United States Department of Labor
Employees' Compensation Appeals Board

S.S., Appellant	)	
and	)	**Docket No. 15-1783**
	)	**Issued: September 12, 2016**
U.S. POSTAL SERVICE, LOGISTICS & DISTRIBUTION CENTER, Tampa, FL, Employer	)	

Appearances:
Lenin V. Perez, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 25, 2015 appellant, through her representative, filed a timely appeal from an August 3, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant sustained an emotional condition in the performance of duty.

[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)(2014). 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 (2006). 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.*

FACTUAL HISTORY

On July 18, 2014 appellant, then a 51-year-old mail handler (forklift operator), filed a traumatic injury claim (Form CA-1) for depression and anxiety, which she attributed to an alleged May 30, 2014 employment incident. She stopped work on June 5, 2014. Appellant attached a June 18, 2014 statement/e-mail to her Form CA-1 describing a series of events between May 30 and June 4, 2014 that ostensibly caused her claimed emotional condition.

Appellant indicated that on Friday, May 30, 2014 at approximately 10:00 p.m., she was sitting on her forklift writing a few things down when she heard her name shouted out from behind. She turned to see who called her and from a distance she observed a "[huge white dildo with balls]" being waved from side to side. However, appellant could not see who was waving the dildo. She then turned back around and finished what she was doing. A few minutes later, appellant drove her forklift to the location where she observed the item being waved.[3] In route, she passed a supervisor of distribution operations (SDO), J.W., who was headed in the opposite direction. They did not speak. Appellant then saw coworker, J.C., a custodian who was sweeping. She asked J.C. if he had called her name, and he replied "No, just [T.A.] over there having fun with a [d]ildo." Appellant observed another coworker, E.D., standing nearby and drove over to him and asked if he had called her name. E.D., a mail handler, told her "No" and motioned towards T.A., another mail handler. Appellant then drove over to T.A. and asked if he had called her name. He was reportedly laughing at the time and told her "no, I called [J.W.]." Appellant then asked him who had waved the dildo. T.A. admitted to doing it. Appellant then told him he could get into a lot of trouble doing something like that. She noted that T.A. again denied calling her name, and instead claimed to have "called out [J.W.'s] name." At that point, appellant reportedly "left it alone." She also stated that throughout the night she heard a couple of the guys snickering and laughing as she drove by on a number of occasions.[4]

When appellant returned to work the following Monday (June 2, 2014) afternoon, she encountered a coworker, J.K., waiting by the time clock. J.K. reportedly glanced in her direction and gave her a "sneer, laugh."[5] Approximately a half hour later (3:25 p.m.), appellant approached J.W. to inform him about what was going on. J.W. reportedly asked appellant if she wanted to report what had happened, and she replied "not at this time." Appellant also stated that later in the evening as she approached T.A., he first chuckled at her with a big grin, but then made a serious face as she drove by. When she passed him another time, appellant stated that she just shook her head "like no." About five minutes afterwards, appellant passed T.A. once more and he reportedly motioned for her to come over and talk to him. After dropping off her mail, appellant returned to see what T.A. wanted. She stated that he asked her what she meant by that. Appellant assumed he was referring to her previous head shaking. She indicated that she told T.A. that she did not believe his story about calling J.W.'s name, but he continued to deny having called her name. According to appellant, T.A. told her that he did not know her that way to do something of that nature. She also indicated that during their conversation, T.A. stated that he did not think it was right for one of the other guys to show the dildo to one of the ladies

[3] Appellant described her initial location as automated package processing system (APPS) 2, side 1. The incident she observed occurred at APPS 2, side 2.

[4] Appellant identified the individuals as H.S. and J.B.

[5] J.K. was off duty on Friday, May 30, 2014.

on the semi-auto, but apparently "he's got it like that." Later on, J.K. reportedly walked by and motioned for T.A. to leave because the two had been commuting together.

Appellant was off work on June 3, 2014, and when she resumed work on June 4, 2014, she reportedly encountered T.A. and J.K. in the front parking lot around 2:45 p.m. She stated that she was walking to the building's front entrance when she heard an engine roaring behind her. Appellant turned her head and observed J.K. driving his truck, with T.A. in the passenger seat. As the truck passed her, J.K. reportedly turned his head towards her and revved the engine and laughed. Appellant also reportedly observed T.A. laughing hysterically. At that point, she decided she had had enough, and was not going to be taunted anymore. Appellant awaited J.W.'s arrival and then informed him that she wanted to file a complaint and speak with R.M., the distributions operations manager.

