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<b>C.Y., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 25-0149</b>
	)	<b>Issued: February 14, 2025</b>
<b>U.S. POSTAL SERVICE, OAK STREET POST</b>	)	
<b>OFFICE, Kissimmee, FL, Employer</b>	)	
	)	

*Misty L. Wenger*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

## DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

## JURISDICTION

On November 27, 2024 appellant, through counsel, filed a timely appeal from a June 3, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

<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 an 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> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that following the June 3, 2024 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 expand the acceptance of his claim to include additional lower extremity conditions as causally related to his accepted March 21, 2014 employment injury.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>4</sup> The facts and circumstances of the case as set forth in the Board's prior decisions and prior order are incorporated herein by reference. The relevant facts are as follows.

On March 26, 2014 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2014 he sustained injury to his neck, shoulders, hands, low back, and feet when bending/twisting his body to handle mail while in the performance of duty. OWCP assigned the present claim OWCP File No. xxxxxx919.<sup>5</sup> In an April 22, 2014 statement, appellant claimed that the acceptance of his claim should include several lower extremity conditions causally related to his March 21, 2014 work activities, including bilateral degenerative conditions of his knees, ankles and feet.

In support of his claim, appellant submitted a March 25, 2014 report from Dr. Samy F. Bishai, a Board-certified orthopedic surgeon, who opined that appellant sustained several medical conditions due to his March 21, 2014 employment activities, including internal derangement of the right and left knee joints, and internal derangement of the right and left ankles and feet. Dr. Bishai also found that on March 21, 2014 appellant aggravated preexisting conditions of his cervical spine, shoulders, upper extremities and lumbar spine. In duty status reports (Form CA-17) dated March 25 and April 22, 2014, he opined that appellant's diagnoses were due to the reported March 21, 2014 injury and found that he was totally disabled from work.

By decision dated May 21, 2014, OWCP accepted the occurrence of the March 21, 2014 employment incident. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a neck, shoulder, upper extremity, back, or lower extremity condition causally related to the March 21, 2014 employment incident, as alleged.

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<sup>4</sup> Docket No. 21-0355 (issued November 7, 2022); Docket No. 20-0144 (issued August 18, 2021); *Order Remanding Case*, Docket No. 20-1079 (issued December 7, 2020).

<sup>5</sup> OWCP had previously accepted under OWCP File No. xxxxxx575 that appellant sustained a traumatic injury on June 21, 2007, in the form of left shoulder tendinitis. It also had previously accepted under OWCP File No. xxxxxx546 that he sustained a traumatic injury on November 26, 2012, in the form of permanent aggravation of the conditions of left rotator cuff tear, left shoulder impingement, internal derangement of both shoulders, cervical disc syndrome, and lumbar disc syndrome. Appellant also has a claim accepted for a December 31, 1999 left shoulder sprain (assigned OWCP File No. xxxxxx335); a claim accepted for occupational left shoulder tendinitis sustained by June 8, 2000 (assigned OWCP File No. xxxxxx872); a claim accepted for September 20, 2005 thoracic and neck strains (assigned OWCP File No. xxxxxx800); and a claim accepted for June 21, 2007 left shoulder tendinitis (assigned OWCP File No. xxxxxx575). OWCP has administratively combined OWCP File Nos. xxxxxx919, xxxxxx575, xxxxxx546, xxxxxx335, xxxxxx872, and xxxxxx800, with OWCP File No. xxxxxx919 serving as the master file.

On May 29, 2014 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 5, 2015.

By decision dated February 10, 2015, OWCP's hearing representative set aside OWCP's May 21, 2014 decision and remanded the case to OWCP for further development, to be followed by issuance of a *de novo* decision.

On remand, OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions to Dr. Richard C. Smith, a Board-certified orthopedic surgeon for a second opinion examination.

In a February 26, 2015 report, Dr. Smith reported the findings of the physical examination he performed on appellant's cervical spine, shoulders, upper extremities, back, and lower extremities. He diagnosed cervical syndrome, subacromial impingement, disorder of lumbar disc, and neck, shoulder, and low back pain. In a March 3, 2015 report, Dr. Smith further discussed appellant's medical condition and provided a permanent impairment rating for the upper extremities.

