United States Department of Labor
Employees' Compensation Appeals Board

S.J., Appellant	)	
and	)	**Docket No. 22-0936**
	)	**Issued: April 27, 2023**
DEPARTMENT OF VETERANS AFFAIRS, CLEMENT J. ZABLOCKI VA MEDICAL CENTER, Milwaukee, WI, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 2, 2022 appellant filed a timely appeal from a May 4, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether OWCP has met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 12, 2021, as she no longer had disability or residuals causally related to her accepted August 29, 2019 employment injury; (2) whether appellant has met her burden of proof to establish continuing employment-related disability or residuals, on or after March 12, 2021, due to the accepted employment injury; and (3) whether appellant has met her burden of proof to expand the acceptance of her claim to include

[1] 5 U.S.C. § 8101 *et seq.*

lumbar conditions and additional right hip conditions as causally related to her accepted August 29, 2019 employment injury.

FACTUAL HISTORY

On September 27, 2019 appellant, then a 54-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 29, 2019 she sustained a right hip fracture, right pelvic fracture, and sciatica when she stumbled and fell forward when walking out of an office while in the performance of duty. She struck her right shoulder against a wall and fell. Appellant heard two cracking sounds as she fell to the floor, landing on her right hip with her right lower extremity collapsed beneath her.[2] She stopped work that day.

In an August 29, 2019 report, Dr. Franklin I. Lee, Board-certified in emergency medicine, recounted appellant's history of a trip and fall that day. On examination, he observed tenderness to palpation at the right groin, and pain with range of motion of the right hip. Dr. Lee ordered x-rays of the right hip, which demonstrated minimal osteophyte formation, no fracture, and lumbosacral posterior fixation hardware in place. He also ordered a computerized tomography (CT) scan of the right hip, which demonstrated subtle, nondisplaced fractures involving the anterior column of the right acetabulum, right pubis, and right inferior pubic ramus. Dr. Lee consulted a staff orthopedist, who opined that the fractures were nonoperative. He diagnosed closed, nondisplaced fracture of the anterior wall of the right acetabulum, and closed, nondisplaced fracture of the unspecified part of pelvis.

In a September 14, 2019 report, Dr. Daniel A. Keller, a Board-certified internist, diagnosed right-sided sciatica, closed fracture of right hip with nonunion, right pelvic fracture with sequelae, and injury of digital nerves of fingers, initial encounter. He opined that the diagnoses were related to the August 29, 2019 employment injury. Dr. Keller held appellant off work.

In reports dated October 9, 2019, Dr. Rudolph R. Teschan, Board-certified in family practice, diagnosed a work-related closed fracture of the right pubis. He held appellant off work.

In a work certificate dated October 16, 2019, Dr. Teschan noted that appellant had sustained fractures of the right inferior pubic ramus, right pubic symphysis, and right acetabulum in the August 29, 2019 employment incident. She participated in physical therapy treatments for gait training. Dr. Teschan recounted that appellant experienced significant pain in the pelvic area with extreme difficulty walking and sitting. He held appellant off work.

On November 25, 2019 OWCP accepted the claim for nondisplaced closed fracture of anterior wall of right acetabulum, nondisplaced closed fracture of the right pubis, and closed fracture of the right pubis symphysis.

In a December 9, 2019 work certificate, Dr. Teschan returned appellant to limited-duty work for four hours a day, with lifting limited to five pounds, no repetitive bending, no crouching,

[2] OWCP received three witness statements from coworkers who heard appellant fall on August 29, 2019 and observed her on the floor in significant pain, and an October 3, 2019 employing establishment accident report, which confirmed appellant's account of events.

and no kneeling pending an evaluation in one month. In a December 12, 2019 work certificate, he increased appellant's work schedule to five hours a day, four days a week.

On December 17, 2019 the employing establishment offered appellant a limited-duty position within the restrictions noted by Dr. Teschan. Appellant accepted the position on December 26, 2019.

In a January 7, 2020 work certificate, Dr. Teschan returned appellant to light-duty work for four days a week, up to six hours per day, with no repetitive bending, squatting, or kneeling, and lifting limited to five pounds. Appellant continued working part-time light-duty work within Dr. Teschan's restrictions. OWCP paid appellant wage-loss compensation for the remaining hours.

