

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

C.F., Appellant)	
)	
and)	Docket No. 18-1344
)	Issued: August 22, 2019
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, North Reading, MA, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On June 27, 2018 appellant filed a timely appeal from a February 22, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of \$13,983.86 for the period July 1, 2013 through September 16, 2016 because she

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the February 22, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

received wage-loss compensation at an improper rate; (2) whether OWCP properly determined that appellant was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment; and (3) whether OWCP properly withheld \$175.00 from appellant's continuing compensation payments.

FACTUAL HISTORY

On June 2, 2003 appellant, then a 37-year-old part-time flexible mail handler, filed a traumatic injury claim (Form CA-1) alleging that she injured her right foot that day when she fell while in the performance of duty. OWCP accepted appellant's claim for right foot fracture and right lower limb mononeuritis. It paid her wage-loss compensation on the supplemental rolls beginning October 5, 2003 and placed her on the periodic rolls effective August 8, 2004.

In an August 17, 2004 letter, OWCP advised appellant that she began receiving total disability compensation on the periodic rolls, effective August 8, 2004, by electronic fund transfer (EFT).³ It indicated that she was receiving disability compensation at the "75 percentage of rate of pay" due to "one or more dependents." OWCP informed appellant that she would be paid disability compensation on the periodic rolls every 28 days and advised her about the effect of her dependents on her receipt of compensation by noting:

"CHANGE IN STATUS OF DEPENDENT. If you have one or more dependents, and the status of any dependent changes, notify OWCP at the address shown on the front of this letter. In the letter, include your file number, the name of the dependent whose status changed, the effective date of the change, and the nature of the change in status. Your signature must appear on the letter.

"If you claimed only one dependent, DO NOT CASH CHECKS RECEIVED AFTER THE CHANGE IN STATUS of this dependent. Otherwise, an overpayment of compensation may result. Return the checks promptly to this office."

By letter dated August 3, 2007, OWCP requested that appellant complete and return an enclosed EN1032 form, which had questions regarding such matters as her employment activities, earnings, and dependency in order to verify that appropriate compensation payments were being made.⁴ The EN1032 form also informed appellant that a claimant who has no eligible dependents was paid compensation at 66 2/3 percent of the applicable pay rate and a claimant who has one or more eligible dependents is paid compensation at 75 percent of the applicable pay rate. It advised appellant that she may claim compensation for a dependent if she had one or more of the following:

"(a) a husband or wife who lives with you; (b) an unmarried child, including an adopted child or stepchild, who lives with you and is under 18 years of age; (c) an

³ An ACPS Periodic Daily Roll Payment sheet indicated that appellant would receive her wage-loss compensation payments by EFT.

⁴ Appellant's answers to the questions were to cover the 15-month period prior to the date she completed and signed the form.

unmarried child who is 18 or over, but who cannot support himself or herself because of mental or physical disability; (d) an unmarried child under 23 years of age who is a full-time student and has not completed four years of school beyond the high school level; and (e) a parent who totally depends on you for support.”

On October 11, 2007 OWCP received an EN1032 form, completed by appellant on September 21, 2007, in which she indicated that she was not married, but that she was claiming dependency status on account of her two sons, J.F., date of birth May 16, 1989, and L.F., date of birth September 21, 1992, both of whom were still enrolled in high school. In subsequent EN1032 forms received on July 8, 2009, November 5, 2010, and January 11, 2012, appellant continued to indicate that she was claiming dependency status on account of her son, L.F. In the EN1032 form dated January 10, 2012, she reported that her son, L.F., was still her dependent even though he was 19 years old because he was still enrolled in high school and had special needs.

In a January 12, 2012 letter, OWCP requested that appellant provide verification of full-time student status or incapacity for self-support with respect to her son L.F. It provided her with a student dependency form to complete and return with respect to full-time student status. OWCP also advised appellant that if her son L.F. was incapable of self-support, she may claim continuing compensation by submitting a medical report from an attending physician, which fully described the mental or physical disability which caused the incapacity for self-support and an estimate of its probable duration.

