United States Department of Labor
Employees' Compensation Appeals Board

R.B., Appellant	)	
and	)	**Docket No. 20-0109**
	)	**Issued: June 25, 2020**
DEPARTMENT OF HOMELAND SECURITY, FEDERAL AIR MARSHAL SERVICE, Chelsea, MA, Employer	)	

Appearances:
John L. DeGeneres, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On October 16, 2019 appellant, through counsel, filed a timely appeal from an April 25, 2019 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 this case.

[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). 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. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a right hip condition causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On August 16, 2016 appellant, then a 48-year-old federal air marshal, filed an occupational disease claim (Form CA-2) alleging that he developed right hip osteoarthritis as a result of his federal employment. He noted that he first became aware of his condition and realized its relationship to his federal employment on June 6, 2016. On the reverse side of the claim form, the employing establishment indicated that appellant continued to perform his normal work duties.

In an attached statement, appellant related that he had worked for the employing establishment since June 2002. He indicated that his training involved routine running, calisthenics, aerobics training, sprints and shuttle runs, pushups, sit-ups, and various free-weight and machine-oriented exercises. Appellant also described the defensive tactics and firearms training that he frequently underwent and explained that these techniques placed a remarkable amount of stress on his knees, shoulders, and hips. He related that he walked at least four to six miles per day through airports, while carrying over 50 pounds of luggage and gear; walked up and down stairs and down narrow aircraft aisles; sat, stood, and twisted repeatedly from airline passenger seats. Appellant reported that he first noticed his right hip pain in October 2014 while deployed for work in Paris, France and that subsequent diagnostic testing revealed arthritis in his right hip. He alleged that sitting for long periods of time in the airline seats, twisting, and walking down the aisle and from terminal to terminal worsened his hip pain.

In a May 13, 2015 surgical consultation note, Dr. Eugene E. Berg, a Board-certified orthopedic surgeon, indicated that appellant had a history of right groin pain for the prior eight or nine months. He indicated that a right hip x-ray examination report demonstrated evidence of osteoarthritis and diagnosed right hip osteoarthritis. Dr. Berg also completed an employing establishment physical restriction form dated August 26, 2016.

In a May 29, 2015 examination note, Harry Morse, a certified nurse anesthetist, recounted appellant's complaints of chronic right hip and low back pain. He reviewed appellant's history, conducted an examination, and diagnosed sacral iliac joint dysfunction and chronic low back pain.

In a June 3, 2015 report, Dr. Thomas Marks, a Board-certified orthopedic surgeon, recounted appellant's complaints of right hip and left heel pain. Upon examination of appellant's right hip, he observed tenderness to palpation over the abductor and greater trochanteric bursa and limited range of motion due to secondary pain. Dr. Marks diagnosed left plantar fasciitis and right hip osteoarthritis.

Appellant also submitted a July 26, 2015 letter by Dr. Justin W. Kung, a Board-certified diagnostic radiologist, who indicated that x-ray examination reports of appellant's bilateral knees and right hip taken on March 26 and May 21, 2015, respectively, demonstrated findings of degenerative change with osteophyte formation, subchondral sclerosis and cystic change. OWCP also received the March 26 and May 21, 2015 x-ray examination reports.

In a June 9, 2016 narrative report, Dr. David C. Morley, Jr., a Board-certified orthopedic surgeon, recounted that he examined appellant for injuries sustained during the course of his career working as a federal air marshal. He indicated that appellant's job and maintenance of his skills involved routine running, calisthenics and aerobics training, lower extremity repetitive impact loading activities, tactical training, joint manipulation, full contact fighting with protective gear, and significant standing and walking for many miles daily. Upon physical examination, Dr. Morley observed positive Trendelenburg sign and markedly positive Stinchfield sign on the right side. Range of motion testing of the right hip revealed flexion to 95 degrees, extension to 0 degrees, internal rotation to 5 degrees, external rotation to 10 degrees, adduction to 10 degrees, and abduction to 15 degrees. Dr. Morley described appellant's employment duties and opined that these heavy, physical, and repetitive impact loading lower extremity activities caused and worsened, at the very least, his degenerative right hip condition. He explained that the repetitive heavy physical demands placed on appellant's hip over a period of years, as described above, resulted in increased stresses through his right hip contributing to his arthritic condition.

