

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

_____)	
W.S., Appellant)	
)	
and)	Docket No. 22-0777
)	Issued: April 6, 2023
U.S. POSTAL SERVICE, BROOKLYN)	
PROCESSING & DISTRIBUTION CENTER,)	
Brooklyn, NY, Employer)	
_____)	

Appearances:
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 18, 2022 appellant filed a timely appeal from a March 1, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

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.*

³ The Board notes that, following the March 1, 2022 decision, appellant submitted additional evidence to OWCP. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a medical condition causally related to the accepted April 4, 2018 employment incident.

FACTUAL HISTORY

On April 7, 2018 appellant, then a 53-year-old motor vehicle operator, filed a traumatic injury claim (Form CA-1) alleging that on April 4, 2018 he sustained a whiplash-type injury to his lower back, middle back, and neck while in the performance of duty. He explained that he drove into a pothole in the right lane that he could not see because of a rain puddle. On the reverse side of the claim form, appellant's supervisor, S.K., acknowledged that appellant was injured in the performance of duty. Appellant stopped work on April 4, 2018.

In support of his claim, appellant submitted an undated statement indicating that he was leaving the employing establishment when he drove into a pothole. He could not see the pothole because of rain making a puddle over it in the right lane. Appellant reported hurting his back and neck in the manner of whiplash.

An April 4, 2018 duty status report (Form CA-17) signed by Dr. Manuel Ceja, a Board-certified internist, indicated that appellant had decreased range of motion (ROM) and tenderness in the cervical, thoracic, and lumbar spine. Dr. Ceja diagnosed strain/sprain of the cervical, thoracic, and lumbar spine and held appellant off work pending reevaluation on April 6, 2018. In an attending physician's report (Form CA-20) of even date, he provided the same information and related that appellant sustained a whiplash injury when driving over a pothole. Dr. Ceja checked a box marked "Yes," indicating that the medical condition was caused or aggravated by the claimed April 4, 2018 employment incident. In a Form CA-17 and Form CA-20 dated April 6, 2018, he provided the same information and held appellant off from work.

In a development letter dated April 13, 2018, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence required. OWCP afforded appellant 30 days to respond.

Appellant subsequently submitted April 4, 2018 progress notes from Dr. Ceja, relating that on April 4, 2018 appellant was driving at 25 miles per hour when he drove over a pothole that was full of water and thus looked like a puddle. He reported that he had a whiplash movement and then felt pain in his neck, mid back, and lower back, which worsened over time. Dr. Ceja noted that appellant had a herniated L4-L5 disc 15 years ago but that his lower back had not bothered him until the April 4, 2018 incident. His examination demonstrated generalized tenderness to the cervical spine and paracervical muscles, full cervical spine ROM with slight discomfort, tenderness to the thoracic spine and bilateral paravertebral muscles, generalized tenderness to the lumbar spine and bilateral paravertebral muscles, decreased lumbar spine ROM secondary to pain, and positive straight leg raise test bilaterally. Dr. Ceja diagnosed sprains of ligaments of the cervical, thoracic, and lumbar spine and strain of muscle, fascia, and tendon at lower back level and neck level. He indicated that appellant was temporarily totally disabled and recommended x-ray scans of the spine and physical therapy. Dr. Ceja opined that "within a certain degree of medical certainty ... the history presented by the patient, the objective physical, as well as the diagnosis rendered, is causally related to the injury the patient incurred" on April 4, 2018.

