



ground, resulting in a sudden sharp shift of the hamper, which caused him to twist abruptly. Appellant stopped work and first sought medical treatment on June 10, 2013. He notified his supervisor on June 19, 2013 who controverted the claim arguing there was no firm medical diagnosis.

In a June 21, 2013 report, Ann McCullough, a physician assistant, reported that she was treating appellant for the last month for low back pain with lower extremity radiculopathy. She reported that his symptoms were exacerbated at work which consisted of constant lifting, bending, and stooping.

By letter dated July 1, 2013, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days. No evidence was received.

By decision dated August 5, 2013, OWCP denied appellant's claim as the evidence was insufficient to establish an injury due to the accepted June 7, 2013 incident. It found that he had failed to provide any evidence containing a medical diagnosis in connection with the accepted June 7, 2013 employment incident.

On June 26, 2014 appellant requested reconsideration of the August 5, 2013 decision.

In a February 17, 2014 medical report, Dr. Robert R. Reppy, a doctor of osteopathic medicine, reported that on June 7, 2013 appellant was working at the employing establishment, pushing a loaded hamper full of mail weighing over 100 pounds, when one of its casters caught and shifted the hamper, causing appellant to twist abruptly. Appellant's back was twisted to the left and he immediately felt a sharp muscular twinge in the thoracic and lumbar region. The pain grew progressively worse throughout the day and he sought treatment with his general practitioner. Dr. Reppy provided findings on physical examination and diagnosed left shoulder impingement syndrome, left supraspinatus tendinopathy per a July 21, 2013 magnetic resonance imaging (MRI) scan, left infraspinatus tendinopathy, left subscapularis tendinopathy, and lumbar sprain. He noted that the lumbar sprain diagnosis was presumptive and should be considered pending further radiographic studies. Dr. Reppy recommended physical therapy, an MRI scan of the lumbar spine, and restricted appellant from pulling/pushing over 50 pounds.

In reports dated March 4, 2014, Dr. Mark J. Timken, a Board-certified diagnostic radiologist, providing MRI scan findings pertaining to the left hip, right shoulder, left shoulder, and lumbar spine. On March 10, 2014 appellant underwent a physical capacity evaluation and on March 19, 2014 he underwent a nerve conduction study of the lower extremities.

In a March 31, 2014 report, Dr. Reppy provided findings on physical examination and diagnosed supraspinatus and subscapularis tears bilaterally, bilateral shoulder impingement syndrome, right rotator cuff tear, and lumbar sprain/strain. He opined that based on appellant's history and examination, his conditions and symptoms were compatible with the workplace scenario described. Dr. Reppy noted that repetitive motion while weight bearing had long been recognized as an etiology for degenerative conditions of the shoulder joint tendons and/or rotator cuff. He provided appellant with increased work restrictions.

In an April 29, 2014 initial orthopedic evaluation, Dr. Richard M. Blecha, a Board-certified orthopedic surgeon, provided a detailed explanation of appellant's daily employment duties as a postal service rural letter carrier where he had been employed for several years. He described the June 7, 2013 employment incident stating that appellant was pushing a hamper loaded with approximately 150 pounds of parcels and mail when the hamper wheel caught the concrete and abruptly shifted, causing appellant to twist his back. Dr. Blecha provided findings on examination and a summary of prior medical and diagnostic reports. Appellant's prior medical history included low back pain over the years but nothing to this magnitude. He had also experienced a motor vehicle accident in 1980 but his injuries had since resolved. Dr. Blecha diagnosed degenerative disc disease at L3-4 and facet arthropathy with resultant foraminal stenosis at L3-4, L4-5, and L5-S1. He noted that appellant's daily routine at the employing establishment consisted of considerable bending, twisting, and lifting over several years. Dr. Blecha opined that these activities likely resulted in the degenerative changes of the facets producing a foraminal stenosis and the degenerative disc disease at L3-4. He further stated that symptoms had worsened considerably and brought sharply into focus by the incident in which the wheel of the hamper caught and caused appellant to wrench his back on June 7, 2013.

