

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

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**S.H., Appellant** )

**and** )

**U.S. POSTAL SERVICE, MONTCLAIR POST** )  
**OFFICE, Montclair, NJ, Employer** )  
\_\_\_\_\_ )

**Docket No. 21-1380**  
**Issued: September 22, 2023**

*Appearances:*

*James D. Muirhead, Esq., for the appellant<sup>1</sup>*  
*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 September 7, 2021 appellant, through counsel, filed a timely appeal from a May 3, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the

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<sup>1</sup> 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.

<sup>2</sup> Appellant died during the pendency of this appeal. As such, a substitute appellant is required to carry the appeal forward as the Board's jurisdiction was invoked during his lifetime. *See M.H.*, Docket No. 21-1250 n.2 (issued February 17, 2023); *J.W.*, Docket No. 20-0952 (issued February 2, 2022); *D.V.*, Docket No. 20-1291 (issued September 14, 2021); *N.D.*, Docket No. 14-1757 (issued June 2, 2015); *Albert F. Kimbrell*, 4 ECAB 662, 666 (1952). Accordingly, appellant's counsel is recognized by the Board as the substitute appellant for the purposes of carrying the appeal forward.

Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>4</sup>

### ISSUE

The issue is whether appellant has met her burden of proof to establish permanent impairment of a scheduled member or function of the body, warranting a schedule award.

### FACTUAL HISTORY

This case has previously been before the Board on a different issue.<sup>5</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 17, 2010 appellant, then a 54-year-old part-time flexible carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 12, 2010 she injured her neck, shoulder, and lower back, bending, scanning, and lifting a parcel from the floor while in the performance of duty. She stopped work on June 12, 2010 and returned to light-duty work on July 5, 2010. OWCP accepted the claim for sprain of the lumbar back and sprain of the right shoulder.<sup>6</sup>

On November 19, 2006 appellant underwent a magnetic resonance imaging (MRI) scan of her cervical spine which demonstrated slight cervical spondylitic and discogenic change with very small subligamentous herniations, most apparent at C5-6, but with minimal thecal sac indentation. She underwent a right shoulder MRI scan of even date which demonstrated slight impingement as a result of downward positioning of the acromion in relation to the distal clavicle, small subdeltoid effusion, and minimal cuff tendinosis.

Appellant underwent a repeat cervical MRI scan on March 6, 2008 which demonstrated mild cervical spondylitic and discogenic changes, with mild disc protrusions, but without frank disc herniation or spinal stenosis. She underwent lumbar spine MRI scan on March 10, 2008 which demonstrated no evidence for disc herniation, central stenosis, or neural foraminal stenosis.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

<sup>4</sup> Counsel also indicated that he was appealing an overpayment decision but did not provide the date of that decision. As more than 180 days has elapsed from OWCP's last overpayment decision dated December 16, 2020, to the filing of this appeal, pursuant to FECA and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction to review this aspect of appellant's claim.

<sup>5</sup> Docket No. 13-1850 (issued January 9, 2014).

<sup>6</sup> OWCP previously accepted that appellant sustained lumbar and thoracic sprain on October 12, 2006 and expanded acceptance of the claim to include cervical spine sprains and right shoulder sprain/strain due to an August 6, 2006 traumatic employment injury, under OWCP File No. xxxxxx290. OWCP File Nos. xxxxxx563 and xxxxxx290 have been administratively combined by OWCP, with File No. xxxxxx563 serving as the master file.

On August 10, 2010 appellant filed a notice of recurrence (Form CA-2a) claiming disability and stopped work on July 5, 2010. OWCP paid wage-loss compensation on the supplemental rolls beginning on August 26, 2010.<sup>7</sup>

On October 14, 2014 appellant filed a claim for compensation (Form CA-7) for a schedule award. She submitted a July 11, 2014 impairment rating by Dr. Nicholas Diamond, an osteopath, who examined appellant and referred to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>8</sup> and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*). Dr. Diamond found 32 percent permanent impairment of the right lower extremity due to the lumbar spine. He further evaluated appellant's right upper extremity and found 17 percent permanent impairment due to range of motion (ROM) deficit. Dr. Diamond found 1 percent permanent impairment based on the diagnosis-based impairment (DBI) estimate of epicondylitis, as well as 40 percent of the right upper extremity due to the cervical spine. He opined that appellant had reached maximum medical improvement (MMI) on June 11, 2014.