In April 6, 10, 17, and 25, 2018 progress notes, Dr. Ceja related appellant's history of injury and symptoms. On each date, he examined appellant, diagnosed sprains of ligaments of the cervical, thoracic, and lumbar spine and strain of muscle, fascia, and tendon at neck level, indicated that appellant was temporarily totally disabled, and opined that within a certain degree of medical certainty his medical condition was causally related to the April 4, 2018 employment incident. In the April 6, 2018 report, Dr. Ceja reviewed x-rays taken on April 4, 2018, which revealed shallow levocurvature of the cervical spine, no abnormalities of the thoracic spine, and narrowing of the L5-S1 disc space. On April 10, 2018 he indicated that appellant's pain had improved somewhat with therapy and rest, but he was still quite symptomatic. In the April 17, 2018 progress notes, Dr. Ceja clarified appellant's history of a herniated L4-L5 disc dating back to 2001, which had not bothered appellant since 2002. On April 25, 2018 he reviewed April 13 and 18, 2018 MRI scans, which demonstrated no evidence of significant bulge or herniation in the thoracic spine, mild bilobed posterolateral disc bulges between C3 and C6 with mild foraminal narrowing, L5-S1 posterior central herniation with regional nerve root impingement, which could be attributed to dispersal of herniated central nucleus pulposus, and facet joint widening, which may indicate ligament laxity further exacerbating neural foraminal compromise in setting of trauma, as well as L4-L5 and L5-S1 concomitant posterior disc bulges with mild-to-moderate bilateral foraminal narrowing. Dr. Ceja added a diagnosis of strain of muscle and tendon on the back wall of thorax. Appellant also submitted corresponding CA-17 and CA-20 forms dated April 10, 2018 signed by Osman Hossain, a physician assistant, and dated April 17 and 25, 2018 signed by Dr. Ceja.

The employing establishment submitted an April 26, 2018 letter asserting that appellant's injury was "not that severe" because he "seem[ed] to walk and move fine" and there was no damage to the truck he drove on the date of injury.

A May 5, 2018 letter from Dr. Ceja related appellant's history of injury and symptoms. He diagnosed thoracic strain/sprain, cervical strain/sprain, neck muscle strain, lumbar strain/sprain, cervical disc displacement, and lumbar disc displacement. Dr. Ceja advised that appellant was temporarily totally disabled and opined that his medical condition was causally related to the April 4, 2018 employment incident. Appellant also submitted corresponding CA-17 and CA-20 forms dated May 11, 2018 signed by Dr. Ceja.

The employing establishment submitted a May 22, 2018 letter noting that appellant had a history of a preexisting herniated L4-L5 disc and asserting that he had not established causal relationship.

By decision dated May 23, 2018, OWCP denied appellant's traumatic injury claim, finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed condition and the accepted April 4, 2018 employment incident.

Appellant subsequently submitted April 6, 2018 and May 7, 2018 reports from Dr. Saglara B. Mills, a chiropractor, relating appellant's history of injury on April 4, 2018. Dr. Mills examined appellant and diagnosed segmental and somatic dysfunction of cervical region, vertebral subluxation complex of thoracic and lumbar region, sprain of ligaments of lumbar, cervical, and thoracic spine, cervicalgia, pain in thoracic spine, and lumbar radiculopathy. She advised that he could not return to work and recommended conservative chiropractic spinal manipulative treatment. Dr. Mills opined, based on her examination and appellant's history, that his condition was causally related to the April 4, 2018 employment incident. She explained that the mechanism of injury was consistent with the clinical presentation and that there had been

moderate-to-severe trauma to the spine, which misaligned the vertebrae, overstretched ligaments and muscles, and inflamed the nerves. In the May 7, 2018 report, Dr. Mills added diagnoses of mid-cervical disc displacement, lumbar intervertebral disc displacement, lumbosacral intervertebral disc displacement, lumbago with sciatica on the right side, and muscle spasm. Appellant submitted chiropractic progress notes from Dr. Mills dated April 10 through May 23, 2018.

A May 4, 2018 report from Dr. Raed Hattab, a Board-certified pain management specialist, related appellant's history of injury on April 4, 2018. Examination revealed decreased sensation in right lower extremity at lateral aspect, decreased deep tendon reflexes at right brachioradialis, positive bilateral foraminal compression/Spurling's sign, spinal point tenderness to palpation, asymmetrical cervical muscles with mild-to-moderate tenderness and muscle spasm to upper trapezius and paraspinal muscles, decreased sensation in left leg at lateral and posterior aspect, decreased deep tendon reflexes with ankle jerk, asymmetrical lumbar muscles with moderate tenderness and muscle spasm to paraspinal muscles. Dr. Hattab diagnosed cervicalgia, cervical sprain/strain, cervical disc displacement with disc bulge at C3-C4, C4-C5, and C5-C6, right C6 radiculopathy, lumbago, lumbar sprain/strain, lumbar disc displacement with disc bulge at L4-L5 and herniated nucleus pulposus at L5-S1 with facet syndrome, and left L5-S1 radiculopathy. He indicated that appellant was temporarily totally disabled and opined that, within a certain degree of medical certainty, appellant's medical condition was causally related to the April 4, 2018 employment incident.