On January 23, 2012 OWCP received appellant’s response, signed on January 23, 2012. In response to a question regarding whether her son, L.F. was attending school on a full-time basis she checked a box marked “Yes” and indicated that her son was still enrolled in high school and had special needs. A school official completed Part B of the form and reported that her son attended a local high school. Appellant noted that L.F. was expected to complete his course of study in June 2013.

Appellant continued to submit EN1032 forms dated August 8, 2012, August 21, 2013, September 13, 2014, and September 3, 2015, which indicated that she was claiming dependency status on account of her son, L.F. In the September 3, 2015 EN1032 form, she explained that her son was “under 23 with mental illness -- bipolar-medication needed, not capable of self-support.”

On September 9, 2016 OWCP received an EN1032 form, completed by appellant on August 31, 2016, in which she indicated that she was no longer claiming dependency status on account of her son, L.F. Appellant noted that her son was no longer a dependent as of May 5, 2016 because he had moved out. OWCP adjusted her wage-loss compensation rate from 75 percent to 66 2/3 percent, effective September 18, 2016.

In a development letter dated October 5, 2016, OWCP again advised appellant of the circumstances under which she was entitled to augmented compensation for her dependent child. It requested additional information to determine whether her son qualified as a full-time student under FECA for the period July 1, 2013 through September 20, 2015 and provided her with a student dependency form to complete and return. OWCP also advised appellant that if her son was incapable of self-support, she must submit a medical report from an attending physician, which fully described the mental or physical disability which caused the incapacity for self-support

in order to continue to claim compensation. Appellant was afforded 30 days to submit the requested information.

Appellant did not respond to OWCP's request within the allotted period.

On February 1, 2017 OWCP issued a preliminary determination that appellant had received an overpayment of compensation in the amount of \$13,983.86 for the period July 1, 2013 to September 17, 2016 because she did not have a dependent within the meaning of FECA during this period which would qualify her to receive compensation at the augmented rate of 75 percent. It provided a calculation of the overpayment.⁵ OWCP also found that appellant was at fault in the creation of the overpayment because she accepted a payment that she knew or reasonably should have known was incorrect. It indicated that she was aware or should have reasonably been aware that she was not entitled to compensation at the augmented rate of 75 percent because she did not have a dependent within the meaning of FECA after June 30, 2013. OWCP requested that appellant complete and return an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. It provided her with her appeal rights and afforded 30 days for a response.

On March 6, 2017 OWCP received appellant's completed Form OWCP-20, dated February 27, 2017. Appellant requested a telephonic conference with the district office on the issue of fault and possible waiver. She alleged that the overpayment occurred at no fault of her own because her son had special needs and a mental disability, which required psychiatric care. Appellant asserted that her son was not capable of self-support during the period of overpayment and noted that he had not graduated from high school and was living at home. She explained that her son relied on her to make appointments with psychiatrists, cook his food, pay his copays and living necessities, and pay for classes at a vocational school. Appellant also submitted a financial information questionnaire, signed on February 27, 2017, in which she provided figures for her monthly income, monthly expenses, and assets.

In a February 27, 2017 statement, appellant indicated that her son had been on medication for a number of years due to mental illness. She explained that he was in special classes and saw a psychiatrist at a Children's Hospital in Boston, MA. Appellant also reported that her son was on a special individualized educational plan at school and had decided to drop out in 2013. She