On October 13, 2014 OWCP requested that Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), review Dr. Diamond's July 11, 2014 report.

In a November 17, 2014 report, Dr. Harris noted that he had reviewed the medical evidence and found that Dr. Diamond provided extensive abnormal findings out of proportion to other examiners including the attending physician. He concluded that appellant should be referred for a second opinion examination to obtain documented findings on examination for rating her spinal nerve impairments in accordance with *The Guides Newsletter*.

On February 12, 2016 OWCP referred appellant for a second opinion examination with Dr. Donald Heitman, a Board-certified orthopedic surgeon.

On March 29, 2016 appellant underwent a cervical MRI scan, which demonstrated straightening of the normal cervical lordosis, broad-based disc bulges at C4-5 and C6-7, central disc herniation at C5-6, and multilevel neural foraminal narrowing. She underwent a lumbar MRI scan of even date, which demonstrated marked diffuse heterogeneity of the marrow signal, presumably degenerative in nature, mild central stenosis L4-5, and neural foraminal narrowing, but no disc herniation.

On March 30, 2016, appellant underwent a right shoulder MRI scan, which demonstrated diffuse tendinitis of the supraspinatus and infraspinatus tendons, but no discrete rotator cuff tear, moderate acromioclavicular (AC) joint hypertrophy resulting in moderate impingement of the

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<sup>7</sup> By decision dated February 10, 2011, OWCP terminated appellant's wage-loss compensation, effective that date, finding that she could return to full-time full-duty work. Appellant disagreed with the February 10, 2011 termination decision and repeatedly requested reconsideration. OWCP affirmed the February 10, 2011 decision and found that she had no continuing disability in decisions dated July 8, 2011 through July 2, 2013. Appellant appealed to the Board, and it affirmed the June 2, 2013 decision. *Supra* note 5.

<sup>8</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

supraspinatus outlet, a benign lipoma along the anterior surface of the humeral head and neck, and no obvious displaced labral tear.

In a February 26, 2016 report, Dr. Heitman noted appellant's history of injury and treatment. He conducted a physical examination and reported findings, including extremes of pain to the right trapezium, limited ROM of the neck, significant pain and spasms with resisted internal rotation and forward elevation of the right shoulder with limited ROM including forward elevation of 95 degrees, and external rotation of 10 degrees. Dr. Heitman found decreased dorsiflexion and plantar flexion strength in the right ankle, and a hyper-reflexive response to the patella tendon reflex on the right. He applied *The Guides Newsletter* to appellant's cervical findings and found no impairment. Dr. Heitman then evaluated appellant's lumbar findings under *The Guides Newsletter* and found no impairment. He determined that the loss of ROM in the right shoulder resulted in 11 percent permanent impairment. Dr. Heitman found that appellant reached MMI in 2014.

On June 17, 2016 OWCP requested that Dr. Arnold T. Berman, a Board-certified orthopedic surgeon serving as OWCP's DMA, review Dr. Heitman's report. Dr. Berman completed a report on July 7, 2016 and found that no cervical spine conditions had been accepted. He further asserted that the ROM calculation method was not available for appellant's right shoulder strain. After applying the DBI methodology, the DMA determined that appellant had four percent permanent impairment of the right upper extremity based on the diagnosis of impingement syndrome, Table 15-5, page 402 of the A.M.A., *Guides*.

On August 4 and October 10, 2016 Dr. Heitman reviewed the DMA's report and agreed with his findings.

By decision dated October 5, 2017, OWCP granted appellant a schedule award for four percent permanent impairment of her right upper extremity. The award ran for 12.48 weeks during the period February 26 to May 23, 2016. OWCP noted a zero percent impairment for appellant's right lower extremity.

On October 16, 2017 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on March 19, 2018.

By decision dated May 31, 2018, OWCP's hearing representative vacated the October 5, 2017 decision and remanded the case for additional development on the issue of a ROM impairment rating.