On May 5, 2014 appellant underwent another physical capacity evaluation. In reports dated May 9, 2014, Dr. Timken provided MRI scan findings pertaining to the right foot, cervical spine, and right ankle.

In a May 19, 2014 medical report, Dr. Samy F. Bishai, Board-certified in emergency medicine, provided a description of the June 7, 2013 employment incident when appellant was pushing a loaded hamper and a broken wheel caught the ground, causing him to twist his back. Appellant complained of sharp pains in his lower back with radiation down to the legs. He noted a prior medical history of minor back aches from the time he spent in the military and a motorcycle accident that occurred in 1980 in which he landed on his back. Dr. Bishai reviewed the March 4, 2014 lumbar MRI scan, provided findings on examination, and diagnosed lumbar disc syndrome, degenerative disc disease at L3-4, L4-5, and L5-S1 with spinal stenosis, and radiculopathy of the lower extremities bilaterally, more severe on the right.

By decision dated July 14, 2014, OWCP affirmed the August 5, 2013 decision. It found findings that appellant had established a diagnosed condition of degenerative disc disease but had failed to prove that it was causally related to the accepted June 7, 2013 employment incident.

On July 17, 2014 appellant requested reconsideration of the July 14, 2014 decision.

In support of his claim, appellant submitted a June 5, 2014 medical report from Dr. Bishai, who explained that appellant was a postal service rural letter carrier and suffered a work-related back injury on June 7, 2013 when pushing a loaded hamper and a broken wheel caught the ground, causing him to twist his back. He immediately felt severe, sharp pain in his back with radiation down the legs. Dr. Bishai reported that appellant's condition was aggravated because he returned to work following the incident, causing an increase in symptoms. He noted that appellant's OWCP claim was initially accepted for sprain of the lumbar region with an ICD9<sup>2</sup> code of 847.2 but that his injury was more than that of a lumbosacral strain. Dr. Bishai

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<sup>2</sup> *The International Classification of Diseases, 9<sup>th</sup> Revision (ICD9).*

stated that appellant suffered from degenerative disc disease of the lumbar spine as well as bulging discs in the lumbar region of his spine. He opined that his disc conditions developed over a period of time while working as a postal service rural letter carrier and that the June 7, 2013 incident caused a sharp increase in symptoms, resulting in pain in his lower back with radiation down to the legs.

Dr. Bishai noted review of appellant's employee statement, his work schedule, and duties related to his employment. He provided a detailed explanation describing appellant's eight-hour daily employment duties. Dr. Bishai noted that appellant's duties included casing mail which entailed twisting, turning, continuous reaching over the shoulder, prolonged standing, and bending to pick up letter trays and tubs. His task of separating parcels entailed bending, stooping, reaching, twisting, and turning. Dr. Bishai was then required to take the sorted parcels, place them in tubs weighing 10 to 30 pounds, and lift these tubs into the wheeled hamper which stood approximately three feet tall resulting in repetitive lifting and bending. The hamper would then be wheeled to the vehicle for loading. Dr. Bishai stated that it was at this point in appellant's daily activities that he sustained his injury on June 7, 2013 when wheeling out the loaded hamper. As he was wheeling the hamper loaded with approximately 150 pounds of parcels and mail, appellant rounded a turn and the previously damaged right center wheel coaster caught the concrete ground which caused the hamper to shift and twist abruptly, causing his back to twist abruptly too. He felt pain from this incident, but continued to work throughout the day, loading his vehicle and placing tubs from the hamper on the platform which consisted of lifting, bending, twisting, turning, reaching, and stooping. Appellant then had to extract mail and parcels from the hamper which required leaning into the hamper and lifting the trays and tubs from a height below the knee. He was then required to extract mail from a U-cart by leaning into the equipment and lifting the trays and tubs from a height above the waist level. Following these activities at work, appellant had to deliver the mail to approximately 330 centralized boxes.