By decision dated August 10, 2015, OWCP accepted that on March 21, 2014 appellant sustained permanent aggravation of left shoulder tendinitis, permanent aggravation of internal derangement of both shoulders, permanent aggravation of left shoulder impingement, permanent aggravation of left rotator cuff tear, permanent aggravation of cervical disc syndrome, and permanent aggravation of lumbar disc syndrome.

By decision dated January 22, 2016, OWCP denied expansion of the acceptance of the claim to include additional conditions as causally related to the accepted March 21, 2014 employment injury. It found that the weight of the medical opinion evidence regarding this matter rested with Dr. Smith's second opinion.

On December 21, 2016, appellant, through his representative, requested reconsideration of the January 22, 2016 decision denying the expansion claim. The representative argued that Dr. Smith failed to answer the questions posed by OWCP in its February 23, 2015 referral document.

By decision dated March 16, 2017, OWCP denied modification of its January 22, 2016 decision.

On March 8, 2018, appellant requested reconsideration of the March 16, 2017 decision.

Appellant submitted a June 7, 2017 report from Dr. Hoi V. Do, a Board-certified pain management physician, who opined that appellant sustained employment-related lower extremity conditions other than those already accepted, including internal derangement of both knee joints, torn medial meniscus of the right knee joint, degenerative arthritis of the right knee joint, torn medial meniscus of the left knee joint, degenerative arthritis of the left knee joint, internal derangement of both ankle joints, sprains of the anterior talofibular ligaments of both ankle joints, and tenosynovitis of the peroneus longus and brevis tendons of the left ankle/foot. Dr. Do opined that these conditions were caused by the repetitive duties of appellant's job, including the repetitive knee bending he performed on March 21, 2014.

In reports dated September 29, 2017 through February 28, 2018, Dr. Bharatkumar D. Patel, a Board-certified neurologist, discussed the neurological conditions affecting appellant's neck and upper and lower extremities. In reports dated August 18, 2017 through January 12, 2018, Dr. Sydel Legrande, a Board-certified family medicine physician, addressed appellant's collective complaints of cervical, bilateral shoulder, back and bilateral knee pain.

By decision dated May 11, 2018, OWCP denied modification of its March 16, 2017 decision.

In a June 12, 2018 report, Dr. Conrad D. Tamea, a Board-certified orthopedic surgeon, reported that on March 21, 2014 appellant experienced the sudden worsening of chronic overuse syndrome from his work as a mail carrier for 27 years. He advised that appellant was required to frequently bend, stoop, and kneel due to his new job assignment and noted, "[t]his was the culmination of a repetitive stress injury resulting in exacerbation of symptoms of internal derangement of both knees including tear of medial meniscus, osteoarthritis of his right knee, and tear of the medial meniscus of his left knee." Dr. Tamea further indicated that appellant was required to bend and stoop with heavy objects throughout his entire 27 years of working, resulting in repetitive overuse stress to both knees that reached its culmination on March 21, 2014.

On April 27, 2019, appellant, through his representative, requested reconsideration of the May 11, 2018 decision. Appellant submitted a January 7, 2019 report in which Dr. Tamea summarized appellant's visits between January 23, 2018 and January 7, 2019.

By decision dated July 10, 2019, OWCP denied modification of its May 11, 2018 decision.

In a May 13, 2019 report, Dr. Tamea discussed appellant's factual and medical history and detailed his physical examination. He diagnosed herniated cervical and lumbar discs at multiple levels, spinal stenosis, supraspinatus tear of the right shoulder, subscapularis tear of the right shoulder with impingement, supraspinatus tendinitis of the shoulder with impingement, bilateral knee derangement with medial meniscus tears, and bilateral chronic sprains of the anterior talofibular ligaments of the ankles. In a January 23, 2018 note, Dr. Tamea noted, "At this time, I am reiterating the causation of [appellant's] knee injuries from the reported date of March 21, 2014 as a result of repetitive stress injury stemming from his work as a mail handler." Appellant also submitted diagnostic test results, including a January 16, 2019 electromyogram/ nerve conduction velocity (EMG/NCV) study of the lower extremities and a May 16, 2019 right shoulder ultrasound.

In a September 20, 2019 report, Dr. Ralph D'Auria, a Board-certified physiatrist, reported physical examination findings and noted, "[t]his is a 58-year-old male patient who has sustained multiple injuries due to repetitive trauma and overuse. It is my opinion that the patient's present condition is related to aggravations of his previous injuries."

