

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

)	
M.H., Appellant)	
)	
and)	Docket No. 21-1297
)	Issued: December 20, 2022
DEPARTMENT OF THE ARMY, U.S. ARMY)	
ARMAMENT RESEARCH DEVELOPMENT &)	
ENGINEERING CENTER, PICATINNY)	
ARSENAL, Picatinny, NJ, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
 JANICE B. ASKIN, Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 29, 2021 appellant filed a timely appeal from a June 25, 2021 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On June 15, 2017 appellant, then a 59-year-old product assurance engineer, filed an occupational disease claim (Form CA-2) alleging that he sustained an emotional condition due to stress and because his previously accepted bilateral hearing³ made it difficult to communicate with his colleagues in the workplace. He noted that he first became aware of his condition on September 18, 2016, and realized its relation to his federal employment on May 17, 2017. OWCP assigned the claim OWCP File No. xxxxxx814.

In support of his claim, appellant submitted an October 19, 2016 letter from Dr. Janet Neigel, a Board-certified ophthalmologist, discussing a diagnosis of severe blepharospasm and the use of bilateral hearing aids; a January 8, 2017 notice of personnel action Standard Form 50-B, May 22, 2017 hospital discharge instructions; May 30, 2017 magnetic resonance imaging (MRI) scans of the brain demonstrating mild cortical atrophy and possible chronic microvascular ischemic changes; a June 7, 2017 report from Dr. Francis M. Jampol, a Board-certified otolaryngologist, diagnosing progressive deterioration of bilateral severe hearing loss; and a June 11, 2017 note from Dr. Howard Kuo, a Board-certified neurologist, holding appellant off work through July 16, 2017.

In a development letter dated July 19, 2017, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of additional evidence needed to establish his claim and provided a questionnaire for his completion. In a separate development letter dated July 19, 2017, OWCP requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding appellant's allegations. OWCP afforded both parties 30 days to respond.

In response, appellant submitted a May 2017 statement, which explained that he felt "psychologically uncomfortable" while working and that he had asked to speak with an employing establishment counselor as he feared what would happen since he had 100 percent hearing loss and was no longer a candidate for hearing aids. He related that he had been struck twice while crossing the street as he could not hear approaching vehicles. Appellant felt that his "mental capacity was degrading and it took much longer than necessary to finish simple tasks." The counselor referred him to Dr. Bilelo, an employing establishment physician. However, appellant became agitated as he felt Dr. Bilelo was not paying attention to his concerns. He then experienced dizziness and headaches, called emergency medical services, and was taken to a hospital.

In a July 31, 2017 statement, appellant alleged a pattern of harassment, discrimination, and disparate treatment dating back to June 2001 by Supervisor R.D., who allegedly isolated him from

² *Order Remanding Case*, Docket No. 19-1187 (issued August 7, 2020).

³ Appellant has a previously-accepted occupational disease claim for bilateral noise-induced hearing loss sustained on or before January 14, 1998 under OWCP File No. xxxxxx200. On February 12, 2018 OWCP granted appellant a schedule award for 100 percent permanent impairment due to binaural hearing loss.

coworkers, made him create his own work assignments, and find funding for his assigned tasks. He noted that R.D. was later removed from his post for discriminating against another employee. Appellant also alleged that in June 2008, Supervisor M.B. directed appellant to use a project template to keep him working on one assignment for a year and directed him not to undertake any other work. He and M.B. participated in alternative dispute resolution and signed an agreement wherein M.B. agreed to end any harassment of appellant. Appellant alleged that M.B. was later removed for misconduct. He also alleged that in June 2012, director, J.F., and supervisor, C.H., held a meeting to determine why he was developing military specifications for MG M249 accessories, although he was an ammunition engineer. Appellant was instructed to hand off the assignment to other employees, and C.H. was subsequently transferred due to alleged new hire recruitment issues. He also alleged that in May 2015, team lead J.R. “was not fair in the workload distribution among team members” and deliberately banned appellant from an e-mail distribution list in violation of the Americans with Disabilities Act (ADA). Additionally, appellant noted that in June 2015, he filed an Equal Employment Opportunity (EEO) claim as the isolation imposed by his supervisors adversely affected his mental health, as he had not been promoted or given assignments to end his isolation.