Dr. Christopher J. Evanich, a Board-certified orthopedic surgeon, provided reports dated from February 20 through July 16, 2020 recounting a history of injury and treatment. He obtained a February 20, 2020 pelvic x-ray, which demonstrated right acetabular and pubic rami fractures with abundant callus formation. Dr. Evanich opined that a March 10, 2020 magnetic resonance imaging (MRI) scan[3] of the right hip demonstrated a subacute to chronic fracture of the anterior acetabulum and right pubic rami, which would be the expected course of healing following the fractures. In his July 16, 2020 report, he opined that appellant's residual pain was probably due to soft tissue injury as it had been a year since the injury.

Appellant stopped work on September 4, 2020.

In a September 9, 2020 report, Dr. Niel A. Johnson, a Board-certified family practitioner, held appellant off work from September 4 through 11, 2020.

In reports dated September 28, 2020, Dr. Teschan recounted that appellant had experienced a gradual increase in right hip pain until as of September 1, 2020 she was no longer able to work. Appellant sought treatment in a hospital emergency department. She required crutches to walk and was tearful due to pain. A September 28, 2020 MRI scan of the pelvis demonstrated a healing fracture of the right inferior pubic ramus with deformity of the contour of the bones indicative of fracture. The right pubic symphysis also demonstrated a contour deformity and bone marrow edema, indicating ongoing healing of the right pubic symphysis fracture. Edema was also visible at the right acetabular fracture, indicating continued healing of the bone. Dr. Teschan obtained right hip x-rays, which demonstrated degenerative joint disease and osteoarthritis. On examination he observed tenderness to deep palpation of the right lumbar region and right hip, and full range of motion of the right hip. Dr. Teschan diagnosed multiple pelvic fractures, chronic pain as a direct result of the fractures, osteoarthritis and degenerative joint disease of the right hip aggravated by the August 29, 2019 employment injury, and insomnia and depression due to chronic pain. He prescribed medication and held appellant off work.

[3] A March 10, 2020 MRI scan of the right hip demonstrated subacute to chronic fractures of the anterior acetabulum, right pubic ramus, a small, displaced ossicle adjacent to the acetabulum, no femoral head fracture or dislocation, no avascular necrosis, and a strain of the adductor brevis muscle likely related to recent trauma.

On October 29, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Mysore S. Shivaram, a Board-certified orthopedic surgeon, for a second opinion on the nature and extent of appellant's employment-related conditions and her work capacity.

In a November 16, 2020 report, Dr. Shivaram reviewed the medical record and SOAF. On examination he noted full, painless range of motion of the right hip and lumbar spine, no definite area of tenderness at the right hip, normal motor and sensory findings of both lower extremities, and a slight overreaction to pain. Dr. Shivaram diagnosed a healed, nondisplaced fracture of the superior and inferior pubic ramus and anterior column of the acetabulum. He opined that there was no evidence of degenerative arthritis of the right hip, that the accepted injury had not precipitated or aggravated a hip condition, and that there was no clinical basis for her complaints of pain along the lateral aspect of the right proximal thigh into the right lower extremity. Dr. Shivaram found that appellant had attained maximum medical improvement (MMI). He disagreed with the work restrictions provided by appellant's physicians, as her complaints of pain were subjective with no objective evidence of pathology. Dr. Shivaram returned her to full-time work with no restrictions.

OWCP continued to receive additional evidence. In an October 29, 2019 report, Dr. Mustafa Farooque, Board-certified in physiatry and pain medicine, recounted that appellant had undergone L4-S1 posterior fusion approximately 15 years previously with a good result. Appellant reported that approximately two weeks after the accepted August 29, 2019 employment injury, she developed right-sided lumbosacral pain with radiation into the right lower extremity. Dr. Farooque was unable to fully examine appellant's right lower extremity due to pain or the apprehension of pain. He obtained lumbar x-rays, which demonstrated degenerative changes of the sacroiliac joints, fixation hardware from an L4-S1 interbody fusion, and partially visualized fractures at the base of the right superior pubic ramus, which may have extended into the medial wall of the right acetabulum. Dr. Farooque diagnosed minimally-displaced fracture of the right interior pubic ramus, right pubic symphysis, and anterior column of the right acetabulum following the August 29, 2019 employment injury. He opined that, based on his limited examination, there were no significant focal neurologic deficits attributable to the lumbar spine.