As part of the employing establishment's internal harassment investigation, appellant and several of her coworkers provided statements regarding the May 30, 2014 incident. In a June 4, 2014 statement, T.A. indicated that on May 30, 2014 he was culling on APPS 2, side 2 when a dildo fell out of the mail onto the belt. T.A. stated he took the item and called "[J.W.] out [and] put it up in the air." J.W. subsequently came over and took the dildo. And soon afterwards, appellant came around and asked T.A. if he had something to show her. In response, T.A. asked appellant what she was talking about. He then told her there was a dildo in the mail, that J.W. took it, and now it was gone. T.A. indicated that appellant proceeded to tell him that all the guys stated he had called her name. When he asked appellant who told her that, she reportedly refused to identify the individual(s). Additionally, T.A. stated that he started to tell appellant that he would not call her over to look at a dildo. He also reiterated that appellant would not tell him who stated that he had called her name, and she reportedly told him not to worry about it because they were just going to squash it. However, appellant brought the incident up again a few days later.

According to T.A., the following Monday, June 2, 2014, appellant told him that she did not believe him. T.A. indicated that she showed him where she had been parked on the forklift when she thought she heard her name, and then looked back to see the dildo up in the air. He stated that he asked her if he had ever been disrespectful to her before, to which she replied "no." T.A. then asked if they had ever had this type of conversation before, which appellant also replied "no." However, she reportedly told T.A. that it was too coincidental to turn around, see the dildo up in the air, and then come around the machine (APPS) and hear everyone laughing. T.A. stated that, while appellant believed it was directed at her, another coworker, E.T., was there the entire time when he -- T.A. -- called J.W. to retrieve the dildo.

E.T. also provided a statement dated June 4, 2014. He recalled the incident with the dildo, but identified a different date -- Thursday, May 29, 2014. E.T. indicated that T.A. called him over after a dildo had fallen out of a package. He noted that T.A. was culling at the time and had the dildo in a flat tub. T.A. further indicated that he was on a tow-motor at the time. He also stated that as the machine was ending, T.A. stood up on a bulk mail container (BMC) and yelled to J.W. E.T. reiterated that "[T.A.] yelled J.W.'s name." Afterwards, E.T. drove off on his tow-motor. Although he observed appellant and T.A. talking, E.T. stated he did not know what the conversation was about. He specifically denied seeing or hearing any incident between the two of them.

In an August 13, 2014 statement, J.W. indicated that on May 30, 2014 he was working on side one of APPS 2 when T.A. called for his attention from side two of APPS 2. He noted that T.A. was standing near the culling belt when he held up a sex toy in the air, which had apparently fallen out of the mail. J.W. further indicated that he immediately went to side two and confiscated the sex toy along with the packaging, and proceeded to place the item in patch-up. According to him, that was the extent of his involvement.

E.D. also provided a statement dated June 4, 2014. He recalled the May 30, 2014 incident and noted that he was loading at APPS 2, side 2 and T.A. was culling. He further stated that T.A. insisted on waving it around, and toying with it.[6] ED. also indicated that another manager, K.C., came around and reportedly knew about the object. Additionally, he noted that appellant came by and told T.A. that he could get in a lot of trouble with that thing. E.D. observed the two having a conversation, but he could not hear what else was stated. He indicated that appellant did not look happy. E.D. further commented that T.A. treated the matter as a joke, but should have just put the item in patch-up.

In his June 4, 2014 statement, J.K. noted that he had been off Friday (May 30, 2014) and knew nothing of the incident. He also stated that he heard "today" that T.A. found a dildo in the mail on Friday.

In an August 21, 2014 development letter, OWCP requested additional factual information, as well as a comprehensive medical report regarding appellant's claimed emotional condition, including an opinion on causal relationship. Specifically, it asked appellant to provide signed witness statements from anyone who could verify her allegations regarding the alleged May 30, 2014 incident and subsequent taunting. OWCP also solicited information about any related grievance and/or Equal Employment Opportunity (EEO) complaint she may have filed. OWCP afforded appellant at least 30 days to submit the requested factual and medical information.

Apart from the above-noted witness statements, OWCP did not receive any additional factual information regarding the alleged employment incident(s).

Following the May 30, 2014 incident, Dr. Arthur first saw appellant on June 4, 2014, at which time he prescribed medications. He noted she was unable to return to work because the depression and post-traumatic symptoms affected her ability to concentrate, attend to tasks, relate to others, and keep regular attendance. Appellant had a history of migraine headaches and a previous depressive episode in 2012, which had resolved. Dr. Arthur diagnosed major depressive disorder with aspects of post-traumatic stress disorder (PTSD) and generalized anxiety disorder. He explained that the inappropriate and sexually harassing incident at work on May 30, 2014 directly precipitated appellant's depression and anxiety, as well as many of the symptoms of acute PTSD. Dr. Arthur further noted that there had been no other stressors in appellant's life and she was previously quite stable. However, now she was in active treatment, and totally disabled for any work at the employing establishment dating back to June 5, 2014.

