal employment.<sup>2</sup> In a second October 12, 2010 decision, the Board found that appellant failed to meet her burden of proof to establish an emotional condition in the performance of duty.<sup>3</sup> The facts and law of the previous Board decisions are incorporated herein by reference.<sup>4</sup>

Appellant retired on disability in March 2002. On January 17, 2008 she elected FECA benefits and received total disability compensation from January 19, 2008 until her return to a modified position for four hours a day on June 23, 2008. Appellant continued to receive wage-loss compensation for four hours daily.<sup>5</sup>

The accepted conditions at the time appellant returned to the part-time modified letter carrier position were rotator cuff tear of the right shoulder, bilateral carpal tunnel syndrome, bilateral chondromalacia patella, tear of the left medial meniscus, and contusion of the right ankle. The modified duties were described as: box mail middle and upper sections, write-up accountable mail pieces, answer Dutch door assisting customers, and other duties assigned within doctor restrictions, each for one to four hours intermittently. Physical requirements identified were push U-cart of mail to box mail; lift up to 10 pounds; stand, walk, and pull; and sit and write, each for one to four hours intermittently. Appellant accepted the position on May 15, 2008 “under stress and duress.”<sup>6</sup>

Under file number xxxxxx301, in an August 28, 2008 decision, OWCP found that appellant’s modified part-time position fairly and reasonably represented her wage-earning capacity and reduced her compensation accordingly. It noted that the medical evidence established that she was only capable of part-time employment.

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<sup>2</sup> Docket No. 10-273 (issued October 12, 2010). This decision was adjudicated by OWCP under file number xxxxxx005, a subsidiary file of the present claim. The master file was adjudicated by OWCP under file number xxxxxx190.

<sup>3</sup> Docket No. 10-693 (issued October 12, 2010). This case was adjudicated by OWCP under file number xxxxxx256, also a subsidiary file. File number xxxxxx190, file number xxxxxx005, and file number xxxxxx256 claims were combined in June 2009, with an additional subsidiary claim, adjudicated under file number xxxxxx301. File number xxxxxx301 was accepted for tear of the left medial meniscus and bilateral chondromalacia patellae. Left knee surgery was performed on October 30, 1992.

<sup>4</sup> Appellant filed the instant claim under file number xxxxxx190, on December 27, 1993. It was accepted for right shoulder impingement and bilateral carpal tunnel syndrome. Appellant had left and right carpal tunnel releases on October 6 and November 28, 1994 respectively. She last worked as a letter carrier in 1994. Beginning in March 1995 appellant performed modified duties for four hours daily. On September 30, 1996 she was granted a schedule award for 20 percent impairment of the right and left arms, which was amended on April 25, 1997. Under file number xxxxxx301, appellant was granted a schedule award for five percent left leg impairment on June 17, 1999. In July 1999 OWCP accepted a right ankle contusion. Appellant continued modified duties until she retired on disability in 2002. On May 29, 2007 she was granted a schedule award for an additional 5 percent left leg impairment and 10 percent right leg impairment. On June 23, 2008 appellant returned to a modified position for four hours a day.

<sup>5</sup> Compensation was and continues to be paid under file number xxxxxx301.

<sup>6</sup> In a February 28, 2008 work capacity evaluation, Dr. Robert E. Holladay, a Board-certified orthopedic surgeon and OWCP referral physician, advised that appellant could work four hours a day with a 10-pound weight restriction and no twisting, bending, stooping, operating a motor vehicle at work, squatting, kneeling, or climbing.

On September 17, 2008 Dr. William Rutledge, an attending general practitioner, described appellant's complaints and his examination findings. He advised that simple grasping was limited to four hours daily and fine manipulation to one hour daily.

Appellant stopped work on October 22, 2008 and did not return. She continued to receive wage-loss compensation based on the August 28, 2008 wage-earning capacity decision.

In an October 27, 2008 report, Dr. Rutledge noted that appellant had been advised not to return to work until her symptoms improved, opining that the return to part-time modified duty caused an exacerbation of her hand and right shoulder symptoms and caused a consequential injury to the left shoulder due to avoidance of overuse of the right shoulder.<sup>7</sup> On a duty status report dated November 15, 2008, he restricted appellant to four hours sitting; one to two hours of simple grasping; one hour of standing, twisting, and fine manipulation; and no climbing, kneeling, bending, stooping, pulling, pushing, or reaching above the shoulder, with an eight-pound weight restriction.