On December 13, 2018 OWCP referred the claim to the DMA for clarification. In an April 2, 2019 note, the DMA found that utilizing Dr. Heitman's ROM figures for the right upper extremity resulted in five percent permanent impairment in accordance with Table 15-34, page 475.

By decision dated June 6, 2019, OWCP granted appellant a schedule award for an additional one percent permanent impairment of the right upper extremity for a total of five percent. On June 20, 2019 appellant, through counsel, requested a telephonic hearing before a

representative of OWCP's Branch of Hearings and Review. A hearing was held on October 2, 2019.

By decision dated November 22, 2019, OWCP's hearing representative found a conflict of medical opinion evidence between Dr. Diamond and Dr. Heitman regarding the extent of appellant's permanent impairment and remanded for referral to an impartial medical examiner (IME) to resolve this issue.

On December 9, 2019 OWCP referred appellant, a statement of accepted facts, and a list of questions to Dr. Howard Pecker, a Board-certified orthopedic surgeon selected as the IME, to resolve the conflict in the medical opinion evidence.

In a January 27, 2020 report, Dr. Pecker reviewed the SOAF and the medical record, and discussed his examination findings regarding appellant's extremities. He noted that her right shoulder range of motion varied from 0 to forward elevation of 45 degrees actively on three separate measurements *versus* 160 degrees on the left. Dr. Pecker found exaggerated complaints of pain during minor motions of the right shoulder. He noted that passive motion was also variable with multiple measurements from 60 to 95 degrees with forceful muscular resistance at every level. Dr. Pecker reported that during the lumbar examination appellant was able to touch her toes and forward elevate her shoulder to 125 degrees in this maneuver. He found excellent muscular development of the deltoid. Dr. Pecker also reported external rotation to 60 degrees with good strength and intermittent effort with right/left confusion. He diagnosed mild arthritis of the AC joint of the right shoulder and mild degenerative disc changes of the cervical spine. Dr. Pecker opined that the current conditions were not causally related to the June 12, 2010 employment injury and that there was no ratable permanent impairment of the upper extremities due to the employment injury. He explained that the history of picking up packages from the floor could not have caused or aggravated the chronic and preexisting degenerative changes at the AC joint of the right shoulder as the symptom complex and the physical examination did not correlate with her subjective complaints. Dr. Pecker found no evidence of traumatic pathology to the cervical or lumbar spine and no evidence of focal deficits. He determined that the imaging studies showed "only minimal chronic and preexisting degenerative changes consistent with claimant's age." Dr. Pecker found that appellant reach MMI as of his January 27, 2020 examination.

In applying the A.M.A., *Guides* to his findings regarding appellant's right shoulder, Dr. Pecker found that the ROM calculation method could not be used as it was inconsistent throughout his examination. He further found that the class of diagnosis (CDX) of sprain/strain was a Class 1 impairment, Table 15-5, page 401, that the grade modifier for functional history (GMFH) could not be used as appellant's subjective complains did not match the underlying objective findings. Dr. Pecker found that the grade modifier for physical examination (GMPE) was zero as appellant's subjective complaints did not match his objective observation or diagnostic findings. He determined that the grade modifier for clinical studies (GMCS) was one as imaging studies confirmed the diagnosis of mild pathologies of tendinitis and AC arthritis. He applied the net adjustment formula, resulting in 0 percent permanent impairment of the right upper extremity.

On February 5, 2020 OWCP requested that Dr. Pecker review the reports of Drs. Heitman and Diamond and provide a supplemental discussion of his agreement and/or disagreement with the findings presented.

In an addendum report dated February 7, 2020, Dr. Pecker reviewed the prior medical evidence and noted that his physical examination revealed no deficits of either strength, sensory, or motion as found by Dr. Diamond. He further indicated that he discounted ROM deficits found by Dr. Heitman because of inconsistencies and lack of correlation to his physical examination findings.

By decision dated February 25, 2020, OWCP denied appellant's increased schedule award claim finding that the opinion of Dr. Pecker as the IME represented the special weight of the medical evidence and established that appellant had no permanent impairment to a scheduled member as a result of her accepted employment injuries. On March 4, 2020 appellant, through counsel, requested telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

On February 25, 2020 OWCP issued a preliminary overpayment determination finding that appellant had been overpaid compensation benefits for the period February 26 through June 14, 2016 in the amount of \$11,464.29 because she was paid a schedule award for permanent impairment affecting her right upper extremity, that it subsequently found that she was not entitled to.