[6] In his June 4, 2014 statement, E.D. did not specifically mention a dildo, sex toy, or otherwise describe the item/object T.A. reportedly waved around and toyed with.

A July 18, 2014 report from Dr. Gary K. Arthur, a Board-certified psychiatrist, noted that appellant was a forklift operator who had worked for the employing establishment for 27 years. Dr. Arthur also indicated that he had reviewed appellant's Form CA-1. In his medical report, he described a May 30, 2014 employment incident where appellant reportedly heard her name called from behind her forklift, and as she turned she saw a male coworker waving a large dildo with testicles at her. Dr. Arthur further noted that appellant immediately became shocked, anxious, and embarrassed. He also reported that appellant observed other male coworkers who laughed and smiled at appellant for the remainder of the day. Additionally, he reported a history of similar behavior directed toward another female at the same postal facility. Dr. Arthur noted that the male coworkers were supportive of the person waving the dildo and ignored appellant's distress. That same evening, appellant reportedly became increasingly depressed about the incident and how belittling and embarrassing it was. He noted that she began having intrusive memories about it, being hypervigilant and easily startled. Dr. Arthur also reported that appellant feared further repercussions from other employees and/or supervisors if she filed a complaint.

In a September 11, 2014 follow-up report, Dr. Arthur noted that he continued to treat appellant and there had not yet been any improvement.

By decision dated September 23, 2014, OWCP denied appellant's claim because she failed to establish a compensable employment factor as the reputed cause of her claimed emotional condition. In essence, OWCP found that while T.A. waved a dildo in the air on May 30, 2014, he did not specifically direct it towards appellant. T.A. stated that he called out the supervisor's name -- J.W., -- not appellant's. Additionally, appellant did not provide any evidence to substantiate her claim that on May 30, 2014 T.A. intentionally called out her name to show her the dildo. OWCP further found that appellant failed to establish the alleged incidents of snickering/laughing and/or taunting on May 30, June 2 and 4, 2014. Consequently, OWCP denied appellant's emotional condition claim without having reviewed the medical evidence of record.

Appellant timely requested a hearing, which was held before an OWCP hearing representative on May 18, 2015. At the hearing, she indicated that she filed both a grievance and an EEO complaint. Appellant also provided transcripts from two recent depositions regarding the EEO complaint.[7]

E.D. was deposed on March 12, 2015 and testified that both he and appellant were about the same distance (25 feet) from T.A. at the time of the May 30, 2014 incident. He was operating a tow-motor and noted that T.A. picked up the dildo and waved it. E.D. did not specifically recall T.A. saying anything. He described T.A. as a 30-year-old child, and noted that he was never quiet. But again, E.D. did not remember if T.A. shouted at the supervisor or appellant. He recalled that appellant came over and spoke to T.A., and he heard her say to T.A. that he could get in trouble for that. But E.D. reportedly did not hear the rest of the conversation.

OWCP also received an October 29, 2014 statement from J.C., as well as a transcript of his March 13, 2015 EEO deposition testimony. In his October 29, 2014 statement, J.C. indicated

[7] However, the record does not include information regarding the final disposition of either the grievance or appellant's EEO complaint.

that his recollection of the May 30, 2014 incident was "sketchy at best." He noted that the incident occurred at APPS 2, side 2, and that T.A. was culling off the dumpers while he, J.C., was cleaning on the other side under the belts. He stated he did not see the dildo when it was pulled from the mail. J.C. first noticed it on the upright behind T.A. Additionally, He indicated that he heard T.A. call out to both J.W. and appellant, but he did not recall in which order. J.C. also stated that all interactions from those calls occurred on the other side of the dumpers out of his line of sight and well out of his hearing range. Appellant reportedly approached J.C. later, but he did not recall their actual conversation. J.C. noted that appellant was upset, and believed he even told appellant to file a grievance if she was that upset over the incident. He also stated that he and appellant never had any further discussions on the subject.

In his March 13, 2015 EEO deposition, J.C. reiterated that he heard T.A. call out to both appellant and J.W. At first he did not recall the order, but later on in the deposition J.C. stated that T.A. first shouted the first name of J.W. and then shouted out appellant's first name. He also noted that T.A. shouted loud enough to be heard over the machinery. Afterwards, T.A. reportedly walked to the other side of the dumpers, which was out of J.C.'s line of sight. He also indicated that E.T. was there at the time loading dumpers. J.C. did not see K.C. in the vicinity. He also stated that several hours passed before appellant came to talk to him.

