

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

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<b>R.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-1701</b>
	)	<b>Issued: May 18, 2020</b>
<b>U.S. POSTAL SERVICE, PROCESSING &amp; DISTRIBUTION CENTER, Minneapolis, MN,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 10, 2018 appellant filed a timely appeal from an April 2, 2018 nonmerit decision and a July 6, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these decisions.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative; and (2) whether appellant has

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the July 6, 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.*

met her burden of proof to establish disability from work for the period June 25 through August 18, 2017 causally related to her accepted June 25, 2017 employment injury.

### **FACTUAL HISTORY**

On July 26, 2017 appellant, then a 54-year-old postal support employee mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that, on June 25, 2017, she sustained an acute strain of her back muscles when she lifted heavy mail items out of the bottom of a cart while in the performance of duty. She stopped work on June 25, 2017. Appellant requested continuation of pay (COP),<sup>3</sup> but on the reverse side of the claim form, the employing establishment controverted appellant's request for COP because the injury had not been reported within 30 days.

Appellant reported to OWCP that the lifting incident occurred on June 25, 2017. The case record contains an emergency room note indicating that she previously visited the hospital on the evening of June 25, 2017 and complained of low back pain radiating down into her right posterior thigh.

In a June 26, 2017 report, Dr. Jessica Carlson, Board-certified in internal medicine, noted that appellant reported having developed low back pain radiating down into her right side after lifting boxes of mail that morning at work, a type of pain which she felt differed from her usual chronic pain. She noted that appellant reported having a history of five previous lumbar fusion surgeries, diagnosed acute sciatic back pain and spinal stenosis of the lumbar region with neurogenic claudication, and admitted her to the hospital for observation. On July 27, 2017 Dr. Carlson discharged appellant from the hospital and recommended, that given her prior fusion surgery, that she avoid jobs requiring bending/twisting or lifting more than 40 pounds. She indicated that she had given appellant a note for the employing establishment recommending avoidance of these activities, but that appellant did not want her previous fusion surgery to be mentioned in the note.

The record reflects that appellant had also been evaluated at the hospital on June 26, 2017 by Dr. Elliot Francke, Board-certified in internal medicine, Dr. Matthew R. Monsein, Board-certified in family medicine, and Dr. Jonathan Workman, an osteopath Board-certified in orthopedic surgery. Dr. Francke diagnosed sciatic nerve impingement, Dr. Monsein diagnosed acute pain and back strain, and Dr. Workman diagnosed acute low back pain and muscle strain.<sup>4</sup>

In a July 2, 2017 report, Dr. Carlson noted that appellant had been readmitted to the hospital and she diagnosed acute chronic back pain with radiation to the right buttock and spinal stenosis of the lumbar region. In a July 6, 2017 letter, Dr. Francke advised that appellant had been hospitalized on June 26 and 27, 2017, and July 1 through 3, 2017, for acute muscular back strain. He indicated that she could return to work when she had accomplished physical therapy for the

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<sup>3</sup> On August 11, 2017 appellant was separated from the employing establishment for cause.

<sup>4</sup> The physicians noted that appellant reported back and right buttock/lower extremity pain after an incident involving lifting/handling mail at work. Dr. Monsein characterized the findings of his neurological examination as unremarkable and Dr. Workman recommended that appellant wear a lumbar corset when lifting at work to avoid a recurrent strain.

purpose of increasing core strength and could stand for 30 minutes at a time without pain.<sup>5</sup> In an undated note received on August 8, 2017, Dr. Samantha Pullen, Board-certified in internal medicine, noted that appellant was hospitalized on June 26 and 27, and July 1 through 3, 2017, for back pain.

By decision dated September 7, 2017, OWCP accepted appellant's claim for sprain of the lumbar spine. It noted that appellant had diagnoses of spinal stenosis of the lumbar region with neurogenic claudication, right-sided sciatica, and possible disc injury, but found that these were not accepted conditions. OWCP also noted that, if her injury resulted in lost time, she might be eligible for COP. On September 21, 2017 OWCP amended its September 7, 2017 acceptance decision to indicate that appellant was not entitled to COP for her accepted injury. By decision dated September 21, 2017, it formally denied her request for COP, noting that she had not reported her June 25, 2017 employment injury on a form approved by OWCP within 30 days following the injury.