On March 4, 2020 appellant, through counsel, requested a prerecoupment hearing with regard to the February 25, 2020 preliminary overpayment determination. On the same date, counsel also requested an oral hearing with regard to the February 25, 2020 schedule award decision.

Following a preliminary review, by decision dated May 4, 2020, OWCP's hearing representative vacated both the February 25, 2020 schedule award denial and the February 25, 2020 preliminary overpayment determination and remanded the case for a supplemental report from Dr. Pecker providing discussion of all the conditions accepted by OWCP as job related, including the August 6, 2006 injuries of lumbar sprain, thoracic sprain, cervical sprain and right shoulder sprain, as well as any preexisting permanent impairment, and a proper application of the A.M.A., *Guides* and *The Guides Newsletter*.

On May 11, 2020 OWCP requested a supplemental report from Dr. Pecker and provided him with a May 11, 2020 updated SOAF, which listed the accepted conditions resulting from the August 6, 2006 employment injury as cervical sprain/strain and right shoulder sprain/strain, only. It further listed the accepted conditions resulting from the June 12, 2010 employment injury as lumbar sprain and right shoulder sprain. OWCP asked that Dr. Pecker address the application of *The Guides Newsletter* to his findings and to consider all accepted employment injuries.

In his May 22, 2020 supplemental report, Dr. Pecker reviewed *The Guides Newsletter* and found that a rating for a spinal nerve injury was not required as appellant had no evidence of radiculopathy and therefore no need to translate radiculopathy into extremity injury.

On June 10, 2020 OWCP issued a *de novo* preliminary overpayment determination finding that appellant was overpaid schedule award benefits for the period February 26 through June 14, 2016 in the amount of \$11,464.29 as she was paid a schedule award for permanent impairment

affecting her right upper extremity that she was not due. It found that she was without fault in the creation of this overpayment.

By *de novo* decision dated June 10, 2020, OWCP denied appellant's schedule award claim finding that the opinion of Dr. Pecker as the IME represented the special weight of the medical evidence and established that appellant had no permanent impairment to a scheduled member or function of the body as a result of her accepted employment injuries.

On June 18, 2020 appellant, through counsel requested a telephonic hearing from "the *de novo* decision dated June 10, 2020." A hearing was held on September 17, 2020.

By decision dated December 2, 2020, OWCP's hearing representative affirmed the June 10, 2020 schedule award decision, finding that Dr. Pecker's reports were entitled to the special weight and established that appellant had no permanent impairment of a scheduled member warranting a schedule award. She reported that she did not make findings in regard to the preliminary overpayment determination as a separate prerecoupment hearing had not been formally requested.

By decision dated December 16, 2020, OWCP found that appellant had received an overpayment of compensation in the amount of \$11,464.29 for the period from February 26 through June 14, 2016, for which she was without fault. It denied waiver of recovery of the overpayment.

On February 10, 2021 appellant, through counsel, requested reconsideration of the December 2, 2020 schedule award decision and provided additional medical evidence including electromyogram and nerve conduction velocity (EMG/NCV) studies dated September 6, 2018. In a January 29, 2021 report, Dr. Diamond reviewed his July 11, 2014 report, Dr. Pecker's report, and the September 6, 2018 EMG/NCV studies. He diagnosed bilateral C5 and C6 radiculopathy as well as bilateral carpal tunnel syndrome as a result of this testing. Dr. Diamond disagreed with Dr. Pecker's finding on examination and opined that carpal tunnel syndrome should be included in the impairment rating.

On April 5, 2021 OWCP requested a supplemental report from Dr. Pecker and provided him with the EMG/NCV studies.