Under file number xxxxxx301,<sup>8</sup> appellant filed a recurrence claim (Form CA-2a) on January 5, 2009. She stated that she sustained a recurrence of disability on October 21, 2008 when her light-duty job was withdrawn. In a February 19, 2009 decision, OWCP denied appellant's request for reconsideration of the August 28, 2008 wage-earning capacity determination. On March 6, 2009 appellant filed a claim for compensation (Form CA-7) for the period October 27, 2008 to March 4, 2009. She continued to submit claims for compensation beginning October 27, 2008.

In reports dated March 19 to October 20, 2009, Dr. Rutledge noted appellant's complaints of neck, ankle, and bilateral knee, hand, wrist, and shoulder pain. He described physical examination findings and diagnosed osteoarthritis of bilateral knees, medial meniscus tear, contusion to the ankle, chondromalacia patella, bilateral carpal tunnel syndrome, and right shoulder impingement. Dr. Rutledge reported that appellant had an accidental fall at church on May 31, 2009 when her knees gave out, making her fall on outstretched hands and both knees. He advised that she was totally physically impaired and was incapable of any type of work due to "advances in her arthritic problems."

By decision dated June 16, 2009, OWCP denied appellant's January 2009 recurrence claim.

In reports dated June 25 to September 29, 2009, Dr. W. Scott Bowen, a Board-certified orthopedic surgeon, noted appellant's medical history. He described her complaints of continued discomfort in both knees and right shoulder and his physical examination findings. Dr. Bowen diagnosed bilateral patellofemoral chondromalacia, status post previous arthroscopic surgery and synovitis, and right shoulder rotator cuff tendinitis with mild adhesive capsulitis. He indicated that appellant would ultimately require further knee surgery. Dr. Bowen opined that appellant could return to work at a strictly sedentary position for four hours a day, but that she should not

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<sup>7</sup> The record also contains a duty status report dated November 24, 2008 with an illegible signature.

<sup>8</sup> *Supra* notes 3 and 4.

be required to walk or answer a door and should have breaks every two hours. He injected her knees in September 2009.

On November 16, 2009 an OWCP hearing representative affirmed the June 26, 2009 decision that denied appellant's January 2009 recurrence claim.

In correspondence dated January 25, 2010, S.M., a customer service supervisor at the employing establishment, stated that appellant returned to a modified position in July 2008, but rarely performed the assigned duties. She indicated that appellant boxed mail for no more than 30 minutes occasionally, would write up accountable mail at her own discretion, and never worked a full week after her return. S.M. advised that when appellant stopped work on October 27, 2008, she presented documentation from her psychologist, Dr. James Money Penny.

Evidence from the employing establishment included an undated statement from D.S. who advised that since appellant returned to part-time work, she had not performed her modified duties, had not been in regular attendance, and had not cooperated with management. In September 30 and October 20, 2008 statements, P.G., a customer service manager, advised that after appellant's return to modified duty she had not been productive, noting that she would not answer the service door because she complained that it hurt to get up and down and that she could not box mail because her feet and ankles hurt. The duties she performed included conducting online audits and inputting data. In a September 30, 2008 statement, V.M., a customer service supervisor, indicated that she observed appellant writing forms and occasionally answering the telephone, but that she was mostly sitting in the breakroom during her 6:00 to 10:00 a.m. tour.

In an undated report responding to a February 8, 2010 OWCP information request, Dr. Rutledge advised that appellant developed bilateral shoulder pain upon her return to work in June 2008. Appellant had described her modified duties as requiring quite a bit of computer work and boxing mail. She noted that she had to push off with her arms in order to rise from sitting. Dr. Rutledge reported that appellant had positive findings of shoulder and wrist tenderness and decreased shoulder range of motion. He advised her to stop work in October 2008 and noted that she returned to baseline status on or about December 30, 2008.

On April 19, 2010 Dr. Bowen noted appellant's complaints of difficulty rising from a seated position, anterior knee pain, difficulty navigating stairs due to knee pain, and right shoulder pain. He provided physical examination findings and diagnosed bilateral knee osteoarthritis, mostly patellofemoral; right shoulder impingement with at least partial-thickness rotator cuff tear; and right ankle pain.

In an April 29, 2010 report, Dr. Jesse Burks, a podiatrist, noted appellant's complaint of severe right ankle pain. He noted findings and diagnosed to rule out synovitis, right ankle; and posterior tibial synovitis, right. He recommended a magnetic resonance imaging (MRI) scan.<sup>9</sup>

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<sup>9</sup> A June 15, 2010 right ankle MRI scan showed soft tissue edema but no other significant abnormality. On June 17, 2010 Dr. Burks reviewed the MRI scan study and diagnosed posterior tibial tendinitis.