⁵ OWCP noted that for the period July 1, 2013 through February 28, 2014 (243 days), appellant was paid \$2,800.00 every 28 days. It calculated that during this period she received total wage-loss compensation of \$24,300.00 (\$2,800.00/28 days, multiplied by 243 days). OWCP indicated that for the period March 1, 2014 through February 28, 2015 (365 days), appellant was paid \$2,842.00 every 28 days. It calculated that she received total wage-loss compensation of \$37,047.60 (\$2,842.00/28 days, multiplied by 365 days). For the period March 1, 2015 through February 29, 2016 (366 days), appellant received wage-loss compensation of \$2,851.00 every 28 days. OWCP calculated that she received total wage-loss compensation of \$37,266.64 during this period (\$2,851.00/28 days, multiplied by 366 days). It reported that, for the period March 1 through September 17, 2016 (201 days), appellant was paid \$2,862.00 every 28 days. OWCP calculated that appellant received total wage-loss compensation of \$20,545.07 during this period (\$2,862.00/28 days, multiplied by 201). Accordingly, it determined that she received a total of \$100,570.89 wage-loss compensation at the augmented rate of 75 percent. OWCP reported that, during the period July 1, 2013 through February 28, 2014, appellant should have received \$86,587.03 in wage-loss compensation at the augmented rate of 66 2/3 percent. It subtracted \$86,587.03 from \$100,570.89 to conclude that she received an overpayment of compensation in the amount of \$13,983.86.

related that she paid for her son to take night classes at a trade school. Appellant asserted that her son was dependent on her and noted that she used the compensation money to help her son.

OWCP received a checking account statement dated February 16, 2017 and circled money withdrawn for her son's trade school classes and car payments. Appellant submitted insurance benefit statements which showed that her son was receiving therapeutic care from a psychiatrist. She also submitted additional financial documents, including bank account statements, billing statements, utility bills, and credit card statements.

OWCP received progress notes from the Children's Hospital Department of Psychiatry dated from August 25, 2008 to January 24, 2011 by Dr. Sergio Korndorfer, a Board-certified psychiatrist. Dr. Korndorfer indicated that appellant's son had a longstanding history of mood instability, including depression, significant irritability and aggression, and oppositional defiant behavior. He reported that her son struggled with significant anger, especially at home. Appellant's son was diagnosed with mood disorder and oppositional defiant disorder. In a January 24, 2011 note, Dr. Korndorfer related that appellant's son had returned to 11th grade, but had missed about 60 to 80 percent of his classes.

In a report dated June 7, 2012, Dr. Sarah D. DeFerranti, a pediatric cardiologist, related that appellant's son was being treated for depression and oppositional defiant disorder, as well as elevated triglycerides due to significant obesity. She noted that he was no longer taking his medication and would not graduate 12th grade. Dr. DeFerranti reported that appellant's son was a little bit more active at work in the past 3 months and indicated that he worked in the grocery store stacking produce for 25 to 30 hours per week.

Appellant also submitted various documents regarding her son's educational needs and continued eligibility for special education services at school.

In a development letter dated April 26, 2017, OWCP informed appellant that enrollment in night school may be sufficient to establish dependency. It advised her that it needed verification of student status in order to determine her son's eligibility for dependency and provided her with a student dependency form to complete and return. OWCP also requested medical evidence to establish appellant's incapacity of self-support.

On May 7, 2017 OWCP received appellant's completed student dependency form. A school official completed Part B of the form and related that appellant's son attended vocational school from September 2016 to February 2017.

In a May 10, 2017 letter, Dr. Allan B. Rosansky, a psychiatrist, indicated that appellant's son had been under his care from August 27, 2014 to August 15, 2015 and was diagnosed with bipolar illness. He noted that appellant's son had "marked limitations of social functioning and work functioning. [Appellant's son] also carries limitations of self-care." Dr. Rosansky related that these symptoms had started in early childhood and continued into adulthood. He noted that L.F. "has lived with his mother who has had to assist him in functioning."