In an October 19, 2016 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence necessary to support his claim and provide a questionnaire for his completion. OWCP afforded appellant 30 days to submit the requested information. A similar letter of even date requested additional information from the employing establishment.

The employing establishment submitted an administrative medical review report dated November 9, 2016 by Dr. Mary Nadratowki, a Board-certified internist, who outlined a history of medical treatment that appellant had received from its health unit from 1990 to 2016. Dr. Nadratowki noted that appellant's most recent diagnosis was right hip avascular necrosis (AVN) and suggested that it was likely he had a subtle organic femoral head misalignment. She opined that the exact etiology of his AVN was unknown.

By decision dated November 18, 2016, OWCP denied appellant's occupational disease claim. It accepted his duties as a federal air marshal as described and diagnosis of a right hip condition, but denied his claim finding that the medical evidence of record failed to establish that his medical condition was causally related to the accepted employment factors.

OWCP subsequently received a letter dated November 17, 2016, wherein counsel indicated that he was submitting additional medical records that were not acknowledged as received by OWCP in its October 19, 2016 development letter. Counsel also asserted that Dr. Morley's June 9, 2016 medical report constituted sufficient documentation that appellant sustained a right hip injury due to his federal employment.

Appellant submitted his completed questionnaire dated November 17, 2016. He explained that his hobbies of trap shooting and fishing were seasonal and occurred approximately once or twice a month during the period of time. Appellant also noted that he participated in road cycling from approximately 2011 through 2014 on average of 12 times per year. He related that he stopped these activities because of his hip pain. Appellant listed the medical reports that he had submitted and explained that he did not seek medical treatment for his right hip until March 2015 so he did not have medical reports dated from 2014 or prior. He also provided an official position description.

On December 8, 2016 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 22, 2017.

OWCP received a March 13, 2017 memorandum by counsel who asserted that OWCP would not have denied appellant's claim had it received his completed questionnaire, which he had completed on November 17, 2016. Counsel also clarified that appellant was not alleging a direct causation, but that his employment contributed to and worsened his preexisting right hip osteoarthritis.

In a December 1, 2016 supplemental report, Dr. Morley indicated that he had reviewed additional medical documentation since his June 9, 2016 report and opined that appellant's ongoing right hip osteoarthritis symptoms continued to be hastened by the physical demands of his federal employment. He explained that the repetitive, high impact loading activities of appellant's job had placed significant loads on his lower extremities and that such activities on a regular basis resulted in articular cartilage damage to the hip joint, which progressively culminated in osteoarthritis.

By decision dated June 6, 2017, OWCP's hearing representative set aside the November 18, 2016 decision and remanded the case for further medical development noting that OWCP should compose a statement of facts (SOAF) and refer appellant to a second opinion physician.

In a June 12, 2017 letter, counsel informed OWCP that he was enclosing the additional medical records that were originally filed in response to the development letter. Appellant submitted VA medical center progress notes dated May 13, 2015 to November 1, 2016, which indicated that appellant was treated for complaints of right groin pain, right hip arthritis, neck and knee problems, and lower back and neck degenerative joint disease. The progress notes reported diagnoses of advanced right hip osteoarthritis, femoroacetabular impingement (FAI), and right hip AVN. In an October 6, 2016 report, Dr. Samuel H. Poon, a Board-certified internist and rheumatologist, related that appellant's right hip osteoarthritis was "most likely due" to appellant's diagnosis of FAI.