Dr. Bishai diagnosed lumbar disc syndrome, degenerative disc disease at L3-4, L4-5, and L5-S1 with spinal stenosis, and radiculopathy of the lower extremities bilaterally, more severe on right. He reported that appellant's grueling work schedule entailed a great deal of bending, stooping, twisting of the back, lifting, all of the processes of casing mail, all of the motions of taking the mail out to load in to the long life vehicle, and the delivery of the mail. These activities placed a great burden on appellant's lumbar spine and caused the development of tears in the annulus fibrosis of the discs which lead to bulging of the nucleus pulposus, or the soft part of the disc. This then lead to the bulging of the disc and caused pressure on the nerve roots that gave the painful condition of radiculopathy as pain radiated from the back down to the legs. Dr. Bishai stated that based on appellant's history, review of his work schedule, and the activities that occurred at work on June 7, 2013, there was an obvious causal relationship between his symptoms and his work activities. He further stated that the physical examination findings, appellant's history, and diagnostic studies provided additional support that appellant's symptoms were caused by his work-related activities as described. Dr. Bishai noted that, after returning to work, the sequence of activities while working as a rural mail carrier caused him to suffer aggravation of the original injury which was reflected in his increase of symptoms in the back and legs. He stated that he was providing a rationalized medical opinion showing the relationship between the work activities and appellant's current symptoms, explaining that the symptoms he complained of at the time of the June 7, 2013 injury showed the link between his diagnosed conditions and his activities at work that caused him to suffer from this condition

affecting the discs. The causal relationship was established because appellant's symptoms in his back and legs were directly related to his work activities, and were also connected to his diagnosed conditions from the June 7, 2013 work injury, as well as afterwards when he continued to work as a postal service rural letter carrier, resulting in an aggravation and increase of symptoms. Dr. Bishai concluded that appellant continued to suffer from the June 7, 2013 injury and could not return to work pending further medical treatment.

By decision dated September 15, 2014, OWCP denied modification of its July 14, 2014 decision, finding that appellant had failed to establish that his diagnosed medical conditions were causally related to the accepted June 7, 2013 work-related incident. It noted that Dr. Bishai's reports made it unclear whether appellant suffered a traumatic or occupational injury. OWCP noted that he had previously billed OWCP for a lumbar strain ICD9 847.2 which contradicted the diagnoses provided in his report. It further stated that Dr. Bishai's description of the June 7, 2013 employment incident was not consistent with that provided on appellant's Form CA-1 as he failed to describe the weight of the mail trays or explain that his job required twisting, turning, bending, and lifting.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>3</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>5</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup>

To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such a causal relationship.<sup>7</sup> The opinion of the physician

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> *See John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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 specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. 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.<sup>8</sup>

### ANALYSIS

OWCP accepted that the June 7, 2013 employment incident occurred as alleged. The issue is whether appellant established that the incident caused him a lumbar injury. The Board finds that he did not submit sufficient medical evidence to support that his lumbar injury was causally related to the June 7, 2013 employment incident.<sup>9</sup>

In medical reports dated February 17 and March 31, 2014, Dr. Reppy reported that on June 7, 2013 appellant was working at the employing establishment and twisted his back when pushing a loaded hamper weighing over 100 pounds. He provided findings on physical examination and diagnosed supraspinatus and subscapularis tears bilaterally, bilateral shoulder impingement syndrome, right rotator cuff tear, and lumbar sprain/strain. Dr. Reppy opined that based on appellant's history and examination, his conditions and symptoms were compatible with the workplace scenario described. He noted that repetitive motion while weight bearing had long been recognized as an etiology for degenerative conditions of the shoulder joint tendons and/or rotator cuff.