On June 1, 2010 Dr. Bowen examined appellant for complaints of right shoulder pain. He described full range of motion, 4/5 strength, tenderness with slight crepitus, and positive Jobst and Hawkins' signs, and O'Brien's test. Dr. Bowen diagnosed symptomatic impingement and rotator cuff tear, right shoulder; and synovitis, right shoulder. He recommended right shoulder surgery and a functional capacity evaluation. Dr. Bowen advised that appellant could not do any overhead work and recommended a sedentary position where she would sit, lift no more than 10 to 15 pounds occasionally up to her waist level, and no lifting up to her chest or overhead.

In reports dated September 9, 2010, Dr. Rutledge wrote in support of a consequential left shoulder injury. He opined that because appellant had a right shoulder injury, she used her left shoulder excessively and had developed pain and stiffness. Dr. Rutledge diagnosed left shoulder rotator cuff tendinitis. On September 17, 2010 he performed arthroscopic repair of the right rotator cuff. In reports dated September 23 to December 2, 2010, Dr. Bowen described appellant's postoperative condition, advised that she could not work, and recommended left shoulder surgery.

In a January 26, 2011 decision, OWCP denied appellant's claim for a consequential left shoulder condition. Appellant timely requested a review of the written record, and in a June 15, 2011 decision, an OWCP hearing representative set aside the January 26, 2011 decision and remanded the case for referral to an appropriate specialist.

In August 2011 appellant was referred to Dr. James T. Galyon, a Board-certified orthopedic surgeon. In an August 31, 2011 report, Dr. Galyon described physical examination findings. He advised that appellant's bilateral carpal tunnel syndrome and torn left knee meniscus had been effectively treated with surgery and that she had a poor result from a right shoulder decompression procedure. Dr. Galyon indicated that appellant had bilateral shoulder anatomical abnormalities that were not due to work activities. He opined that the bilateral mild-to-moderate chondromalacia patellae was primarily caused by gross obesity and the anatomical characteristics of her patellae. Dr. Galyon concluded that appellant could not perform letter carrier duties due to nonemployment-related bilateral chondromalacia patellae.

On September 13, 2011 OWCP found that the weight of the medical evidence rested with the opinion of Dr. Galyon and denied the consequential left shoulder condition. Appellant timely requested a review of the written record.

Dr. Rutledge continued to submit reports in which he described appellant's current condition. He did not discuss the period of claimed disability in the instant case. In an undated report received on December 19, 2011, Dr. Rutledge reiterated his findings and conclusions. He further noted that appellant should not have been working a limited-duty job because she had problems in bilateral shoulders, knees, hands, and ankles, with shoulder tenderness and restricted range of motion such that she was totally disabled.

By decision dated December 21, 2011, an OWCP hearing representative found that a conflict in medical evidence had been created between the opinions of Dr. Galyon and Dr. Rutledge regarding appellant's left shoulder condition and remanded the case to OWCP to obtain a referee opinion.

In January 2012 OWCP referred appellant to Dr. Rommel G. Childress, a Board-certified orthopedic surgeon, for an impartial medical evaluation. In an undated report, received by OWCP on February 27, 2012, Dr. Childress noted his review of the record, described appellant's complaints, and provided physical examination findings. He diagnosed impingement syndrome and rotator cuff tear, right shoulder, requiring arthroscopic intervention, currently, less symptomatic since appellant stopped work; bilateral carpal tunnel syndrome with surgeries and current symptoms that were minimal with activities of daily living; chondromalacia and loose bodies of left knee and torn medial meniscus, left knee, currently reasonably comfortable, with management and limited activities at home; history of right ankle contusion, with tendency for recurrent swelling, but managing reasonably with the restricted activities of daily living; and consequential injury to left shoulder, with rotator cuff tear, currently reasonably managed with conservative measures and not giving appellant excessive problems or difficulty since she was not working and was being managed reasonably with nonoperative treatment. Dr. Childress opined that, following his review of the record, appellant's left shoulder problems and difficulties, as documented by Dr. Rutledge, supported a consequential injury to the left shoulder, caused by both overuse in casing mail and other activities when she was attempting to work, and by straining and using her shoulders to get up and down when she was having problems and difficulties with her left knee, plus the May 31, 2009 fall at church that was caused by her knees giving way. He disagreed with Dr. Galyon's opinion regarding appellant's shoulder impingement syndrome, finding that repetitively pushing up from a seated position because of bilateral knee problems and overuse of the left upper extremity from months and months of protection because of right shoulder problems did create a consequential injury to the left shoulder, that was aggravated by the May 2009 fall when her knees gave out.