OWCP also received additional diagnostic testing reports. A September 23, 2016 right hip diagnostic testing report revealed normal bone mineral content. An October 5, 2016 diagnostic report of the pelvis was suggestive of either septic arthritis or avascular necrosis. An October 5, 2016 cervical magnetic resonance imaging (MRI) scan report revealed degenerative disc disease of C5-7 with left bony neural foramen, narrowing C6-7, and mild reversal of the usual cervical lordosis. An October 5, 2016 right hip MRI scan report demonstrated significant interval worsening of the right hip.

OWCP subsequently referred appellant's claim, along with a SOAF and a copy of the record, to Dr. Kenneth Polivy, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether appellant sustained a diagnosed medical condition caused, aggravated, or accelerated by the factors of his federal employment. In an April 18, 2018 report, Dr. Polivy recounted that appellant had worked as a federal air marshal for 15 years and indicated that he had reviewed appellant's job description. He related appellant's current complaints of numbness and occasional pain in the right hip. Upon physical examination, Dr. Polivy observed

that appellant could stand with level hips and shoulders and was able to heel walk and toe walk without difficulty. Examination of appellant's right hip revealed normal range of motion and decrease in sensation in the right lateral trochanteric region. Dr. Polivy opined that appellant's right hip AVN and subsequent osteoarthritis were not medically connected to the factors of employment as described in the SOAF. He explained that there were no peer reviewed studies to support an increased incidence of AVN or osteoarthritis in individuals who were active in employment activities. Dr. Polivy reported that appellant's activities, either through his work schedule, reported lifting activities, or exercise activities, did not cause the development of his osteoarthritis.

OWCP determined that a conflict in the medical evidence existed between Dr. Morley, appellant's treating physician, and Dr. Polivy, OWCP's second opinion physician, regarding whether appellant's diagnosed right hip condition was caused, aggravated, or precipitated by factors of his federal employment. It referred appellant to Dr. Robert Pennell, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve the conflict.

In a July 9, 2018 letter, counsel noted his objection to the appointment of Dr. Pennell as a referee physician. First, he asserted that Dr. Pennell had a documented bias against injured federal workers. Second, counsel argued that OWCP failed to adhere to its rotating selection procedures and pointed out that Dr. Pennell's office was located more than 52 miles from appellant's residence. He submitted eight pages from a deposition of Dr. Pennell from an altogether different legal proceeding. Counsel also provided a print-out of driving directions from appellant's residence to Dr. Pennell's office.

In a July 10, 2018 report, Dr. Pennell indicated that he had reviewed the SOAF and the entire case file. He noted that appellant had worked for the employing establishment from May 2002 until September 6, 2017 when he was terminated from employment due to an inability to perform his duties. Dr. Pennell discussed appellant's right hip x-rays on May 13 and 15, 2015 and August 23, 2016 and explained that the diagnostic imaging did not show evidence of AVN. He recounted that appellant currently complained of continuing symptoms and limitations in his right hip and right groin pain, numbness, and paresthesias.

Upon physical examination, Dr. Pennell observed normal gait with a very slight crouch. He reported that range of motion of appellant's right hip demonstrated 100 degrees flexion, 30 degrees abduction, 10 degrees adduction, 30 degrees internal rotation, and 25 degrees external rotation. Dr. Pennell also observed tenderness in the center of the right groin directly over the hip joint. He diagnosed primary osteoarthritis of the right hip joint and status post right total hip replacement with persistent right hip joint pain and tenderness. Dr. Pennell noted his disagreement with Dr. Morley's opinion that appellant's right hip osteoarthritis was causally related to his employment. He explained that Dr. Morley's opinion "would be contradicted by the fact that [appellant] had a completely normal left hip joint." Dr. Pennell referenced medical literature and noted that it reported that there was overall insufficient evidence to assign evidence of causation to any employment. He asserted that "there was no scientific evidence that strenuous work, such as that performed by [appellant] would cause or aggravate osteoarthritis of the hip joint or cause or aggravate avascular necrosis of the head of the femur."

OWCP received a September 13, 2017 letter, which indicated that appellant was terminated from employment due to medical inability to perform the essential functions of his position.