In an April 5, 2021 report, Dr. Pecker reviewed the additional medical evidence and opined that appellant had not incurred any permanent impairment of her upper or lower extremities as a result of the accepted injuries on August 6, 2006 and June 12, 2010. He asserted that appellant had not responded to questions regarding subjective response in an accurate or rationally physiologic way and that she was an unreliable historian. Based on this assessment, Dr. Pecker found that functional history and symptomatic complaints could not be used. He further noted that EMG/NCV studies must only be used when correlated with physical findings. Dr. Pecker again reported that there were no physical findings of neurologic deficit at the time of his physical examination of appellant and therefore that the EMG/NCV study findings could not be used.

By decision dated May 3, 2021, OWCP denied modification of its December 2, 2020 decision regarding appellant's schedule award claim.

## LEGAL PRECEDENT

The schedule award provisions of FECA<sup>9</sup> and its implementing regulations<sup>10</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants. As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.<sup>11</sup>

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.<sup>12</sup> However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.<sup>13</sup> The sixth edition of the A.M.A., *Guides* (2009) provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*. It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.<sup>14</sup>

Section 8123(a) of FECA 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.<sup>15</sup> When there are opposing reports of virtually 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.<sup>16</sup> Where a case is referred to an IME for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.<sup>17</sup>

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<sup>9</sup> 5 U.S.C. § 8107.

<sup>10</sup> 20 C.F.R. § 10.404.

<sup>11</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5.a. (March 2017); *id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>12</sup> 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see A.G.*, Docket No. 18-0815 (issued January 24, 2019); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

<sup>13</sup> *Supra* note 11 at Chapter 2.808.5.c(3) (March 2017).

<sup>14</sup> *Supra* note 11 at Chapter 3.700, Exhibit 4 (January 2010); *see L.H.*, Docket No. 20-1550 (issued April 13, 2021); *N.G.*, Docket No. 20-0557 (issued January 5, 2021).

<sup>15</sup> 5 U.S.C. § 8123(a). *See R.C.*, Docket No. 18-0463 (issued February 7, 2020); *see also G.B.*, Docket No. 16-0996 (issued September 14, 2016).

<sup>16</sup> *See M.R.*, Docket No. 19-0526 (issued July 24, 2019); *C.R.*, Docket No. 18-1285 (issued February 12, 2019).

<sup>17</sup> *V.H.*, Docket No. 20-0012 (issued November 5, 2020).



## ANALYSIS

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

The record reflects that Dr. Pecker was provided an updated SOAF dated May 11, 2020 which did not list all the accepted conditions resulting from the August 6, 2006 employment injury. The May 11, 2020 updated SOAF listed the accepted conditions resulting from the August 6, 2006 employment injury as cervical sprain/strain and right shoulder sprain/strain, only. It did not reference the accepted lumbar and thoracic sprain. It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.<sup>18</sup> OWCP's procedures dictate that when a DMA, second opinion specialist, or IME renders a medical opinion based on a SOAF which is incomplete or inaccurate or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>19</sup> As Dr. Pecker did not have a complete and accurate SOAF as the framework in forming his opinion, his opinion is of diminished probative value and is not entitled to the special weight typically afforded to an IME.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.<sup>20</sup> Once it undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.<sup>21</sup> Accordingly, the Board finds that the case must be remanded to OWCP.<sup>22</sup>

On remand OWCP shall clarify the accepted conditions and prepare an updated SOAF. It shall then refer the case record, together with the SOAF, to another IME who specializes in the appropriate field of medicine for a reasoned opinion regarding appellant's permanent impairment in accordance with the A.M.A., *Guides*. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

## CONCLUSION

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

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<sup>18</sup> *C.E.*, Docket No. 19-1923 (issued March 30, 2021); *B.K.*, Docket No. 19-0976 (issued December 15, 2020); *M.B.*, Docket No. 19-0525 (issued March 20, 2020); *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>19</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990); *see also C.C.*, Docket No. 19-1948 (issued January 8, 2021); *N.W.*, Docket No. 16-1890 (issued June 5, 2017).

<sup>20</sup> *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *S.S.*, Docket No. 18-0397 (issued January 15, 2019).

<sup>21</sup> *Id.*; *see also R.M.*, Docket No. 16-0147 (issued June 17, 2016).

<sup>22</sup> *See L.F.*, Docket No. 20-0459 (issued January 27, 2021); *J.T.*, Docket No. 18-1300 (issued March 22, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 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: September 22, 2023  
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