In an October 22, 2019 report, Dr. D'Auria described appellant's subjective complaints, including pain in his neck, shoulders, low back, knees, ankles and feet.

In an October 30, 2019 note, Dr. D'Auria indicated that appellant's current diagnoses were bilateral knee sprains with associated ruptured menisci, rupture of the left shoulder labrum, herniated cervical and lumbar discs, and bilateral ankle sprains. He reported that appellant had decreased muscle strength in the upper and lower extremities, weakness and dysesthesia of both

lower extremities, positive Neer and Hawkins tests in the left shoulder, and weakness of the left upper extremity. Dr. D'Auria noted, "[t]hese findings are directly related to work injuries."

In a September 24, 2020 report, Dr. D'Auria indicated that the following conditions should be accepted as work related: complete tear of rotator cuff of right shoulder, partial labral tear of right shoulder, complex tears of the medial menisci of the knees, and bilateral ankle sprains. He stated:

"It is my opinion, within a reasonable degree of medical certainty, that this patient's condition and disability related to his condition are related to his aggravation work injury dated March 21, 2014, due to lack of proper rehabilitation after his previous injuries, returning to work before medically cleared to do so, and performing his job duties in a work station that required him to perform movements that aggravated the previously injured body areas and placed excessive load on additional body areas."

Appellant appealed to the Board and, by decision dated August 18, 2021,<sup>6</sup> the Board set aside OWCP's July 10, 2019 decision and remanded the case to OWCP for further development of the medical evidence, to be followed by a *de novo* decision. It found that the February 26 and March 3, 2015 reports of Dr. Smith, the OWCP referral physician, were insufficient to carry the weight of the medical evidence as they failed to adequately address the referral questions posed by OWCP. The Board remanded the case for OWCP to obtain clarification from Dr. Smith.

Appellant subsequently submitted a July 16, 2021 report wherein Dr. D'Auria discussed appellant's subjective complaints, including pain in his neck, shoulders, low back, knees, and ankles.

On October 7, 2021, OWCP requested clarification from Dr. Smith, the OWCP second opinion physician. No response was received.

Appellant submitted a January 21, 2022 report wherein Dr. Robert G.R. Lang, a Board-certified neurosurgeon, reported physical examination findings and diagnosed cervical spondylosis without myelopathy, right shoulder sprain, left shoulder contusion, lumbosacral spondylosis without myelopathy, and meniscus tear. Dr. Lang noted, "[t]his patient has had multiple injuries while working as a federal postal worker. [Appellant] has persistent neck[,] lower back[,] shoulder[,] and knee pain associated with cervical and lumbar spondylosis and prior meniscus injuries to the knees. He has had bilateral shoulder impingement." In a January 21, 2022 Form CA-17, Dr. Lang recommended work restrictions. Appellant also submitted May 9, 2022 x-rays of the cervical spine.

In a June 8, 2022 report, Dr. Richard Ojima, Board-certified in occupational medicine, reported physical examination findings and diagnosed cervical spondylosis without myelopathy, lumbosacral spondylosis without myelopathy, right shoulder sprain, left shoulder contusion, and meniscus tear. In a duty status report of even date, he recommended work restrictions. Dr. Ojima produced July 13 and September 1, 2022 narrative reports, which contained similar findings, as well as July 13 and August 31, 2022 Form CA-17 reports, which provided work restrictions.

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<sup>6</sup> Docket No. 20-0144 (issued August 18, 2021).

OWCP referred appellant, along with the case record, a SOAF, and series of questions, for a second opinion examination with Dr. Robin G. Simon-Mark, an osteopath Board-certified in orthopedic surgery. It requested that she provide an opinion regarding whether the acceptance of appellant's claim should be expanded to include additional lower extremity conditions causally related to his accepted March 21, 2014 employment injury.

In a June 16, 2022 report, Dr. Simon-Mark discussed appellant's factual and medical history, including the nature of the accepted March 21, 2014 employment injury. She reported the findings of her June 16, 2022 physical examination, noting that appellant had 5/5 strength in his quadriceps hamstrings and had 5/5 strength upon ankle dorsiflexion and plantar flexion. There was a negative straight leg raise test bilaterally in the seated position. Dr. Simon-Mark noted that OWCP had accepted the following conditions as related to the March 21, 2014 employment injury: permanent aggravation of left shoulder tendinitis; permanent aggravation of internal derangement of both shoulders; permanent aggravation of left shoulder impingement; permanent aggravation of left rotator cuff tear; permanent aggravation of cervical disc syndrome; and permanent aggravation of lumbar disc syndrome. She stated, "No additional related diagnoses have been identified." Dr. Simon-Mark indicated that appellant could not return to his regular job, but could work with restrictions. In a June 16, 2022 work capacity evaluation (Form OWCP-5c), she delineated work restrictions.