May 11, 21, and 29, 2018 progress notes from Dr. Ceja related appellant's history of injury and added diagnoses of cervical disc displacement and intervertebral disc displacement in the lumbosacral region. He indicated that appellant was temporarily totally disabled and opined that appellant's medical condition was causally related to the accepted April 4, 2018 employment incident. In the May 21 and 29, 2018 reports, Dr. Ceja added further diagnoses of cervical radiculopathy and sacral and sacrococcygeal radiculopathy. Appellant also submitted corresponding CA-17 and CA-20 forms dated May 21 and 29, 2018 signed by Dr. Ceja.

On June 7, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 24, 2018.

By decision dated November 27, 2018, OWCP's hearing representative affirmed the May 23, 2018 decision.

Appellant subsequently submitted a September 18, 2019 narrative medical report from Dr. Albert Johnson, a Board-certified orthopedic surgeon, who provided a detailed description of the April 4, 2018 employment incident, as well as appellant's symptoms and history of treatment. Dr. Johnson noted that appellant had a prior lumbar spine injury in 2001 for which he underwent chiropractic care and physical therapy. He stated that appellant's symptoms had completely resolved, and he had been symptom-free for the past 18 years. Examination revealed pain in the lower back with heel and toe walking, spinous process tenderness at C4, C5, C6, and C7, restricted ROM of the cervical spine, Semmes Weinstein Monofilament testing proximally to C5 region revealing very faint feeling and appreciated better on the left side than the right, deep tendon reflexes revealing a slight question of the right triceps reflex being less prominent than the left, tenderness in the lumbar spine at L4, L5, and the sacrum, sacroiliac joint tenderness bilaterally, and restricted ROM in the lumbar spine. Dr. Johnson reviewed appellant's medical records and diagnostic reports. He diagnosed post-traumatic strain and sprain syndrome of cervical spine,

post-traumatic disc bulges at C3-C4, C4-C5, and C5-C6 levels, electrodiagnostic evidence of right-sided C5-C6 radiculopathy, post-traumatic strain and sprain syndrome of lumbar spine, post-traumatic disc bulges at L4-L5 and L5-S1 levels, post-traumatic disc herniation at L5-S1, aggravation of underlying quiescent foraminal stenosis and facet joint arthropathy, and electrodiagnostic evidence of left-sided S1 radiculopathy.

Dr. Johnson explained that when the seven-ton postal truck proceeding at about 25 miles per hour hit a deep pothole, it jolted downward and appellant's air seat struck the metal frame, causing a whiplash-type injury to the neck, mid back, and low back. He noted that, in the literature, whiplash and associated injuries describe neck injuries resulting from acceleration and deceleration caused by a motor vehicle collision or other indirect trauma. Dr. Johnson described the three stages of whiplash: first the torso is driven forward and upward, sustaining compressive and shear forces followed by tensile forces, then the torso moves backward, finally the head swings back, extending the entire cervical spine. He noted that the source of pain in such injuries includes the facet joints, ligaments, and intervertebral discs and surrounding muscles, that the most common symptoms include neck, shoulder, and low back pain, and that anatomical, biomechanical, and autopsy studies show that discs can be injured along the anterior longitudinal ligament during the abnormal hyperextension phase of whiplash. Dr. Johnson opined that the sudden acceleration and deceleration injury caused by appellant's postal truck suddenly going into a deep pothole caused a whiplash-associated injury to the cervical, thoracic, and lumbar spine, leading to the diagnosed musculoskeletal injuries. He based his opinion on appellant's history of injury, his physical examination, appellant's employment duties, and his review of the medical records provided.

On November 5, 2019 appellant, through counsel, requested reconsideration.

By decision dated January 31, 2020, OWCP denied modification of the November 27, 2018 decision.