In a May 27, 2015 follow-up report, Dr. Arthur noted that he continued to treat appellant on a monthly basis since her injury. He reported ongoing signs of depression with low motivation, easy fatigue, and loss of self-confidence and self-esteem. Dr. Arthur continued to diagnose employment-related depression and generalized anxiety disorder, and noted that appellant remained disabled. He also questioned whether appellant would be able to return to her prior work location.

In an August 3, 2015 decision, the hearing representative affirmed OWCP's September 23, 2014 denial. She found there was insufficient evidence to establish that T.A.'s actions were directed at appellant. The hearing representative acknowledged that J.C.'s account of the incident supported appellant's assertion that T.A. called out her name while waving the dildo. However, she noted that T.A. denied appellant's accusation, and several other witnesses did not support her account of the incident. Consequently, the hearing representative found that the May 30, 2014 dildo waving incident was not a compensable employment factor. She also found that there was no evidence to substantiate appellant's account of coworker harassment or inappropriate action, including laughing and snickering at her on May 30 and June 2, 2014. Additionally, there was also no evidence of appellant having been harassed and/or bothered in the parking lot on June 4, 2014. Given that appellant had not established a compensable factor of employment, the hearing representative affirmed the denial of her emotional condition claim without reviewing the medical evidence of record.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed

compensable.[8] However, disability is not compensable when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.[9]

To establish that she sustained an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.[10]

An employee's emotional reaction to administrative or personnel matters generally falls outside FECA's scope.[11] Although related to the employment, administrative and personnel matters are functions of the employing establishment rather than the regular or specially assigned duties of the employee.[12] However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.[13]

Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting her allegations with probative and reliable evidence.[14] When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter, OWCP must base its decision on an analysis of the medical evidence.[15]

ANALYSIS

On May 30, 2014 while taking notes during some "down time," appellant reportedly heard her first name called out from behind her. She turned around and saw someone at a distance waving a dildo in the air. At the time, appellant did not know the identity of the individual waving the dildo, but later learned that it was T.A. She also came to believe that he was the one who called out her name. However, T.A. denied calling out appellant's name, and instead claimed to have called out the supervisor's first name. The above-described incident, as

[8] *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler*, 28 ECAB 125, 129 (1976).

[9] *Lillian Cutler*, *id.*

[10] *See Kathleen D. Walker*, 42 ECAB 603 (1991).

[11] *Andrew J. Sheppard*, 53 ECAB 170, 171 (2001); *Matilda R. Wyatt*, 52 ECAB 421, 423 (2001).

[12] *David C. Lindsey, Jr.*, 56 ECAB 263, 268 (2005).

[13] *Id.*

[14] *Supra* note 8.

[15] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

well as some alleged taunting afterwards, reportedly caused or contributed to appellant's diagnosed major depressive disorder and generalized anxiety disorder.

Initially, the Board finds there are no *Cutler* allegations.[16] Appellant did not specifically attribute her claimed emotional condition to regular or specially assigned work duties or a requirement imposed by the employment. The May 30, 2014 incident occurred during what appellant described as "down time." She did not attribute her claimed emotional condition to her specific duties as a mail handler (forklift operator). Just prior to the incident appellant was sitting on her forklift writing a few things down. And after observing the dildo being waved in the air, appellant immediately turned back around and finished what she had been doing during her "down time." Based on her own description of the events, the Board finds that the May 30, 2014 incident did not involve appellant's regular or specially assigned work duties or a requirement imposed by the employment.

The essence of appellant's complaint is that T.A. intentionally harassed her by calling out her name and waiving a dildo in the air for her to see. She claimed to have been embarrassed and ashamed that it was directed towards her. To the extent that incidents alleged as constituting harassment or a hostile work environment are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[17] For harassment to give rise to a compensable disability under FECA there must be evidence that harassment did in fact occur.[18] Allegations of harassment must be substantiated by reliable and probative evidence.[19] Mere perceptions of harassment are not compensable.[20]

The record establishes that T.A. waved a dildo in the air on May 30, 2014. The record also supports that T.A. called out to the supervisor who then walked over to APPS 2, side 2 and retrieved the dildo. However, the weight of the evidence does not support appellant's claim that T.A. waved the dildo for her benefit and called out her name. Apart from appellant, J.C. was the only witness to have reportedly heard T.A. call out her first name. He stated that T.A. called out both first names, the supervisor first and appellant second. But as previously noted, T.A. repeatedly denied calling out appellant's name. He indicated that the only name he called was her supervisor's. While appellant claims to have heard her name, she did not mention having also heard her supervisor's name. J.W. heard his name, but did not mention hearing appellant's name or any other names. Additionally, E.T. indicated that T.A. stood up on a BMC and yelled his supervisor's first name. Again, there was no mention of T.A. also yelling appellant's name. E.D., who was also in the vicinity, did not recall hearing T.A. call out any names.