On September 25, 2017 appellant filed a claim for compensation (Form CA-7) for leave without pay for disability from work for the period June 25 through August 18, 2017. She subsequently submitted additional evidence including a July 1, 2017 report from Dr. Mark M. Miller, Board-certified in internal medicine, who indicated that she reported that, not long after she arrived home from the hospital on June 27, 2017, she experienced a return of her lumbar pain which radiated into her right buttock. Dr. Miller diagnosed acute sciatic back pain and spinal stenosis of the lumbar region with neurogenic claudication.<sup>6</sup>

In support of her wage-loss compensation claim appellant also submitted July 2 and 3, 2017 reports by Dr. Monsein in which he collectively diagnosed chronic pain and history of multiple spine surgeries. On July 3, 2017 Dr. Francke also examined appellant and diagnosed "ongoing back pain." In a July 3, 2017 discharge report, Dr. Pullen reviewed a June 26, 2017 x-ray of the lumbar spine and a July 2, 2017 magnetic resonance imaging (MRI) scan of the lumbar spine.<sup>7</sup> She noted that the principal diagnoses causing hospital admission were spinal stenosis of the lumbar region with neurogenic claudication and acute sciatic back pain.

On October 2, 2017 appellant requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review on the September 21, 2017 denial of COP.

By January 9, 2018 development letter, OWCP requested that appellant submit additional evidence in support of her wage-loss compensation claim, including a rationalized medical report which demonstrated that she had disability for the claimed period due to her accepted lumbar sprain. It afforded her 30 days to submit such evidence.

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<sup>5</sup> Dr. Francke advised that appellant would be required to wear a lumbar corset when performing activities and could not lift anything over five pounds, unless otherwise specified by her physical therapist.

<sup>6</sup> On July 2, 2017 Dr. Jose P. Maldonado, Board-certified in orthopedic surgery, evaluated appellant at the request of Dr. Miller. Upon physical examination, he noted tenderness to palpation at approximately the right L4-5 level into the right buttock.

<sup>7</sup> The case record contains copies of these diagnostic tests.

In response, appellant submitted a January 23, 2018 letter from Dr. Ensor E. Transfeldt, Board-certified in orthopedic surgery, who noted that appellant had been admitted to a hospital in June 2017 after a box-lifting incident at work which resulted in pressure and mid-to-low back pain, radiating to the right side and buttock. Dr. Transfeldt indicated that she reported that she was unable to work during this time, and he observed that she had no neurological deficit, but her pain was related to a specific myotomal muscle group with diffuse weakness involving the right leg. Dr. Transfeldt discussed the July 2, 2017 MRI scan and diagnosed trochanteric bursitis of the right hip and lumbar region intervertebral disc degeneration. He opined that appellant was incapacitated after the June 25, 2017 incident of lifting boxes and had been totally disabled from working since that date.<sup>8</sup> Dr. Transfeldt reported that he could not predict when she would be ready to return to work, but noted that she needed a prolonged program of rehabilitation.<sup>9</sup>

In a February 15, 2018 letter, OWCP informed appellant that an oral hearing would take place on March 19, 2018 at 11:15 a.m., Eastern Standard Time (EST). It provided a toll free number and a pass code to access the hearing by telephone. The letter was mailed to appellant's address of record.

By decision dated March 2, 2018, OWCP denied appellant's claim for wage-loss compensation because she failed to submit sufficient medical evidence to establish disability from work for the period June 25 through August 18, 2017 causally related to the accepted June 25, 2017 employment injury.<sup>10</sup>

By decision dated April 2, 2018, OWCP's hearing representative found that appellant had abandoned her request for an oral hearing in connection with the denial of COP. She indicated that appellant had failed to appear at the telephonic hearing scheduled for March 19, 2018 and failed to contact OWCP prior to or subsequent to the scheduled hearing to explain her failure to appear.