By decision dated February 22, 2018, OWCP finalized its preliminary determination that appellant received an overpayment of compensation in the amount of \$13,983.86 for the period July 1, 2013 through September 17, 2016. It noted that she had not submitted sufficient evidence

to demonstrate that she had a qualified dependent during this period, which otherwise would have entitled her to receive augmented compensation. OWCP also found that appellant was at fault in the creation of the overpayment, thereby precluding waiver of recovery of the overpayment. It directed recovery by deducting \$175.00 every 28 days from her continuing compensation payments.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA⁶ provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.⁷ If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 66 2/3 percent of his or her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.⁸

Section 8110 specifies that a “dependent,” for purposes of this section, include: (3) an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support, and who is --

(A) under 18 years of age; or

(B) over 18 years of age and incapable of self-support because of physical or mental disability.⁹

A child is also considered a dependent if he or she is an unmarried student under 23 years of age who has not completed 4 years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university, or training program.¹⁰

OWCP procedures further provide that to be entitled to an augmented compensation disability rate, a child over 18 years old must be incapable of self-support by reason of a mental or physical disability. It describes that “a child is incapable of self-support if his or her physical or mental condition renders him or her unable to obtain and/or retain a job, or engage in self-employment that would provide a sustained living wage. This determination must be based on medical evidence. A medical report covering the child’s past and present condition must be submitted for review to determine whether it establishes incapacity for self-support.”¹¹

⁶ *Supra* note 1.

⁷ 5 U.S.C. § 8102(a).

⁸ *See also* 5 U.S.C. §§ 8105(a) and 8110(b); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Compensation Claims*, Chapter 2.901.12 (February 2013).

⁹ *Id.* *See also* 20 C.F.R. § 10.405

¹⁰ *Id.* at § 10.405; *see also E.G.*, 59 ECAB 599, 603 (2008).

¹¹ Federal (FECA) Procedure Manual, *supra* note 8 at Chapter 2.901.12(e)(1)-(2) (February 2013).

If a claimant received compensation at the augmented rate during a period when he or she did not have an eligible dependent, the difference between the compensation that was disbursed at the 75 percent augmented rate and the compensation that should have been disbursed at the 66 2/3 percent basic rate constitutes an overpayment of compensation.¹²

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly found that appellant received an overpayment of compensation in the amount of \$13,983.86 for the period July 1, 2013 through September 16, 2016 because she received wage-loss compensation at the augmented rate even though she did not have an eligible dependent under FECA.

The evidence of record reflects that appellant's son, L.F., turned 18 on September 21, 2010, and he remained enrolled in high school until June 2013. Accordingly, OWCP paid wage-loss compensation based on the augmented rate of 75 percent due to one or more dependents.¹³ Appellant submitted EN1032 forms dated from August 21, 2013 to September 3, 2015, indicating that she was claiming dependency status on account of her son, L.F. OWCP continued to pay wage-loss compensation based on the augmented rate of 75 percent until September 18, 2016. The Board finds, however, that appellant has not submitted sufficient evidence to demonstrate that she had a dependent within the meaning of FECA for the period July 1, 2013 to September 17, 2016, which would qualify her to receive compensation at the augmented rate of 75 percent.

Appellant asserted that her son qualified as a dependent under FECA because she paid for him to take night classes at a trade school. She submitted a student dependency form on May 7, 2017, which was completed by a school official who verified that appellant's son had attended vocational school from September 2016 to February 2017. This form, however, did not address the pertinent period of overpayment from July 1, 2013 to September 17, 2016. There is no evidence of record to substantiate that appellant's son was a full-time student from July 1, 2013 until his 23rd birthday in September 2015, for which he could qualify as a dependent within the meaning of FECA.¹⁴

Appellant also asserted that her son was incapable of self-support due to mental disability. She related that her son had special needs and relied on her to make his psychiatric appointments, cook his food, and pay for his living necessities. As noted above, for appellant to establish that her child, who has turned 18 years of age, is incapable of self-support, she must submit a medical report from her child's physician describing the mental or physical disability which caused the child's incapacity of self-support.¹⁵

Appellant submitted a May 10, 2017 letter by Dr. Rosansky who indicated that he had treated appellant's son from August 27, 2014 to August 15, 2015 for bi-polar disorder.