The Board finds that the opinion of Dr. Reppy is not well rationalized. Dr. Reppy provided multiple diagnoses and only generally stated that appellant's conditions and symptoms were compatible with the June 7, 2013 workplace injury. He failed to explain how the June 7, 2013 employment incident caused or aggravated the diagnoses provided. Moreover, Dr. Reppy explained that repetitive motion while weight bearing had long been recognized as an etiology for degenerative conditions of the shoulder joint tendons and/or rotator cuff. In this instance, he is implying that appellant's shoulder conditions are related to his occupational duties and not to this June 7, 2013 traumatic incident. Furthermore, appellant has not alleged a shoulder injury resulting from the June 7, 2013 incident. Dr. Reppy failed to provide a sufficiently rationalized medical opinion pertaining to the cause of appellant's lumbar condition. As his statement on causation lacks a sufficient explanation as to the mechanism of injury pertaining to this traumatic injury claim, namely, how twisting appellant's back while pushing a hamper would cause him injury, his reports are insufficient to meet appellant's burden of proof.<sup>10</sup>

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<sup>8</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>9</sup> *See Robert Broome*, 55 ECAB 339 (2004).

<sup>10</sup> *S.W.*, Docket 08-2538 (issued May 21, 2009).

Dr. Blecha's April 29, 2014 report is also insufficient to establish appellant's traumatic injury claim. He provided a detailed explanation of appellant's daily employment duties as a postal service rural letter carrier as well as a description of the June 7, 2013 employment incident when he twisted his back while pushing a hamper weighing about 150 pounds. Dr. Blecha diagnosed degenerative disc disease at L3-4 and facet arthropathy with resultant foraminal stenosis at L3-4, L4-5, and L5-S1. He noted that appellant's daily routine at the employing establishment consisted of considerable bending, twisting, and lifting over several years and opined that these activities likely resulted in the degenerative changes of the facets, producing a foraminal stenosis and the degenerative disc disease at L3-4. The Board notes that Dr. Blecha is attributing appellant's conditions to his work environment over a period longer than a single workday or shift rather than an injury from a single occurrence within a single workday as alleged by appellant in this claim.<sup>11</sup> Dr. Reppy's statement that appellant's symptoms had worsened as a result of the June 7, 2013 incident is highly speculative.<sup>12</sup> Thus, his opinion is of limited probative value.<sup>13</sup>

In medical reports dated May 19 and June 5, 2014, Dr. Bishai provided a description of the June 7, 2013 employment incident when appellant was pushing a loaded hamper and a broken wheel caught the ground, causing him to twist his back. He also provided a detailed description of appellant's daily employment duties which entailed twisting, turning, continuous reaching over the shoulder, prolonged standing, bending, stooping, lifting, pushing, and leaning. Dr. Bishai reviewed the March 4, 2014 lumbar MRI scan, provided findings on examination, and diagnosed lumbar disc syndrome, degenerative disc disease at L3-4, L4-5, and L5-S1 with spinal stenosis, and radiculopathy of the lower extremities bilaterally, more severe on the right. He opined that appellant's disc conditions developed over a period of time while working as a postal service rural letter carrier and that the June 7, 2013 incident caused a sharp increase in symptoms, resulting in pain in his lower back with radiation down to the legs. Dr. Bishai further stated that appellant's condition was aggravated because he returned to work following the incident which caused an increase in symptoms.

The Board finds that the opinion of Dr. Bishai is not sufficiently rationalized. Dr. Bishai opined that appellant's degenerative disc disease and bulging discs developed over a period of time working as a postal service rural mail carrier and that the June 7, 2013 incident caused a sharp increase in symptoms. He reported that appellant's grueling work schedule entailed a great deal of bending, stooping, twisting of the back, lifting, all of the processes of casing mail, all of the motions of taking the mail out to load into the vehicle, and the delivery of the mail. These activities placed a great burden on appellant's lumbar spine and caused the development of tears in the annulus fibrosis of the discs which lead to bulging of the nucleus pulposus, or the soft part of the disc. This then lead to the bulging of the disc and caused pressure on the nerve roots that gave the painful condition of radiculopathy as pain radiated from the back down to the legs. In

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<sup>11</sup> A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

<sup>12</sup> *M.R.*, Docket No. 14-11 (issued August 27, 2014).