In an August 5, 2017 statement, appellant described a “declining mental state on June 17, 2017” with psychological distress, inability to concentrate, forgetfulness, and taking too long to finish training and other tasks. His 100 percent hearing loss caused eyelid spasms, which affected his decision-making ability and caused extreme dizziness. Appellant alleged that he was not promoted in February 2017 because of his physical limitations and hearing loss. He sometimes became stressed while communicating with coworkers, noting that some individuals were willing to write down on paper what they wanted to tell him, while others disregarded him totally. Appellant had been off work from December 1, 2005 through March 17, 2007 on leave without pay (LWOP) due to blepharospasms.

Appellant also submitted a coworker statement from J.K., who noted that from 2015 onward, appellant’s health had declined, and his hearing had worsened. He was sometimes unable to hear other vehicles, and on occasion had to be walked to his vanpool because of dizziness.⁴

The employing establishment submitted an August 2, 2017 statement by R.N., appellant’s supervisor, who noted that since he began work as branch supervisor in 2010, appellant’s decline in health and increased hearing loss had “impacted his ability to communicate with his peers to complete his assignments.” R.N. asserted that while the employing establishment had accommodated appellant, “his health issues have had sizable impacts to our Small Caliber ammunition mission since he is limited to certain work functions. [Appellant] definitely has the motivation and drive to want to work but unfortunately is very limited due to health.” During the previous two years, appellant had been “relegated to paperwork due to his health issues. [Appellant] has had some disagreements with coworkers who are not familiar with his hearing impediment and this issue has led to several communication issues especially in the last several years as his hearing has gotten worse.” Appellant had been assigned a less stressful assignment of

⁴ Appellant also submitted September 8 and 30, 2009 employing establishment letters requesting additional medical information pursuant to his request for reasonable accommodation; otolaryngology test orders dated July 25, 2017; and an August 11, 2017 letter by Dr. David Layman, a clinical psychologist, who noted that appellant would undergo psychologic and neurocognitive functioning tests in early September.

taking care of procurement packages, but had difficulty completing assignments due to headaches and vertigo. The employing establishment also provided a copy of appellant's official position description.

By decision dated December 21, 2017, OWCP denied appellant's claim for an employment-related emotional condition, finding that he had not established that the June 2001 supervisory harassment factually occurred, as alleged. It further found that the remainder of his allegations pertained to administrative functions of the employing establishment not considered to be compensable employment factors. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On January 30, 2018 appellant, through counsel, requested reconsideration. He submitted a January 9, 2018 report by Dr. Jonathan H. Mack, a licensed clinical psychologist, who related appellant's account of harassment and discrimination at work and reviewed his medical records. Dr. Mack noted that appellant also experienced stress, dizziness, and difficulty concentrating at work on August 25, 2016 as he could not understand others' speech. He diagnosed mild neurocognitive disorder due to traumatic brain injury with behavioral disturbance, deficits in sustained attention and executive functioning, bilateral sensorineural hearing loss, blepharospasm, vertigo of central origin, person on foot injured in collision with car, and multilevel cervical and lumbar disc herniations.

In a March 9, 2018 report, Dr. Jampol noted the accepted bilateral traumatic hearing loss with progressive deterioration, greater on the left. He noted that appellant had been off work from July 6, 2005 through September 11, 2005 and from December 1, 2005 through February 17, 2007 for severe eye spasms and vertigo, and from May 28 through September 21, 2017 for injuries sustained when struck by an automobile.⁵ Dr. Jampol recommended cochlear implants.

By decision dated March 13, 2018, OWCP denied modification.

On June 18, 2018 OWCP received a November 5, 2017 accident report, which documented that appellant had been struck by a motor vehicle while out walking. It also received an April 12, 2018 report by Dr. David B. Basch, a Board-certified orthopedic surgeon, who diagnosed conditions of the cervical and lumbar areas of the spine, right shoulder, right knee, and left ankle.

On July 12, 2018 appellant, through counsel, requested reconsideration. In support thereof, appellant submitted a September 11, 2009 negotiated EEO settlement agreement wherein M.B. agreed to conduct an informal inquiry into any written allegation of harassment presented by appellant, and appellant agreed to accept management's explanation as to how work was assigned in accordance with a process review template, to seek clarification of misunderstandings concerning assigned tasks, and report any allegations of harassment in writing. The employing establishment did not admit any wrongdoing.