On April 27, 2018 appellant requested reconsideration of the March 2, 2018 decision denying her wage-loss compensation claim. In support of her reconsideration request, she submitted as an enclosure a March 23, 2018 report from Dr. Transfeldt who advised that she did not have severe stenosis or severe nerve root impingement and did not require further surgery. Dr. Transfeldt diagnosed lumbar sprain as a result of appellant's "last injury," noting that she had not sustained a serious injury.<sup>11</sup> He indicated that she could return to work with restrictions on bending, twisting, and lifting.

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<sup>8</sup> Dr. Transfeldt noted, "With regard to returning to work, she clearly is in a lot of pain at this time and is not able to go to work...."

<sup>9</sup> Appellant also submitted a January 26, 2018 report from Dr. Ryan Hess, Board-certified in orthopedic surgery, who referenced a work-related June 2017 back strain and diagnosed degenerative joint disease of the right hip.

<sup>10</sup> OWCP noted that, in his January 23, 2018 report, Dr. Transfeldt identified work-related pain as the reason appellant could not work, but he had not discussed objective findings supporting an inability to work.

<sup>11</sup> Dr. Transfeldt noted that appellant did have lumbar degeneration and lumbar spinal stenosis, but that her "recent aggravation is related to a lumbar sprain."

In a report dated May 15, 2018, Dr. Margo Hutchison, Board-certified in family medicine, noted that appellant suffered a work-related injury on June 25, 2017 and diagnosed right groin pain, failed back syndrome, status post lumbar fusion, and deconditioned lower back. On May 22, 2018 Dr. Douglas A. Bloemke, Board-certified in orthopedic surgery, indicated that appellant reported injuring her back while moving trays at work on June 25, 2017 and advised that, upon physical examination, appellant's right hip was mildly tender along the greater trochanter. In a June 5, 2018 report, Dr. Isabel Pereira, an osteopath Board-certified in occupational medicine, noted that appellant could return to work with limitations on that date. She diagnosed lumbar strain and lower back pain, noting that it was unknown whether these diagnoses were work related.

By decision dated July 6, 2018, OWCP denied modification of its March 2, 2018 decision denying appellant's wage-loss compensation claim for the period June 25 through August 18, 2017.

### **LEGAL PRECEDENT -- ISSUE 1**

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>12</sup> Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>13</sup> OWCP has the burden of proving that it properly mailed to a claimant and any representative of record a notice of a scheduled hearing.<sup>14</sup>

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing, that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.<sup>15</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative.

Following OWCP's September 21, 2017 decision concerning the denial of COP, appellant filed a timely request for a telephonic oral hearing before a representative of OWCP's Branch of

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<sup>12</sup> 20 C.F.R. § 10.616(a).

<sup>13</sup> *Id.* at § 10.617(b).

<sup>14</sup> *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>15</sup> 20 C.F.R. § 10.622(f); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.6(g) (October 2011); *see also A.J.*, Docket No. 18-0830 (issued January 10, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

Hearings and Review. In a February 15, 2018 letter, OWCP's hearing representative notified appellant that her telephonic hearing was scheduled for March 19, 2018 at 11:15 a.m., EST. The hearing representative properly mailed the hearing notice to appellant's last known address of record<sup>16</sup> and provided her with a toll free number and a pass code to use at the time of the scheduled hearing. There is no evidence of nondelivery of the hearing notice. Appellant, however, failed to appear for the scheduled hearing and she did not request a postponement or provide an explanation to OWCP for her failure to attend the hearing within 10 days of the scheduled hearing.<sup>17</sup> The Board thus finds that OWCP properly determined that appellant abandoned her request for a telephonic oral hearing.<sup>18</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim including the fact that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>19</sup>

Under FECA the term "disability" means the incapacity, because of an employment injury, to earn the wages that the employee was receiving at the time of injury.<sup>20</sup> Disability is thus not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.<sup>21</sup> An employee who has a physical impairment causally related to a federal employment injury, but who nevertheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used in FECA.<sup>22</sup> When, however, the medical evidence establishes that the residuals or sequelae of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, he or she is entitled to compensation for loss of wages.<sup>23</sup>

The medical evidence required to establish causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the

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<sup>16</sup> *E.S.*, Docket No. 19-0567 (issued August 5, 2019).