In a September 7, 2018 *de novo* decision, OWCP again denied appellant's occupational disease claim finding that was insufficient medical evidence to establish that his right hip condition was causally related to the accepted factors of employment. It found that the special weight of the medical evidence rested with the July 10, 2018 report of Dr. Pennell, OWCP's impartial medical examiner.

On September 24, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 12, 2019.

OWCP subsequently received a February 12, 2019 memorandum by counsel. Counsel again asserted that appellant was not claiming direct causation between his right hip osteoarthritis and his employment, but that his work duties contributed to the "substantial and significant increase in the osteoarthritic disease." He alleged that Dr. Pennell did not provide sufficient medical rationale to support his conclusion that appellant's employment did not contribute to or aggravate appellant's right hip condition.

Appellant also provided progress notes dated November 22, 2016 to June 22, 2017 by Dr. Ricardo A. Gonzales, a Board-certified orthopedic surgeon, who recounted appellant's complaints of right hip pain with an onset of symptoms in 2014 without incident or trauma. Dr. Gonzales conducted an examination of appellant's right hip and diagnosed osteonecrosis of the right hip. He indicated that he had informed appellant that in approximately 60 percent of patients who developed osteonecrosis, they were not able to identify a causative factor.

By decision dated April 25, 2019, an OWCP hearing representative affirmed the September 7, 2018 decision. She found that the special weight of the medical evidence continued to rest with the July 10, 2018 impartial medical report of Dr. Pennell who opined that appellant's federal employment did not cause or contribute to appellant's right hip osteoarthritis.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the

[3] *Id*.

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.[5] 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.[6]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[7]

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.[8] The opinion of the physician must be based on a complete factual and medical background of the employee, 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 specific employment factors identified by the employee.[9]

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.[10]

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[11] This is called an impartial medical examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[12] For a conflict to arise, the opposing physicians' viewpoints must be of "virtually equal weight and rationale."[13] When there exists opposing medical reports of virtually equal weight and

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

[8] *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

[11] 5 U.S.C. § 8123(a); *see R.S.*, Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009).

[12] 20 C.F.R. § 10.321.

[13] *J.K.*, Docket No. 19-1009 (issued October 22, 2019); *Darlene R. Kennedy*, 57 ECAB 414, 416 (2006).

rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[14] Where the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[15]

ANALYSIS

The Board finds that this case is not in posture for a decision.

OWCP improperly determined that a conflict in medical opinion evidence existed between Dr. Morley, appellant's treating physician, and Dr. Polivy, OWCP's second opinion examiner, regarding whether appellant's right hip condition was causally related to or aggravated by the accepted employment factors. In reports dated June 9 and December 1, 2016, Dr. Morley opined that the lower extremity repetitive impact loading activities of appellant's employment caused and worsened, at the very least, his degenerative right hip condition. In an April 18, 2018 report, Dr. Polivy noted his disagreement with Dr. Morley's opinion regarding causal relationship. He explained that there were no scientific studies to support an increased incidence of AVN or osteoarthritis in individuals who were active in employment activities.

The Board finds that Dr. Polivy's April 18, 2018 report lacks sufficient medical rationale and is not of equal weight to Dr. Morley's reports as OWCP had determined. In determining the probative value of medical evidence, the Board considers such factors as the opportunity for and thoroughness of examination performed by the physician, the accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[16] In this case, Dr. Polivy merely referenced some medical literature and provided a general conclusion regarding causal relationship. The Board has held that medical evidence that states a condition but does not offer a rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[17] The Board thus finds that this report is insufficient to create a conflict in medical opinion with Dr. Morley.[18] As there was no conflict in

[14] *Id.*; *Gloria J. Godfrey*, 52 ECAB 486 (2001).

[15] *K.S.*, Docket No. 19-0082 (issued July 19, 2019); *V.G.*, 59 ECAB 635 (2008); *Gary R. Sieber*, 57 ECAB 414, 416 (2006).