⁵ On July 13, 2018 under OWCP File No. xxxxxx200, OWCP received a July 10, 2018 report wherein Dr. Neigel found appellant totally disabled from work for the periods December 1, 2005 through February 17, 2007 and May 28 through September 21, 2017 due to blepharospasm and vertigo caused by the accepted hearing loss.

On August 1, 2018 OWCP administratively combined OWCP File Nos. xxxxxx814 and xxxxxx200, with the latter serving as the master file.

In a September 18, 2018 report, Dr. Sean D. Houston, an otolaryngologist, reviewed audiometric test results demonstrating four percent speech discrimination threshold in the right ear and 20 percent in the left ear. He ordered further testing to evaluate appellant's candidacy for cochlear implants.

On October 11, 2018 OWCP received additional evidence. In e-mails dated April 21 through 29, 2008, appellant requested a reasonable accommodation. In a May 7, 2008 memorandum, M.B. noted that in an April 24, 2008 meeting with appellant, it was determined that it was risky for appellant to drive to work due to blepharospasms; that appellant had "difficulty working with other personnel due to [his] hearing difficulties;" and that appellant's inability to walk, lie down, and stretch during working hours was having a detrimental effect on him. He attached a reasonable accommodation request form for appellant's completion. M.B. noted in a May 30, 2008 e-mail that appellant had signed a letter and was satisfied, and that he needed to find a way to help appellant "excel at his job now."

Appellant provided his April 21, 2009 notes regarding M.B.'s request for a weekly progress review. He alleged that M.B. questioned his choice of tasks, changed task requirements, and unfairly criticized his work. Appellant attached a June 24, 2009 progress review as presented to M.B. with desired work assignments, activity tracking, and organizational responsibility charts.

On July 1, 2009 appellant filed an EEO complaint alleging discrimination by M.B. on the basis of disability. He alleged that M.B. failed to respond to his request for reasonable accommodation, would not assign him work, questioned why he was working on a specific task, changed task requirements, and told appellant his work was no good.

In a July 9, 2009 e-mail, M.B. noted that he was attempting to contact appellant regarding a portfolio management file template, and that another individual would conduct progress reviews with appellant. He commented in August 11, 2009 e-mails that appellant's midpoint evaluation went well and that no reasonable accommodations were requested or identified.

In an August 12, 2009 e-mail, appellant notified M.B. that he found it stressful to work with hearing aids. He asked to telecommute due to blepharospasms while driving. Appellant alleged that he had been barred from travel and participating in manufacture, which made it difficult for him to exhibit his potential. In an undated response, M.B. referenced a May 7, 2008 reasonable accommodation form.

On September 10, 2009 appellant and M.B. agreed to mediation.

By decision dated April 16, 2019, OWCP modified its March 13, 2018 decision to find that appellant had established that, in June 2001, Supervisor D.C. subjected him to "emotional abuse" and an "isolated environment." It denied the claim, however, citing to the legal principle that unsubstantiated allegations of harassment or discrimination were not compensable. Appellant appealed to the Board.

By order dated August 7, 2020,⁶ the Board set aside OWCP's April 16, 2019 decision and remanded the case to OWCP to make findings of fact, with a clear statement of reasons, explaining the basis for the decision. The Board noted that while OWCP cited the legal principle that mere perception of harassment were not compensable under FECA, it did not explain why that principle applied to the alleged emotional abuse.

By decision dated June 25, 2021, OWCP denied appellant's claim, finding that he had not established a compensable factor of employment.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty, as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. 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.⁸ Including that he or she sustained an injury in the performance of duty, and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹⁰

To establish an emotional condition in the performance of duty, appellant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional condition or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the emotional condition is causally related to the identified compensable employment factors.¹¹

⁶ *Supra* note 2.

⁷ *Supra* note 1.

⁸ *C.V.*, Docket No. 22-0078 (issued November 28, 2022); *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *Gary J. Watling*, 52 ECAB 357 (2001).

⁹ *R.S.*, Docket No. 20-1307 (issued June 29, 2021) and *S.S.*, Docket No. 19-1021 (issued April 21, 2021); *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹⁰ 20 C.F.R. § 10.115; *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *id.*

¹¹ *See W.F.*, Docket No. 18-1526 (issued November 26, 2019); *C.M.*, Docket No. 17-1076 (issued November 14, 2018); *C.V.*, Docket No. 18-0580 (issued September 17, 2018); *S.K.*, Docket No. 18-1648 (issued March 4, 2019); *Kathleen D. Walker*, 42 ECAB 603 (1991).