On March 16, 2012 OWCP accepted a consequential injury of left shoulder rotator cuff tear.<sup>10</sup> On May 11, 2012 it paid appellant total disability compensation for the period September 17, 2010 through May 5, 2012, and she was placed on the periodic compensation rolls thereafter. On May 23, 2013 appellant was paid compensation for the period October 27 through December 30, 2008.

In a May 28, 2013 letter, OWCP informed appellant that, based on Dr. Rutledge's February 8, 2010 report, her shoulders had returned to baseline by December 30, 2008 and there was no medical evidence to support total disability until her right shoulder surgery in September 2010.

In an August 14, 2013 report, Dr. Rutledge described appellant's current condition.

By decision dated November 27, 2013, OWCP denied appellant's claim for total disability compensation for the period December 31, 2008 through September 16, 2010. It noted

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<sup>10</sup> The record also indicates that appellant has an additional claim for aggravation of bilateral shoulder conditions and carpal tunnel syndrome, adjudicated by OWCP under file number xxxxxx107. In a May 3, 2012 decision on that claim, the Board found that OWCP properly denied appellant's request for reconsideration. The Board, however, noted in a July 23, 2010 decision, an OWCP hearing representative directed that file number xxxxxx107 be combined with the instant claim, adjudicated under file number xxxxxx190. Docket No. 11-2104 (issued May 3, 2012). File number xxxxxx107 has not been combined with the instant claim.

that her claims for cervical and emotional conditions had been denied,<sup>11</sup> and that the medical evidence did not establish that she was disabled from her limited-duty position after December 30, 2008.

On December 12, 2013 appellant requested reconsideration and submitted additional medical evidence. This evidence included duplicates of evidence previously of record, and a December 9, 2013 report in which Dr. Rutledge advised that, by way of clarification, when he opined that appellant had returned to baseline functioning by December 30, 2008, the statement was in reference “to her doing a little better, but not able to return to work because of ongoing bilateral knee, shoulder, and hand pain.”

In a merit decision dated April 21, 2014, OWCP found the evidence submitted was insufficient to modify the prior decision because the medical evidence was not sufficiently rationalized to establish that she could not perform modified duties for four hours a day.

Appellant requested reconsideration on May 8, 2014. She asserted that the medical evidence established total disability and included a report by Dr. Rutledge, previously of record. In a newly submitted September 12, 2013 report, Dr. Rutledge described appellant’s current condition, but did not discuss the period of claimed disability in this case.

In a nonmerit June 2, 2014 decision, OWCP denied appellant’s reconsideration request without conducting a merit review of the claim.

Appellant again requested reconsideration on August 8, 2014. In a July 31, 2014 report, Dr. Bowen advised that he felt appellant could work four hours a day “in a strictly sedentary position but not do any overhead work.” He continued that it was his understanding that this work was not available for her and he kept her off work. On July 31, 2013 Dr. Rutledge reiterated his findings and conclusions regarding appellant’s current condition.

In a merit decision dated November 7, 2014, OWCP denied appellant’s claim for compensation for the period December 31, 2008 through September 16, 2010, finding the medical evidence submitted insufficient to establish total disability for the claimed period.

### **LEGAL PRECEDENT**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.<sup>12</sup> This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force), or when the physical

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<sup>11</sup> *Supra* notes 2 and 3.

<sup>12</sup> 20 C.F.R. § 10.5(x); *see Theresa L. Andrews*, 55 ECAB 719 (2004).

requirements of such an assignment are altered so that they exceed his or her established physical limitations.<sup>13</sup>

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.<sup>14</sup>

### ANALYSIS

The accepted conditions in this case are rotator cuff tear of the right shoulder, bilateral carpal tunnel syndrome, bilateral chondromalacia patella, tear of the left medial meniscus, and contusion of the right ankle. A consequential left shoulder rotator cuff tear was accepted on March 16, 2012.

In October 2008 appellant was working a modified position for four hours a day and receiving four hours of daily compensation. She stopped work on October 22, 2008 and filed both a recurrence claim and CA-7 claims for compensation for the period after she stopped work. OWCP accepted that appellant sustained a recurrence of disability for the period October 27 through December 30, 2008, and she has been on total disability compensation since September 17, 2010.<sup>15</sup> The Board finds the case is not in posture for decision regarding whether she is entitled to total disability compensation for the period December 31, 2008 through September 16, 2010.

On June 23, 2008 appellant returned to a modified letter carrier position for four hours daily. She continued in that position until October 27, 2008, when she stopped work and did not return. Appellant continued to receive compensation for four hours a day. The duties of the modified position included box mail middle and upper sections, write-up accountable mail pieces, answer Dutch door assisting customers, and other duties assigned within doctor restrictions, each for one to four hours intermittently. Physical requirements identified were: push U-cart of mail to box mail, lift up to 10 pounds; stand, walk, and pull; and sit and write, each for one to four hours intermittently.