[16] *C.D.*, Docket No. 17-1623 (issued February 20, 2018); *James T. Johnson*, 39 ECAB 1252, 1256 (1988).

[17] *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

[18] *See supra* note 11.

medical evidence between Dr. Morley and Dr. Polivy pursuant to 5 U.S.C. § 8123(a), the referral to Dr. Pennell was for second opinion examination.[19]

In a July 10, 2018 report, Dr. Pennell reviewed the medical evidence of record and provided examination findings related to appellant's right hip. He noted his disagreement with Dr. Morley's opinion that appellant's right hip osteoarthritis was causally related to his employment. Dr. Pennell noted that appellant had a "completely normal left hip joint." He also indicated that there was no scientific evidence that strenuous work, such as that performed by appellant would cause or aggravate osteoarthritis of the hip joint.

The Board finds that Dr. Pennell did not provide adequate medical rationale to explain the basis for his conclusion that appellant's employment duties did not cause or aggravate appellant's right hip osteoarthritis.[20] Dr. Pennell simply noted that appellant's left hip examination was normal and referenced scientific studies. He did not explain how appellant's right hip osteoarthritic hip condition was solely due to nonoccupational factors.[21] The Board has found that an employee is not required to prove a significant contribution of factors of employment to a condition for the purpose of establishing causal relationship.[22] Any contribution to appellant's condition by the accepted employment factors would render his condition compensable.[23] Accordingly, the Board finds that Dr. Pennell's opinion is of insufficient probative value to carry the weight of the medical evidence, and the case must be remanded for further development.[24]

It is well established that proceedings under FECA are not adversarial in nature, and while appellant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.[25] It has an obligation to see that justice is done.[26] Once OWCP

[19] *See S.M.*, Docket No. 19-0397 (issued August 7, 2019) (the Board found that at the time of the referral for an impartial medical examination there was no conflict in medical opinion evidence; therefore, the referral was for a second opinion examination); *see also Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (the Board found that, as there was no conflict in medical opinion evidence, the report of the physician designated as the impartial medical examiner was not afforded the special weight of the evidence but was considered for its own intrinsic value as he was a second opinion specialist).

[20] *See T.S.*, Docket No. 18-1702 (issued October 4, 2019).

[21] *See F.K.*, Docket No. 19-1804 (issued April 27, 2020).

[22] *C.H.*, Docket No. 19-1315 (issued March 16, 2020); *J.L.*, Docket No. 17-0782 (issued August 7, 2017); *H.C.*, Docket No. 16-0740 (issued June 22, 2016).

[23] *See J.B.*, Docket No. 17-2021 (issued August 8, 2018); *G.G.*, Docket No. 17-0504 (issued August 8, 2017); *Beth C. Chaput*, 37 ECAB 158 (1985) (it is not necessary to show a significant contribution of employment factors to a diagnosed condition to establish causal relationship).

[24] *Supra* note 19.

[25] *See e.g., M.G.*, Docket No. 18-1310 (issued April 16, 2019); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985); *Michael Gallo*, 29 ECAB 159, 161 (1978); *William N. Saathoff*, 8 ECAB 769, 770-71; *Dorothy L. Sidwell*, 36 ECAB 699, 707 (1985).

[26] *See A.J.*, Docket No. 18-0905 (issued December 10, 2018); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983); *Gertrude E. Evans*, 26 ECAB 195 (1974).

undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.[27] On remand it shall obtain a supplemental opinion from its second opinion physician, Dr. Pennell, which contains adequate medical rationale to resolve the issue of whether appellant sustained a right hip condition causally related to the accepted factors of his federal employment. If Dr. Pennell is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant, together with a SOAF and a list of specific questions, to a second opinion physician in the appropriate field of medicine to resolve the issue. Following this and any other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's occupational disease claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT April 25, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: June 25, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

[27] *B.W.*, Docket No. 19-0965 (issued December 3, 2019); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).