Although J.C. substantiated appellant's allegation, the Board finds that his October 29, 2014 statement and March 13, 2015 EEO deposition testimony are of limited probative value. First, J.C. provided a statement some five months after the May 30, 2014 incident, and he

[16] *See supra* note 9.

[17] *P.T.*, Docket No. 14-2011 (issued February 5, 2015); *see also David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, *supra* note 10 at 603, 608.

[18] *Donna J. DiBernardo*, 47 ECAB 700, 703 (1996).

[19] *Joel Parker Sr.*, 43 ECAB 220, 225 (1991).

[20] *Supra* note 18.

described his recollections as "sketchy at best."[21] In his October 29, 2014 statement, J.C. could not recall which order T.A. called out the two names. However, during his subsequent EEO deposition, J.C. testified that he heard the supervisor's name first, followed by appellant. It is unclear how J.C. was able to recall additional details of the May 30, 2014 incident as it became more remote in time.

Second, there is at least one other important detail that calls into question the accuracy and reliability of J.C.'s witness statement(s). Appellant reported that he was the first person to whom she had spoken following the May 30, 2014 incident. She claimed to have talked to him within minutes of the incident, and before having spoken to T.A. In his October 29, 2014 statement, J.C. noted that appellant "approached [him] later" and he did not recall their actual conversation. In his March 13, 2015 deposition, J.C. represented that appellant approached him several hours later. In contrast, appellant stated that a few minutes after the incident as she was headed to APPS 2, side 2, she saw J.C. and asked him if he had called her name. According to her, J.C. replied "No, just T.A. over there having fun with a [d]ildo." As evidence by his statements, J.C. apparently did not recall this earlier encounter with appellant. Admittedly, his October 29, 2014 recollection of the May 30, 2014 incident was "sketchy at best."

The timing of J.C.'s statement and the above-noted inconsistencies with appellant's version of events calls into question the reliability of his statement that T.A. called out her name on May 30, 2014. Consequently, the Board finds that the weight of the evidence does not support appellant's claim that T.A. called out her name and intentionally waved the dildo in the air for her to see. The Board further notes that the mere fact that appellant filed an EEO compliant and a grievance does not establish that she was subjected to workplace harassment or that unfair treatment occurred.[22]

With respect to the alleged May 30, 2014 harassment by H.S. and J.B., appellant provided nothing to substantiate her claim that they were snickering and laughing as she drove by on a number of occasions. She also failed to substantiate her claim that on June 2, 2014, J.K. glanced in her direction and gave her a "sneer, laugh" while standing by the time clock. Appellant believed that this encounter was related to the May 30, 2014 incident. But according to J.K.'s June 4, 2014 statement, he was not on duty May 30, 2014, and it was not until "today" (June 4, 2014) that he learned T.A. had found a dildo in the mail that previous Friday. Lastly, appellant failed to substantiate her claim that J.K. revved his engine as he passed her in the parking lot on June 4, 2014. This reportedly occurred while T.A. was in the passenger seat laughing hysterically. As noted, allegations of harassment must be substantiated by reliable and probative evidence.[23] Mere perceptions of harassment are not compensable.[24] The Board finds that appellant failed to establish the above-noted incidents of alleged harassment on May 30, June 2, and June 4, 2014.

[21] The Board also notes that the J.C.'s October 29, 2014 statement post-dated OWCP's initial denial of the claim, which was based in large part on appellant's failure to establish that T.A. had called out her name.

[22] *Charles D. Edwards*, 55 ECAB 258, 266 (2004); *see supra* note 7.

[23] *Supra* note 19.

[24] *Supra* note 18.

As the above analysis demonstrates, appellant has not established any compensable employment factors. Moreover, she did not specifically implicate her regular or specially assigned duties as a factor in her claimed emotional condition. Because appellant failed to establish a compensable factor of employment, OWCP properly denied her claim without addressing the medical evidence of record.[25]

CONCLUSION

Appellant has not established an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the August 3, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[25] *Garry M. Carlo, supra* note 15.