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,¹² the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or illness has some connection with the employment, but nevertheless does not come within coverage under FECA.¹³ 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.¹⁴

Allegations alone by a claimant are insufficient to establish a factual basis of an emotional condition claim.¹⁵ Where the claimant alleges compensable factors of employment, he or she must substantiate such allegations with probative and reliable evidence.¹⁶ Personal perceptions alone are insufficient to establish an employment-related emotional condition, and disability is not covered where it results from such factors as an employee's fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment, or to hold a particular position.¹⁷

For harassment or discrimination to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁸ Mere perceptions of harassment or discrimination are not compensable under FECA.¹⁹ A claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence.²⁰ Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.²¹

¹² 28 ECAB 125 (1976).

¹³ See *Lillian Cutler, id.*; see also *G.M.*, Docket No. 17-1469 (issued April 2, 2018); *Robert W. Johns*, 51 ECAB 137 (1999).

¹⁴ *A.C.*, Docket No. 18-0507 (issued November 26, 2018); *Pamela D. Casey*, 57 ECAB 260, 263 (2005); *Lillian Cutler, supra* note 12.

¹⁵ *A.C., id.*

¹⁶ *M.J.*, Docket No. 20-0953 (issued December 8, 2021); *G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹⁷ See *A.C., supra* note 14; *Lillian Cutler, supra* note 12.

¹⁸ *O.G.*, Docket No. 18-0350 (issued August 7, 2019); *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

¹⁹ *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, 57 ECAB 657 (2006).

²⁰ *J.F.*, 59 ECAB 331 (2008); *Robert Breeden, supra* note 18.

²¹ *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, 56 ECAB 616 (2005); *Penelope C. Owens*, 54 ECAB 684 (2003).

ANALYSIS

The Board finds that appellant has established a compensable factor of employment regarding his emotional reaction to attempting to meet the requirements of his position. However, the case is not in posture for decision regarding whether appellant's emotional condition is causally related to the compensable work factor.

Appellant asserted that he developed a stress condition due to a pattern of supervisory harassment and discrimination commencing in June 2001, and difficulty communicating with his supervisors and coworkers when attempting to complete his assignments due to bilateral hearing loss accepted under OWCP File No. xxxxxx200. He noted that some coworkers were willing to communicate with him by writing their words on paper, while other coworkers ignored him. Appellant alleged that Supervisor R.D. isolated him from his coworkers beginning in June 2001, that Supervisor M.B. restricted him to one work task for a year and demanded weekly work progress presentations, that the team lead was not fair in workload distribution among team members and barred appellant from an e-mail list in May 2015, and that he was not promoted in February 2017 due to his hearing loss.

In a May 7, 2008 memorandum, M.B. acknowledged that appellant had "difficulty working with other personnel due to [his] hearing difficulties." In an August 2, 2017 statement, R.N. corroborated that appellant's hearing loss and declining health had "impacted his ability to communicate with peers to complete his assignments," and that appellant had disagreements with coworkers who were not familiar with his hearing impediment, which led to "several communication issues" in the previous two years.

The Board finds that appellant has established a compensable factor of employment under *Cutler*²² with regard to his stress and frustration when attempting to communicate with supervisors and coworkers in completing his assigned duties. Where the claimed disability or condition results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.²³ The Board has long held that emotional reactions to situations in which an employee is trying to meet his or her position requirements are compensable.²⁴ Appellant attributed his emotional condition, in part, to stress caused by difficulty communicating with his coworkers and supervisors while completing assigned work, and his supervisors corroborated these communication difficulties occurred while appellant was performing his assigned duties, the Board finds that his emotional reaction to these events constitutes a compensable factor of employment under *Cutler*.²⁵

²² *Supra* note 12.

²³ *Supra* note 14.

²⁴ *J.K.*, Docket No. 19-0720 (issued November 21, 2019); *C.S.*, 58 ECAB 137 (2006).