OWCP requested that Dr. Simon-Mark provided a supplemental opinion. In a September 19, 2022 supplemental report, she indicated that, based on the June 16, 2022 examination and a review of the SOAF and the medical record, there was no indication that appellant sustained bilateral knee, ankle, or foot conditions from any work-related accident. Dr. Simon-Mark stated that "they should not be allowed on the claim at this point." She indicated that diagnostic studies of the knees and ankles from June 17, 2014 "revealed degenerative and unrelated conditions that in my opinion, were not caused by the industrial injury or affected in any way by the injury of March 21, 2014." Dr. Simon-Mark advised, that at the time of her evaluation, appellant did not complain of any lower extremity issues and did not relate any lower extremity issues historically. She maintained that the acceptance of appellant's claim should not be expanded to include additional conditions.

In October 10, November 7, and December 14, 2022 reports, Dr. Ojima diagnosed cervical spondylosis without myelopathy, lumbosacral spondylosis without myelopathy, right shoulder sprain, left shoulder contusion, and meniscus tear. He also produced October 10, November 7, and December 14, 2022 Form CA-17 reports, which provided work restrictions.

In a February 9, 2023 report, Dr. Ojima indicated that he disagreed with the opinion of Dr. Simon-Mark. He noted that in March 2014 Dr. Bishai reported appellant's complaints of bilateral knee and ankle pain, and diagnosed lumbar disc syndrome with lumbar radiculopathy, internal derangement of both knees and ankles. Dr. Ojima also advised that Dr. Bishai opined that appellant suffered aggravation of all preexisting conditions with additional new conditions diagnosed in March 2014. He stated, "It is therefore contradictory for Dr. Simon[-Mark] to state there were no indication [sic] for these conditions to be added and I am requesting they appropriately be added to his claim and allowed for treatment." Dr. Ojima noted that appellant was complaining of more pain in his back, which radiated to his right lower extremity with continued knee and foot/ankle pain and weakness. In a February 9, 2023 Form CA-17, he provided work restrictions. In a May 1, 2023 report, Dr. Ojima provided the same opinion on causal relationship that he provided in his February 9, 2023 report.

By decision dated June 1, 2023, OWCP denied expansion of the acceptance of appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's additional lower extremity conditions and the accepted March 21, 2014 employment injury. It accorded the weight of the medical opinion evidence to the opinion of Dr. Simon-Mark, the second opinion physician.

In a June 7, 2023 report, Dr. Ojima diagnosed cervical spondylosis without myelopathy, lumbosacral spondylosis without myelopathy, right shoulder sprain, left shoulder contusion, and meniscus tear. In a June 7, 2023 Form CA-17, he provided work restrictions. Appellant also submitted June 14 and 21, 2023 reports of EMG/NCV studies performed on the upper and lower extremities on those dates.

In January 3 and February 26, 2024 reports, Dr. Praveen Mambalam, a Board-certified pain management and anesthesiology physician, diagnosed calcific tendinitis of the left shoulder, bilateral shoulder joint derangement, left rotator cuff sprain, cervical disc disease with myelopathy, and lumbar disc disease with myelopathy. Appellant also submitted a March 21, 2024 magnetic resonance imaging (MRI) scan of the right shoulder. In a May 2, 2024 report, Dr. Mambalam provided an additional diagnosis of bilateral knee osteoarthritis.

On May 31, 2024, appellant requested reconsideration of the June 1, 2023 decision. No additional medical evidence was received.

By decision dated June 3, 2024, OWCP denied modification of its June 1, 2023 decision.