Appellant subsequently submitted a June 16, 2020 narrative medical report from Dr. Nicholas Diamond, an osteopath specializing in pain management, relating a detailed description of the April 4, 2018 employment incident, as well as appellant's symptoms and history of treatment. Dr. Diamond noted appellant's prior lumbar spine injury from 2001 for which the symptoms had resolved. Examination revealed antalgic forward flexed gait, right sternocleidomastoid tenderness, cervical midline paravertebral muscle spasm and tenderness over the posterior midline, trapezius splenius capitis, cervical facet joint tenderness and Travells trigger points, painful cervical spine ROM, lumbar spine midline paravertebral muscle spasm, posterior iliolumbar ligamentous tenderness, lumbar spine facet joint tenderness, facet joint compression test, and Travells trigger points, low back pain with straight leg raise bilaterally, and restricted and painful lumbar spine ROM. Dr. Diamond reviewed appellant's medical records and diagnostic reports and diagnosed post-traumatic cervical spine strain and sprain with C3-C4, C4-C5, and C5-C6 disc bulges, right C5-C6 radiculopathy, post-traumatic lumbosacral sprain and strain, post-traumatic L5-S1 herniation and L4-L5 disc bulge, aggravation of underlying quiescent foraminal stenosis and facet joint arthropathy, left S1 radiculopathy, L5-S1 radiculopathy, and L4-L5 annular tear with herniation. He opined that appellant sustained significant musculoskeletal trauma to his cervical and thoracic spine secondary to the April 4, 2018 employment incident and that appellant was totally and permanently disabled as a mail truck driver.

On September 10, 2020 appellant, through counsel, requested reconsideration.

In a September 25, 2020 letter, Dr. Johnson indicated that he had reviewed a picture of the pothole in question, as well as OWCP's November 27, 2018 decision. He noted that the pothole was quite deep and, though the seat was air-suspended to counter shocks, the seat went into a downward position as the front tire went into the pothole, causing the seat to strike the metal base of the seat connected to the floor of the truck. Dr. Johnson explained that the wheel drop caused an unexpected jolt and driver reaction, leading to a whiplash injury. He further explained that appellant took his foot off the accelerator and went on to use the brake pedal, contributing to the jolt and whiplash. Dr. Johnson noted that commercial truck tires meet a high load rating and thus there may be bodily injury even if there is no damage to the truck or its tires.

By decision dated December 1, 2020, OWCP denied modification of the January 31, 2020 decision.

Appellant subsequently submitted a February 11, 2021 letter from Dr. Johnson, reiterating that appellant had a preexisting herniated disc at L4-L5 and L5-S1 due to a 2001 work-related injury, but that the symptoms had completely resolved, and appellant had been symptom-free for the past 18 years. Dr. Johnson noted that this history was confirmed by Dr. Ceja in his May 21, 2018 report, in which he noted that appellant's low back had not bothered him from 2002 until the new injury on April 4, 2018. He opined, based on the history presented by appellant and the medical records, that the April 4, 2018 wheel drop trajectory aggravated appellant's low back condition. Dr. Johnson further opined that, as there was no preexisting cervical condition, the April 4, 2018 employment incident directly caused the cervical injury, namely bulging discs at C3-C4, C4-C5, and C5-C6, and right-sided C5-C6 radiculopathy.

On February 19, 2021 appellant, through counsel, requested reconsideration.

By decision dated May 10, 2021, OWCP denied modification of the December 1, 2020 decision.

Appellant subsequently submitted several diagnostic reports. A lumbar spine MRI scan report dated June 20, 2002, which demonstrated disc herniations at L4-L5 and L5-S1. A May 17, 2018 electromyogram and nerve conduction velocity (EMG/NCV) study demonstrative electrodiagnostic evidence of right C5-C6 radiculopathies and suggestive of left S1 radiculopathy.

On December 3, 2021 appellant, through counsel, requested reconsideration. He requested that a district medical adviser (DMA) review his case.