²⁵ *Lillian Cutler*, *supra* note 12; *J.K.*, *id.*; *C.S.*, *id.*

Appellant's allegations regarding his dissatisfaction with supervisory actions,²⁶ assignment of work,²⁷ denial of request for reasonable accommodation,²⁸ filing of EEO complaints,²⁹ and performance discussions³⁰ relate to administrative or personnel management actions. Administrative and personnel matters, although generally related to employment, are administrative functions of the employer rather than the regular or specially-assigned work duties of the employee. For an administrative or personnel matter to be considered a compensable factor of employment, the evidence must establish error or abuse on the part of the employer.³¹ Appellant submitted copies of his EEO complaint, memoranda and e-mails regarding his request for reasonable accommodation, the weekly performance template requested by M.B., and e-mails regarding the methods supervisors used to monitor his performance and assign work. Based on the evidence of record, the Board finds that appellant has not established error or abuse by the employing establishment in these administrative functions. The supervisory statements of record substantiate that appellant's hearing loss necessitated a customized method of assigning appellant work and monitoring his performance. Appellant has, therefore, not established a compensable employment factor with regard to these administrative matters.³²

Appellant also alleged harassment and discrimination by R.D. and M.B. and claimed that he was unfairly passed over for a promotion in February 2017 and otherwise excluded from work and e-mails necessary for him to advance his career. To the extent that disputes and incidents alleged as constituting harassment are established as occurring and arising from an employee's performance of his or her regular duties, these could constitute employment factors.³³ The Board has held that unfounded perceptions of harassment do not constitute a compensable employment factor.³⁴ Mere perceptions are not compensable under FECA and harassment can constitute a factor of employment if it is shown that the incidents constituting the claimed harassment actually occurred.³⁵

²⁶ *N.S.*, Docket No. 21-0355 (issued July 28, 2021); *T.C.*, Docket No. 16-0755 (issued December 13, 2016).

²⁷ *L.S.*, Docket No. 18-1471 (issued February 26, 2020); *V.M.*, Docket No. 15-1080 (issued May 11, 2017); *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

²⁸ *F.W.*, Docket No. 18-1526 (issued November 26, 2019); *James P. Guinan*, 51 ECAB 604, 607 (2000); *John Polito*, 50 ECAB 347, 349 (1999).

²⁹ *B.O.*, Docket No. 17-1986 (issued January 18, 2019); *James E. Norris*, 52 ECAB 93 (2000).

³⁰ *See R.B.*, Docket No. 19-0343 (issued February 14, 2020); *D.I.*, Docket No. 19-0534 (issued November 7, 2019).

³¹ *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

³² *P.B.*, Docket No. 19-1673 (issued December 1, 2021).

³³ *D.B.*, Docket No. 18-1025 (issued January 23, 2019); *David W. Shirey*, 42 ECAB 783, 795-96 (1991).

³⁴ *N.S.*, *supra* note 26; *A.E.*, Docket No. 18-1587 (issued March 13, 2019); *M.D.*, 59 ECAB 211 (2007); *Robert G. Burns*, *supra* note 19.

³⁵ *See F.K.*, Docket No. 17-0179 (issued July 11, 2017).

Appellant reasoned that not receiving the promotion in February 2017 and not being assigned manufacturing work were acts of discrimination based on his hearing impairment and health issues. However, he submitted no evidence to support his assertion that these administrative functions were taken in discrimination against his disability. As stated above, unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred.³⁶ Therefore, appellant has not established a compensable employment factor with respect to the claimed harassment and discrimination.

As appellant has established a compensable factor of employment regarding his emotional reaction to attempting to meet the requirements of his position, OWCP must review the medical evidence of record in order to determine whether he has established that his emotional condition is causally related to a compensable work factor.³⁷ Following this and any such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has established a compensable factor of employment regarding his emotional reaction to attempting to meet the requirements of his position. The Board further finds that the case is not in posture for decision regarding whether appellant's emotional condition is causally related to the compensable work factor.

³⁶ *N.S.*, *supra* note 26; *T.Y.*, Docket No. 19-0654 (issued November 5, 2019); *G.S.*, Docket No. 09-0764 (issued December 18, 2009); *Ronald K. Jablanski*, *supra* note 21; *Penelope C. Owens*, *supra* note 21.

³⁷ *M.J.*, Docket No. 20-0953 (issued December 8, 2021); *Z.S.*, Docket No. 16-1783 (issued August 16, 2018); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: December 20, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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