¹² See *Ralph P. Beachum, Sr.*, 55 ECAB 442, 445 (2004).

¹³ *Supra* note 10.

¹⁴ *Supra* note 11.

¹⁵ *Supra* note 12; see also *Teresa B. Tencati*, 21 ECAB 398, 402 (1970).

Dr. Rosansky reported that appellant's son was limited with regards to social and work functioning and self-care. He further related that appellant's son had resided with appellant who had assisted him in functioning. The Board finds, however, that Dr. Rosansky report is conclusory in nature and does not provide sufficient factual information or medical rationale to support his conclusion.¹⁶ Dr. Rosansky did not reference findings or provide rationale to establish a lack of employability.¹⁷ He did not sufficiently explain how appellant's son was disabled such that he had to rely in whole or in part upon the contributions given by appellant as a means of maintaining or helping to maintain a customary standard of living.¹⁸ Dr. Rosansky did not specifically address whether appellant's son was disabled such that he was incapable of self-support during the relevant period of July 1, 2013 through September 17, 2016.

Likewise, Dr. Korndorfer's progress notes dated August 25, 2008 to January 24, 2011 and Dr. DeFerranti's June 7, 2012 report also noted that appellant's son was diagnosed with a mental illness, but lacked sufficient rationale to establish that he was incapable of self-support during the relevant period. To the contrary, Dr. DeFerranti indicated that appellant's son had worked for the prior three months in a grocery store 25 to 30 hours per week, and accordingly, implied that he was not wholly dependent on his mother. Accordingly, the Board finds that the evidence of record is insufficient to meet the criteria for appellant's son to be considered a dependent during the period July 1, 2013 to September 17, 2016.

On appeal appellant notes that OWCP's April 26, 2017 informational letter and enclosed student dependency form did not specify that her son's school needed to confirm student eligibility for previous dates. The Board notes, however, that in its October 5, 2016 letter OWCP specifically informed her that it needed additional information to determine if her son qualified as a full-time student under FECA for the period July 1, 2013 to September 20, 2015. No such evidence was received. Because appellant's son was not a full-time student or incapable of self-support due to a mental or physical disability within the meaning of FECA from July 1, 2013 to September 16, 2016, he was not an eligible dependent and appellant was only entitled to compensation at the basic rate during this period. The Board, therefore, will affirm the fact of overpayment.

OWCP calculated that it paid gross compensation of \$100,570.89 from July 1, 2013 until September 17, 2016, which was compensation paid at the augmented rate of 75 percent for dependents. At the basic rate of 66 2/3 percent for no dependents, during the same time frame, it should have paid compensation of \$86,587.03. This resulted in an overpayment of compensation

¹⁶ A rationalized medical opinion must include rationale explaining how the physician reached the conclusion he or she is supporting. *Beverly A. Spencer*, 55 ECAB 501 (2004).

¹⁷ *Id.* See also *B.S.*, Docket No. 06-546 (issued November 27, 2006) (the Board affirmed the fact of overpayment where a medical report did not specifically address whether an employee's son was disabled such that he was incapable of supporting himself during the relevant period of overpayment).

¹⁸ See *A.S.*, Docket No. 08-2467 (issued August 5, 2009) (the Board determined that a medical report which noted that a claimant's daughter lived with him and was not able to work to support herself due to her mental illness was insufficient to demonstrate incapacity for purposes of establishing dependency).

in the amount of \$13,983.86 for the period July 1, 2013 to September 17, 2016.¹⁹ Therefore, the Board finds that OWCP correctly determined the amount of overpaid compensation in this case.