By decision dated March 1, 2022, OWCP denied modification of the May 10, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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 timely filed within the applicable

⁴ *Supra* note 1.

time limitation period of FECA,⁵ 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 employment injury.⁶ 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.⁷

To determine whether an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged.⁸ The second component is whether the employment incident caused a personal injury.⁹

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹⁰ 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.¹¹

ANALYSIS

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

In a report dated September 18, 2019, Dr. Johnson related appellant's history of injury and treatment and diagnosed post-traumatic strain and sprain syndrome of cervical spine, post-traumatic disc bulges at C3-C4, C4-C5, and C5-C6 levels, electrodiagnostic evidence of right-sided C5-C6 radiculopathy, post-traumatic strain and sprain syndrome of lumbar spine, post-traumatic disc bulges at L4-L5 and L5-S1 levels, post-traumatic disc herniation at L5-S1, aggravation of underlying quiescent foraminal stenosis and facet joint arthropathy, and electrodiagnostic evidence of left-sided S1 radiculopathy. He described the mechanism of whiplash injuries, and explained that when the seven-ton postal truck proceeding at about 25 miles per hour hit a deep pothole, it jolted downward and appellant's air seat struck the metal frame,

⁵ *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

causing a whiplash-type injury to the neck, mid back, and low back. Dr. Johnson opined that the sudden acceleration and deceleration injury caused by appellant's postal truck suddenly going into a deep pothole caused a whiplash-associated injury to the cervical, thoracic, and lumbar spine, leading to the diagnosed musculoskeletal injuries. He also noted that, although appellant had a prior lumbar spine injury in 2001, his symptoms had completely resolved, and he had been symptom-free for the past 18 years.

In his September 25, 2020 letter, Dr. Johnson further described the mechanism of injury based on his review of a photograph of the pothole. He noted that the pothole was quite deep and, though the seat was air-suspended to counter shocks, the seat went into a downward position as the front tire went into the pothole, causing the seat to strike the metal base of the seat connected to the floor of the truck. Dr. Johnson explained that the wheel drop caused an unexpected jolt and driver reaction, leading to a whiplash injury. He further explained that appellant took his foot off the accelerator and went on to use the brake pedal, contributing to the jolt and whiplash. Dr. Johnson noted that commercial truck tires meet a high load rating and thus there may be bodily injury even if there is no damage to the truck or its tires.

In a February 11, 2021 letter, Dr. Johnson reiterated that appellant had a preexisting herniated disc at L4-L5 and L5-S1 due to a 2001 work-related injury, but that the symptoms had completely resolved and appellant had been symptom-free for the past 18 years. He opined, based on the history presented by appellant and the medical records, that the April 4, 2018 wheel drop trajectory aggravated appellant's preexisting low back condition and directly caused the cervical condition.

The Board finds that Dr. Johnson's September 18, 2019, September 25, 2020, and February 11, 2021 reports are sufficient to require further development of the medical evidence. Dr. Johnson demonstrated a comprehensive understanding of the medical record and case history. His reports provide a pathophysiological explanation as to how the accepted April 4, 2018 employment incident aggravated appellant's diagnosed lumbar condition and directly caused his diagnosed cervical condition.

The Board has long held that it is unnecessary that the evidence of record in a case be so conclusive as to suggest causal connection beyond all possible doubt.¹² Rather, the evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound, and logical.¹³ Accordingly, the Board finds that Dr. Johnson's medical opinion is rationalized and logical and is, therefore, sufficient to require further development of appellant's claim.¹⁴

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares

¹² See *D.M.*, Docket No. 21-0908 (issued March 4, 2022).

¹³ *C.S.*, Docket No. 19-1809 (issued July 29, 2020); *W.M.*, Docket No. 17-1244 (issued November 7, 2017).

¹⁴ See *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

responsibility in the development of the evidence.¹⁵ OWCP has an obligation to see that justice is done.¹⁶

On remand OWCP shall prepare a statement of accepted facts and refer appellant, along with the case record, to a specialist in the appropriate field of medicine, for a reasoned opinion regarding whether he sustained a medical condition causally related to or aggravated by the accepted April 4, 2018 employment incident. If the second opinion physician disagrees with the opinion of Dr. Johnson, he or she must provide a fully-rationalized explanation of why the accepted April 4, 2018 employment incident was insufficient to have caused or aggravated appellant's medical condition. After this and other such further development of the case record as OWCP deems necessary, it shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the March 1, 2022 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: April 6, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ *Id.*; see also *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

¹⁶ See *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).