### **LEGAL PRECEDENT**

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.<sup>7</sup> The medical evidence required to establish causal relationship between a specific condition, and the employment injury is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>8</sup>

Section 8123(a) of FECA provides that if there is a disagreement between the physician making the examination for the United States and the physician of an employee, the Secretary shall appoint a third physician (known as a referee physician or impartial medical examiner (IME)) who shall make an examination.<sup>9</sup> For a conflict to arise, the opposing physicians' opinions must be of virtually equal weight and rationale.<sup>10</sup> In situations where the case is properly referred to an IME

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<sup>7</sup> *J.R.*, Docket No. 20-0292 (issued June 26, 2020); *W.L.*, Docket No. 17-1965 (issued September 12, 2018); *V.B.*, Docket No. 12-0599 (issued October 2, 2012); *Jaja K. Asaramo*, 55 ECAB 200, 204 (2004).

<sup>8</sup> *See E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>9</sup> 5 U.S.C. § 8123(a); *see E.L.*, Docket No. 20-0944 (issued August 30, 2021); *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).

<sup>10</sup> *P.R.*, Docket No. 18-0022 (issued April 9, 2018).

for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>11</sup>

### ANALYSIS

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

In a June 16, 2022 report, Dr. Simon-Mark, OWCP's referral physician, discussed appellant's factual and medical history and reported the findings of her physical examination. She listed the conditions that OWCP had accepted as related to the March 21, 2014 employment injury, but stated, "No additional related diagnoses have been identified." In a September 19, 2022 supplemental report, Dr. Simon-Mark indicated that, based on the June 16, 2022 examination and a review of the SOAF and the medical record, there was no indication that appellant sustained bilateral knee, ankle, or foot conditions from any work-related accident. She stated that "they should not be allowed on the claim at this point." Dr. Simon-Mark indicated that diagnostic studies of the knees and ankles from June 17, 2014 "revealed degenerative and unrelated conditions that in my opinion, were not caused by the industrial injury or affected in any way by the injury of March 21, 2014." She maintained that the acceptance of appellant's claim should not be expanded to include additional conditions.

In contrast, in a June 12, 2018 report, Dr. Tamea reported that on March 21, 2014 appellant experienced the sudden worsening of chronic overuse syndrome from his work as a mail carrier for 27 years. He advised that appellant was required to frequently bend, stoop, and kneel due to his new job assignment and noted, "[t]his was the culmination of a repetitive stress injury resulting in exacerbation of symptoms of internal derangement of both knees including tear of medial meniscus, osteoarthritis of his right knee, and tear of the medial meniscus of his left knee." In a May 13, 2019 report, Dr. Tamea reiterated his diagnoses and opinion that "[appellant's] knee injuries from the reported date of March 21, 2014 [were] a result of repetitive stress injury stemming from his work as a mail handler."

In an October 30, 2019 letter, Dr. D'Auria indicated that appellant's current diagnoses included bilateral knee sprains with associated ruptured menisci, and bilateral ankle sprains. He reported that, in addition to upper extremity findings, appellant had lower extremity findings, which included decreased muscle strength in the lower extremities, and weakness and dysesthesia of both lower extremities. Dr. D'Auria noted, "[t]hese findings are directly related to work injuries." In a September 24, 2020 report, he maintained that the conditions of complex tears of the medial menisci of the knees, and bilateral ankle sprains should be accepted as work related. Dr. D'Auria stated:

"It is my opinion, within a reasonable degree of medical certainty, that this patient's condition and disability related to his condition are related to his aggravation work injury dated March 21, 2014, due to lack of proper rehabilitation after his previous injuries, returning to work before medically cleared to do so, and performing his job duties in a work station that required him to perform movements that aggravated

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<sup>11</sup> See *D.M.*, Docket No. 18-0746 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *James P. Roberts*, 31 ECAB 1010 (1980).



the previously injured body areas and placed excessive load on additional body areas.”

The Board finds that there is an unresolved conflict in medical opinion evidence between Dr. Simon-Mark and appellant’s attending physicians, Drs. Tamea and D’Auria, regarding whether the acceptance of his claim should be expanded to include additional work-related lower extremity conditions.<sup>12</sup> Therefore, pursuant to 5 U.S.C. § 8123(a), the case shall be remanded to OWCP for referral of appellant, together with the case record and a SOAF, to a specialist in the appropriate field of medicine for an impartial medical examination to resolve the conflict.<sup>13</sup> Following this and other such further development as deemed necessary, OWCP 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 June 3, 2024 decision of the Office of Workers’ Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: February 14, 2025  
Washington, DC

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

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

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

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<sup>12</sup> See *supra* notes 9 and 10.

<sup>13</sup> See *J.L.*, Docket No. 22-0964 (issued November 15, 2022).