<sup>17</sup> *See A.J.*, *supra* note 15.

<sup>18</sup> *See E.S.*, *supra* note 16.

<sup>19</sup> *S.W.*, Docket No. 18-1529 (issued April 19, 2019); *J.F.*, Docket No. 09-1061 (issued November 17, 2009).

<sup>20</sup> 20 C.F.R. § 10.5(f).

<sup>21</sup> *See L.W.*, Docket No. 17-1685 (issued October 9, 2018).

<sup>22</sup> *See K.H.*, Docket No. 19-1635 (issued March 5, 2020).

<sup>23</sup> *See D.R.*, Docket No. 18-0323 (issued October 2, 2018).

nature of the relationship between the claimed disability and the specific employment factors identified by the claimant.<sup>24</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that appellant has not met her burden of proof to establish disability from work for the period June 25 through August 18, 2017 causally related to her accepted June 25, 2017 employment injury.

In support of her wage-loss compensation claim for the period June 25 through August 18, 2017, appellant submitted medical reports related to hospital stays on June 26 and 27, 2017, and on July 1 through 3, 2017. With respect to this June 2017 period of hospitalization, Dr. Carlson produced reports dated June 26 and 27, 2017, and Drs. Francke, Monsein, and Workman produced reports dated June 26, 2017. The physicians made note of appellant's June 25, 2017 lifting incident and her complaints of low back pain which radiated into her right buttock/lower extremity. They collectively diagnosed spinal stenosis of the lumbar region with neurogenic claudication, sciatic nerve impingement, back strain, muscle strain, acute sciatic back pain, and acute low back pain. However, these reports are of no probative value regarding whether appellant had disability from work for the period June 25 through August 18, 2017 causally related to her accepted June 25, 2017 employment injury because they do not contain an opinion on this matter. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.<sup>25</sup> The reports list diagnoses of several significant back/lower extremity conditions which have not been accepted as related to appellant's federal employment, but they do not offer an opinion that appellant had disability during the claimed period due to the only accepted condition related to her June 25, 2017 employment injury, *i.e.*, a lumbar strain.<sup>26</sup> As such, these reports are insufficient to establish appellant's claim.

With regard to her in-hospital medical treatment in July 2017 appellant submitted a July 1, 2017 report from Dr. Miller who diagnosed acute sciatic back pain and spinal stenosis of the lumbar region with neurogenic claudication. In July 2, 2017 reports, Dr. Francke diagnosed ongoing back pain and Dr. Carlson diagnosed spinal stenosis of the lumbar region and acute chronic back pain with radiation to the right buttock. In another July 2, 2017 report, Dr. Maldonado noted that appellant exhibited tenderness to palpation of her right buttock. In July 2 and 3, 2017 reports, Dr. Monsein collectively diagnosed chronic pain and a history of multiple spine surgeries. In a July 3, 2017 report, Dr. Pullen noted that the principal diagnoses causing appellant's hospital admission were lumbar spinal stenosis with neurogenic claudication and acute sciatic back pain. The Board finds that these reports also are of no probative value on the underlying issue of this case because they do not contain an opinion regarding whether appellant had disability from work for the period June 25 through August 18, 2017 causally related

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<sup>24</sup> *Y.S.*, Docket No. 19-1572 (issued March 12, 2020).