In merit decisions dated November 27, 2013, April 21 and November 7, 2014, OWCP denied appellant's claim for total disability compensation for the period December 31, 2008 through September 16, 2010. It noted that, because Dr. Rutledge indicated in February 2010 that

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<sup>13</sup> *Id.*

<sup>14</sup> *Shelly A. Paolinetti*, 52 ECAB 391 (2001); *Robert Kirby*, 51 ECAB 474 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>15</sup> As noted, *infra*, on March 16, 2012 OWCP accepted that appellant sustained a consequential left shoulder condition. OWCP paid her total disability compensation for the period September 17, 2010 through May 5, 2012, and she was placed on the periodic compensation rolls thereafter.

appellant returned to baseline on or about December 30, 2008, she was not entitled to total disability compensation after that date.

The medical evidence relevant to the period of claimed disability includes reports from Dr. Burks and Dr. Galyon, but neither physician provided a medical opinion on the period of claimed disability, December 31, 2008 through September 16, 2010. As such, the reports from Dr. Burks and Dr. Galyon have no probative value regarding the issue of whether appellant established disability from December 31, 2008 through September 16, 2010.<sup>16</sup>

Dr. Rutledge submitted reports dated March 19 to October 20, 2009, in which the physician described appellant's complaints and physical examination findings. He reported that she had an accidental fall at church on May 31, 2009 when her knees gave out, making her fall on outstretched hands and both knees. Dr. Rutledge diagnosed osteoarthritis of both knees, medial meniscus tear, contusion to the ankle, chondromalacia patella, bilateral carpal tunnel syndrome, and right shoulder impingement and advised that appellant was not capable of any type work due to "advances in her arthritic problems." As noted above, in a report received on March 5, 2010, he indicated that appellant had returned to baseline in December 2008. Dr. Rutledge, however, further explained on December 19, 2011 that appellant should not have been performing a limited-duty job because she had problems in bilateral shoulders, knees, hands, and ankles, with shoulder tenderness and restricted range of motion such that she was totally disabled. On December 9, 2013 he advised that, by way of clarification, when he noted that appellant had returned to baseline functioning by December 30, 2008, the notation indicated that she was doing a little better, but that she was not able to return to work because of ongoing bilateral knee, shoulder, and hand pain.

In reports dated June 25 to September 29, 2009, Dr. Bowen described appellant's complaints and provided physical examination findings. He diagnosed bilateral patellofemoral chondromalacia, status post previous arthroscopic surgery and synovitis, and right shoulder rotator cuff tendinitis and mild adhesive capsulitis and indicated that she would ultimately require further knee surgery. Dr. Bowen opined that appellant could return to work at a strictly sedentary position for four hours a day, but that she should not be required to walk or answer a door and should have breaks each two hours. On June 10, 2010 he advised that appellant could not do any overhead work and recommended a sedentary position where she would sit, lift no more than 10 to 15 pounds occasionally up to her waist level, and do no work up to her chest or overhead.

Dr. Childress, who provided an impartial evaluation with regard to appellant's left shoulder condition in February 2012, while not specifically commenting on appellant's ability to perform the modified duties, indicated that her consequential left shoulder injury was caused by overuse in casing mail and other activities when she was attempting to work, by straining and using her shoulders to get up and down when she was having problems and difficulties with her left knee, plus the May 31, 2009 fall at church that was caused by the knees giving way.

The Board finds that, while these reports lack detailed medical rationale sufficient to discharge appellant's burden of proof that she was totally disabled for the period December 31,

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<sup>16</sup> W.S., Docket No. 14-1022 (issued July 1, 2014).

2008 through September 16, 2010, this does not mean that they may be completely disregarded by OWCP. It merely means that their probative value is diminished.<sup>17</sup> As delineated above, each physician described physical findings which could preclude appellant from performing modified letter carrier duties beginning December 31, 2008.

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>18</sup> The case shall therefore be remanded to OWCP. On remand, OWCP shall refer appellant, an updated statement of accepted facts, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis and a rationalized opinion as to whether appellant was totally disabled at any time during the period December 31, 2008 through September 16, 2010 due to the accepted conditions. After this and such further development deemed necessary, OWCP shall issue an appropriate decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision regarding whether appellant established total disability for the period December 31, 2008 through September 16, 2010.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.<sup>19</sup>

Issued: September 22, 2016  
Washington, DC

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

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

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<sup>17</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>18</sup> *See Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>19</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.