In reports dated December 2, 2020, Dr. Teschan diagnosed a strain of the right adductus brevis muscle with bone marrow edema demonstrated by MRI scan. He opined that the accepted August 29, 2019 employment injury had aggravated lumbar arthritis and resulted in chronic right hip pain. Dr. Teschan held appellant off work.[4]

On January 19, 2021 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on the November 16, 2020 second opinion examination report from Dr. Shivaram, which related that the accepted conditions had resolved without disability or residuals. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

[4] An October 23, 2020 electromyography/nerve conduction velocity (EMG/NCV) study of the right lower extremity demonstrated no acute/active lumbosacral radiculopathy, lumbosacral plexopathy, myopathy, entrapment neuropathy, or peripheral polyneuropathy.

In a January 28, 2021 report, Dr. Christina C. Moore, Board-certified in anesthesiology and pain medicine, performed an intra-articular injection to address perineal and/or coccydynial pain.

By decision dated March 15, 2021, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective March 12, 2021. It found that the weight of medical evidence rested with the second opinion report of Dr. Shivaram and established that appellant had no residuals related to her accepted August 29, 209 employment injury and no continuing disability from work.

OWCP received additional evidence in a July 8, 2020 lumbar MRI scan, which noted postsurgical changes in the lower lumbar spine. The L4-5 and L5-S1 levels could not be visualized due to extensive metallic artifacts.

On April 28, 2021 appellant requested reconsideration.

An April 29, 2021 MRI scan of the pelvis demonstrated a mild bridging cortical deformity involving the superior and inferior right obturator ring and the right pubic symphysis, indicating old healed fractures with no marrow edema, metallic artifact from the lower lumbar spine, mild joint space narrowing at the bilateral sacroiliac joints indicative of mild osteoarthritis, normal hip joint spaces, mild tendinosis near the junction of the distal right gluteus minimus and medius tendons at their insertion on the right greater trochanter, and tendinitis and mild trochanteric bursitis in the left hip.

In a May 19, 2021 memorandum, OWCP requested that Dr. Shivaram review the July 8, 2020 MRI scan of the lumbar spine, April 29, 2021 MRI scan of the pelvis, and an updated SOAF, and provide a rationalized medical report indicating if they changed his prior opinion. It also requested that Dr. Shivaram opine as to whether OWCP should expand the acceptance of appellant's claim to include lumbar or additional right hip conditions.

A June 2, 2021 MRI arthrogram of the right hip demonstrated a partially-detached right anterior labral tear and mild right hip chondromalacia.

In a July 7, 2021 supplemental report, Dr. Shivaram reviewed imaging studies, including the July 8, 2020 and April 29, 2021 MRI scans. He opined that these studies had not changed his opinion. Dr. Shivaram explained that OWCP should not accept osteoarthritis of the right hip as work related as the imaging studies of record did not demonstrate degenerative arthritis. He also opined that OWCP should not expand the acceptance of appellant's claim to include any lumbar spine conditions, as these were preexisting and there were no clinical findings of symptoms referred from the lower lumbar spine.

By decision dated July 22, 2021, OWCP denied modification of the March 15, 2021 termination decision, and denied expansion of the acceptance of appellant's claim to include right hip osteoarthritis, right hip degenerative joint disease, or a lumbar spine condition.

In an August 25, 2021 report, Dr. Rafael Walker Santiago, an orthopedic surgeon, performed a right hip diagnostic arthroscopy and acetabular labral debridement. He diagnosed a right hip labral tear.

On November 1, 2021 appellant requested reconsideration of OWCP's July 22, 2021 decision.

By decision dated November 15, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim.

In a December 3, 2021 report, Dr. Santiago opined that the right hip labral tear with associated chondromalacia of the hip, which he had surgically repaired on August 25, 2021 with a right hip arthroscopy with labral debridement, "was a result of the work injury sustained on [August 29,] 2019."

On December 8, 2021 appellant again requested reconsideration of OWCP's July 22, 2021 decision. In support thereof, she submitted a November 30, 2021 report by Dr. Santiago, who recounted that appellant's right lateral hip pain had not improved significantly with medication and physical therapy. In a work certificate of even date, Dr. Santiago held appellant off work for three weeks.

By decision dated December 16, 2021, OWCP denied modification of its July 22, 2021 decision.

On February 18, 2022 appellant requested reconsideration. She asserted that there was a conflict of medical opinion evidence between Dr. Shivaram and Dr. Santiago as to whether the diagnosed right hip labral tear was related to the accepted employment injury.