<sup>25</sup> *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

<sup>26</sup> The Board further notes with respect to the diagnoses of pain by appellant's attending physicians that the Board has held that pain alone is a symptom, not a medical diagnosis. *See F.U.*, Docket No. 18-0078 (issued June 6, 2018).

to her accepted June 25, 2017 employment injury. Therefore, they also would not establish appellant's claim.<sup>27</sup>

In a July 6, 2017 letter, Dr. Francke advised that appellant had been hospitalized on June 26 and 27, 2017, and July 1 through 3, 2017, for acute muscular back strain. He indicated that she could return to work when she had accomplished physical therapy for the purpose of increasing core strength and could stand for 30 minutes at a time without pain. Moreover, appellant could not lift anything over five pounds, unless otherwise specified by her physical therapist. However, this report is of no probative value on the underlying issue of this case and would not establish her disability claim because Dr. Francke did not indicate that appellant's hospitalization and the recommended restrictions were necessitated by the June 25, 2017 employment injury.<sup>28</sup>

In a January 23, 2018 report, Dr. Transfeldt noted that appellant had been admitted to a hospital in June 2017 after lifting boxes at work, an activity which resulted in pressure and mid-to-low back pain radiating to the right side and buttock. He opined that appellant was incapacitated after the incident of lifting boxes on June 25, 2017, and that she had been totally disabled from working since that date. While Dr. Transfeldt offered an opinion on appellant's incapacity to work due to the June 25, 2017 injury, his January 23, 2018 report is of limited probative value because he failed to discuss the accepted lumbar strain in any detail, or provide medical rationale explaining how objective findings demonstrated appellant's inability to work due to the specific accepted work-related medical condition. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/period of disability has an employment-related cause.<sup>29</sup> Dr. Transfeldt failed to differentiate between the effects of appellant's accepted condition and the effects of her substantial preexisting low back condition which necessitated five prior lumbar spine surgeries.<sup>30</sup> As such, his January 23, 2018 report is of limited probative value regarding whether appellant had work-related disability for the period June 25 to August 18, 2017.<sup>31</sup>

Appellant also submitted reports which do not pertain to her claimed period of disability. In a January 26, 2018 report, Dr. Hess diagnosed degenerative joint disease of the right hip and, in a May 15, 2018 report, Dr. Hutchison diagnosed several low back/right groin conditions. On May 22, 2018 Dr. Bloemke noted that appellant had right hip pain upon examination. In a June 5, 2018 report, Dr. Pereira indicated that she could return to work with limitations on that date. These reports have no probative value regarding appellant's disability claim because they do not contain an opinion on causal relationship with respect to the claimed period of disability. The Board has

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<sup>27</sup> See *supra* note 25.

<sup>28</sup> *Id.* In an undated note received on August 8, 2017, Dr. Pullen noted that appellant was hospitalized on June 26 and 27, 2017, and July 1 through 3, 2017, for back pain. This report is of no probative value regarding work-related disability because Dr. Pullen did not indicate that appellant's hospitalization and the recommended restrictions were necessitated by the June 25, 2017 employment injury.

<sup>29</sup> See *T.T.*, Docket No. 18-1054 (issued April 8, 2020).

<sup>30</sup> See *M.D.*, Docket No. 17-0478 (issued July 5, 2018); *Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

<sup>31</sup> See *V.J.*, Docket No. 17-0358 (issued July 24, 2018).

held that OWCP is not required to pay compensation for disability in the absence of any medical evidence directly addressing the specific dates of disability for which compensation is claimed.<sup>32</sup>

In his March 23, 2018 report, Dr. Transfeldt diagnosed lumbar sprain as a result of appellant's "last injury" and noted that she did not sustain a serious injury. This report is of no probative value with respect to the underlying issue of this case because Dr. Transfeldt did not provide an opinion on causal relationship with respect to disability.<sup>33</sup>

For these reasons, the Board finds that appellant has not provided sufficient rationalized medical opinion evidence to establish total disability for the period June 25 to August 18, 2017 causally related to her accepted June 25, 2017 employment injury.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant abandoned her request for an oral hearing before an OWCP hearing representative. The Board further finds that appellant has not met her burden of proof to establish disability for the period June 25 to August 18, 2017 causally related to her accepted June 25, 2017 employment injury.

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<sup>32</sup> See *M.N.*, Docket No. 18-0741 (issued April 2, 2020); *William A. Archer*, 55 ECAB 674 (2004).

<sup>33</sup> See *supra* note 28.

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 6 and April 2, 2018 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 18, 2020  
Washington, DC

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

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

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