LEGAL PRECEDENT -- ISSUE 2

Section 8129(a) of FECA provides that, when an overpayment of compensation has been made because of an error of fact or law, adjustment shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is when an incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or be against equity and good conscience.²⁰ No waiver of payment is possible if appellant is with fault in helping to create the overpayment.²¹

In determining whether an individual is not without fault or alternatively, with fault, section 10.433(a) of OWCP's regulations provide in relevant part:

An individual is with fault in the creation of an overpayment who:

- (1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or
- (2) Failed to provide information which he or she knew or should have known to be material; or
- (3) Accepted a payment which he or she knew or should have known to be incorrect.²²

ANALYSIS -- ISSUE 2

The Board finds that OWCP has not properly determined that appellant was at fault in the creation of the overpayment of compensation, thereby precluding waiver of recovery of the overpayment.

OWCP found that appellant was at fault in the creation of the overpayment because she had accepted payments that she knew or should have known to be incorrect. It determined that from the signed EN1032 forms, she acknowledged that she knew her compensation benefits should have been reduced effective July 1, 2013 for lack of a qualified dependent. OWCP noted that appellant continued to accept checks with compensation payments at the 75 percent augmented rate despite such knowledge.

¹⁹ *W.M.*, Docket No. 11-2000 (issued May 21, 2012).

²⁰ 5 U.S.C. § 8129(b).

²¹ *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

²² 20 C.F.R. § 10.433(a).

The Board finds, however, that OWCP has not established that appellant was at fault in creating the overpayment covering the period July 1, 2013 to September 17, 2016 based on her signed EN1032 forms. Appellant completed EN1032 forms on August 21, 2013, September 13, 2014, and September 3, 2015 and indicated that she was claiming dependency on account of her son, L.F. In an EN1032 form she completed on August 31, 2016, she related that her son was no longer a dependent as of May 6, 2016 because he had moved out. There is no evidence on the record, however, to establish that at the time appellant completed the EN1032 forms covering the period July 1, 2013 to September 17, 2016 that she knew or should have known that her son was not an eligible dependent under FECA.²³ To the contrary, appellant thought that her son was still a dependent as she explained in the September 3, 2015 EN1032 form that L.F. was “under 23 with mental illness -- bipolar-medication needed, not capable of self-support.”

OWCP has not established that appellant had or should have had knowledge that her son no longer qualified as a dependent under FECA, and accordingly, that she accepted payments which she knew or should have known to be incorrect. The evidence of record does not establish that she knew or reasonably should have known that when she completed the EN1032 forms on August 21, 2013, September 13, 2014, and September 3, 2015 that OWCP would not consider her son a dependent under FECA. OWCP did not advise appellant that it needed additional information to determine whether her son qualified as a full-time student after July 1, 2013 until it issued its letter on October 5, 2016. Accordingly, the Board finds that OWCP has not established how her completion of EN1032 forms from August 21, 2013 to August 31, 2016 put her on notice that the payments she accepted on or after July 1, 2013 were incorrect.²⁴ As OWCP has not established that appellant was at fault in the creation of the overpayment covering the period July 1, 2013 through September 17, 2016, the case will be remanded to OWCP to consider waiver of recovery of the overpayment for this period.²⁵

CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$13,983.86 for the period July 1, 2013 through September 17, 2016. The Board further finds that she was not at fault in the creation of the overpayment. The case will be remanded for OWCP to consider waiver of recovery of the overpayment.

²³ OWCP issued appellant a check for a payment of \$2,385.14 on August 24, 2013 to cover the period July 28 to August 24, 2013. Appellant continued to receive payments *via* checks approximately every 28 days.

²⁴ See *T.H.*, Docket No. 12-0842 (issued February 15, 2013) (where the Board found that a claimant was not aware that compensation payments he received were incorrect until a November 17, 2010 letter informed him that he had received compensation based on an improper rate).

²⁵ In view of the Board’s disposition on the issue of fault, it is premature to consider the issue of whether OWCP properly set the rate of recovery of the overpayment.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 2018 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 22, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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