OWCP subsequently received a July 15, 2021 report by Dr. Santiago, recounting appellant's two-year history of a right hip labral tear. Dr. Santiago diagnosed a partially detached right anterior labral tear, and mild chondromalacia of the right hip. In a January 18, 2022 addendum to the July 15, 2021 report, he opined that as an intra-articular injection to the right hip on June 24, 2021 provided substantial but short-lived symptomatic relief, this confirmed that the main pathology lay within the intra-articular space.

By decision dated May 4, 2022, OWCP denied modification of its December 16, 2021 decision.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of an employee's benefits.[5] After it has determined that, an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to

[5] *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *R.P.*, Docket No. 17-1133 (issued January 18, 2018); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

the employment.[6] Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.[7]

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability compensation.[8] To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.[9]

Section 8123(a) provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.[10] The implementing regulations provides that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP district medical adviser, OWCP shall appoint a third physician to make an examination. 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.[11]

ANALYSIS -- ISSUE 1

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 12, 2021.

Dr. Teschan, in reports dated September 28 and December 2, 2020, noted a gradual increase in appellant's right hip pain until she could no longer work as of September 1, 2020. A September 28, 2020 MRI scan of the pelvis demonstrated that the fractures of the right inferior pubic ramus, right pubic symphysis, and right acetabulum had not yet healed. Additionally, an MRI scan demonstrated a right adductus brevis muscle strain with bone marrow edema. Dr. Teschan obtained right hip x-rays, which demonstrated degenerative joint disease and osteoarthritis. He opined that the pelvic fractures directly caused chronic pain, and that the August 29, 2019 employment injury had aggravated osteoarthritis and degenerative joint disease of the right hip. Dr. Teschan, held appellant off work.

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[6] *D.G.*, *id.*; *R.P., id.*; *Jason C. Armstrong*, 40 ECAB 907 (1989); *Charles E. Minnis,* 40 ECAB 708 (1989); *Vivien L. Minor*, 37 ECAB 541 (1986).

[7] *D.G., id.*; *M.C.*, Docket No. 18-1374 (issued April 23, 2019); *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

[8] *D.G., id.*; *A.G.*, Docket No. 19-0220 (issued August 1, 2019); *A.P.*, Docket No. 08-1822 (issued August 5, 2009); *T.P.*, 58 ECAB 524 (2007); *Kathryn E. Demarsh*, 56 ECAB 677 (2005). *Furman G. Peake*, 41 ECAB 361 (1990).

[9] *D.G., id.*; *A.G., id.*; *James F. Weikel,* 54 ECAB 660 (2003); *Pamela K. Guesford,* 53 ECAB 727 (2002); *Furman G. Peake, id*.

[10] 5 U.S.C. § 8123(a); *G.S.*, Docket No. 20-0562 (issued June 23, 2022); *see D.G., id.*; *A.M.*, Docket No. 18-1243 (issued October 7, 2019); *R.S.,* Docket No. 10-1704 (issued May 13, 2011); *S.T.*, Docket No. 08-1675 (issued May 4, 2009); *M.S.*, 58 ECAB 328 (2007).

[11] 20 C.F.R. § 10.321; *D.G., id.*; *R.C.*, 58 ECAB 238 (2006).

Dr. Shivaram, in his November 16, 2020 report, reviewed the medical record and the SOAF, and noted findings on examination. He opined that the accepted pelvic and acetabular fractures had healed without objective residuals, that appellant did not have degenerative arthritis of the right hip, and that the accepted injury had not precipitated or aggravated a right hip condition. Dr. Shivaram returned appellant to full-time work with no restrictions.

Thus, there was disagreement as to whether appellant had residuals of her accepted right hip injury and on the nature and extent of a period of disability caused by her accepted August 29, 2019 employment injury between OWCP's referral physician and appellant's treating physician, when OWCP terminated appellant's wage-loss compensation and medical benefits, on March 15, 2021. Pursuant to 5 U.S.C. § 8123(a) and 20 C.F.R. § 10.321, OWCP should have referred appellant for an impartial medical evaluation prior to terminating her wage-loss compensation and medical benefits on March 15, 2021.[12]

LEGAL PRECEDENT -- ISSUE 3

When an employee claims that, a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.[13]

To establish causal relationship, the employee must submit rationalized medical opinion evidence.[14] 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 nature of the relationship between the diagnosed condition and the accepted employment injury.[15] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.[16]

Section 8123(a) of FECA provides, in pertinent part, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.[17] When there are opposing reports of virtually

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[12] *G.S.*, *supra* note 10; *D.G.*, *id.*; *A.G.*, *supra* note 8; *James F. Weikel*, *supra* note 9; *Pamela K. Guesford*, *supra* note 9.

[13] *D.T.*, Docket No. 20-0234 (issued January 8, 2021); *see T.E.*, Docket No. 18-1595 (issued March 13, 2019); *T.F.*, Docket No. 17-0645 (issued August 15, 2018); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

[14] *D.T., id.*; *T.K.*, Docket No. 18-1239 (issued May 29, 2019); *M.W.*, 57 ECAB 710 (2006); *John D. Jackson*, 55 ECAB 465 (2004).

[15] *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *T.K., id.*; *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[16] *Id.*

[17] *Supra* note 13.

equal weight and rationale, the case must be referred to an IME, pursuant to section 8123(a) of FECA, to resolve the conflict in the medical evidence.[18]

ANALYSIS -- ISSUE 3

The Board finds that this case is not in posture for decision with regard to the issue of expansion.

OWCP accepted that appellant sustained a nondisplaced closed fracture of anterior wall of right acetabulum, nondisplaced closed fracture of the right pubis, and closed fracture of the right pubis symphysis due to the August 29, 2019 employment injury.

Dr. Teschan, in reports dated September 28, 2020, opined that osteoarthritis and degenerative joint disease of the right hip, as demonstrated by x-ray, had been aggravated by the August 29, 2019 employment injury. In reports dated December 2, 2020, he opined that the accepted August 29, 2019 employment injury had aggravated lumbar arthritis, resulting in chronic right hip pain.

In an August 25, 2021 report, Dr. Santiago diagnosed a right hip labral tear as visualized on diagnostic arthroscopy. In a December 3, 2021 report, he opined that the right hip labral tear with associated chondromalacia of the right hip, was a result of the August 29, 2019 employment injury. Dr. Santiago explained in a January 18, 2022 addendum report that appellant's response to a June 24, 2021 intra-articular injection to the right hip confirmed that the pathology causing her symptoms lay within the intra-articular space.

On May 19, 2021 OWCP requested that Dr. Shivaram, the second opinion physician, specifically address whether appellant had sustained any additional right hip conditions or any lumbar conditions as a result of her accepted August 29, 2019 employment injury. In his July 7, 2021 report, Dr. Shivaram reviewed the SOAF, appellant's medical treatment, the July 8, 2020 MRI scan of the lumbar spine, and the April 29, 2021 MRI scan of the pelvis. He found that the imaging studies did not demonstrate osteoarthritis or degenerative arthritis of the right hip. Dr. Shivaram also opined that all of appellant's lumbar spine conditions were preexisting and that there were no clinical findings of lumbar radiculopathy.

The Board, therefore, finds that a conflict in medical opinion exists between Drs. Teschan and Santiago and Dr. Shivaram, with regard to whether appellant developed additional right hip conditions and/or lumbar conditions as a result of her employment injury.[19]

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[18] *Supra* note 14. *See also S.F.*, Docket No. 20-1492 (issued August 17, 2022).

[19] *S.N.*, Docket No. 19-1050 (issued July 31, 2020); *D.S.*, Docket No. 20-0146 (issued June 11, 2020); *W.B.*, Docket No. 17-1994 (issued June 8, 2018).

OWCP regulations provide that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination.[20]

The case must therefore be remanded for OWCP to refer appellant to an IME to determine whether it should expand the acceptance of her claim to include right hip osteoarthritis, right hip degenerative joint disease, a right hip labral tear, and any lumbar conditions, causally related to her accepted employment injury.[21] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective March 12, 2021.[22] The Board further finds that the case is not in posture for decision regarding expansion of acceptance of the claim due to an unresolved conflict in the medical opinion evidence.

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[20] 5 U.S.C. § 8123(a); *S.N.*, *id.*; *G.K.*, Docket No. 16-1119 (issued March 16, 2018).

[21] *S.F.*, *supra* note 18; *S.N.*, *supra* note 19; *P.S.*, Docket No. 17-0802 (issued August 18, 2017).

[22] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the May 4, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 27, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board