<sup>13</sup> *D.H.*, Docket No. 14-1852 (issued January 27, 2015).

this instance, Dr. Bishai is attributing appellant's lumbar conditions to an occupational injury produced by his work environment over a period longer than a single workday or shift claim.<sup>14</sup> While his statement on causation provides an explanation as to the mechanism of injury, it is irrelevant in this traumatic injury claim as he failed to explain how twisting appellant's back while pushing a heavy hamper caused an aggravation of these conditions.<sup>15</sup> Thus, Dr. Bishai's opinion pertaining to appellant's work-related duties as the cause of his injuries does not provide support for the traumatic injury claim.<sup>16</sup>

Dr. Bishai's opinion that the June 7, 2013 incident caused an increase in symptoms, which worsened because appellant continued to work, is also equivocal as he is attributing appellant's symptoms to the employment incident and not his diagnosed conditions.<sup>17</sup> With respect to this traumatic injury claim, he is generally stating that appellant's preexisting lumbar conditions worsened as a result of the June 7, 2013 employment incident and progressed because he continued to work following that date. As appellant's conditions are degenerative in nature, a well-rationalized opinion is particularly warranted in this case due to his history of preexisting conditions.<sup>18</sup> Dr. Bishai failed to discuss how this preexisting condition had progressed beyond what might be expected from the natural progression of that condition.<sup>19</sup> Moreover, the Board has held that an opinion that a condition is causally related because the employee was asymptomatic before the injury is insufficient, without adequate rationale, to establish causal relationship.<sup>20</sup> While Dr. Bishai generally stated that the June 7, 2013 employment incident was causally related to appellant's diagnosed conditions, his opinion was vague and speculative and provided no explanation pertaining to the mechanism of injury. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>21</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record, and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>22</sup> Without explaining how the employment incident caused or contributed to the

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<sup>14</sup> *Supra* note 12.

<sup>15</sup> *Supra* note 11.

<sup>16</sup> *S.R.*, Docket No. 12-1098 (issued September 19, 2012).

<sup>17</sup> *M.R.*, Docket No. 14-11 (issued August 27, 2014).

<sup>18</sup> *K.P.*, Docket No. 14-1330 (issued October 17, 2014).

<sup>19</sup> *R.E.*, Docket No. 14-868 (issued September 24, 2014).

<sup>20</sup> *T.M.*, Docket No. 08-975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>21</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>22</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996).



diagnosed conditions, Dr. Bishai's opinion is of limited probative value and insufficient to meet appellant's burden of proof.<sup>23</sup>

The remaining medical evidence is also insufficient to support appellant's claim. While Dr. Timken's reports provide diagnostic findings, they are of limited probative value as they failed to provide any opinion on the cause of appellant's injury.<sup>24</sup> Ms. McCullough's June 21, 2013 report is also insufficient to establish appellant's claim as it was not signed by a physician. Registered nurses, physical therapists, and physician assistants are not physicians as defined under FECA and their opinions are, therefore, of no probative value.<sup>25</sup> The Board has held that pain is a description of a symptom rather than a clear diagnosis of the medical condition.<sup>26</sup>

The Board further notes that OWCP asserted that the diagnoses provided in Dr. Bishai's June 5, 2014 report were contradicted by the bill he submitted for lumbar strain ICD9 847.2. Dr. Bishai's June 5, 2014 report stated that appellant's claim was accepted for lumbar strain but that his conditions were actually greater. The record reveals that the ICD9 code 847.2 was entered into the case record for lumbar strain. However, the record does not contain a decision accepting appellant's traumatic injury claim for this condition.<sup>27</sup> If OWCP had authorized payment for this condition, this does not itself establish that the condition is employment related.<sup>28</sup> The Board has held that OWCP's gratuitous payment of a medical bill, without more, does not constitute formal acceptance of a claim for injury.<sup>29</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

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<sup>23</sup> See *L.M.*, Docket No. 14-973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-548 (issued November 16, 2012).

<sup>24</sup> *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

<sup>25</sup> 5 U.S.C. § 8102(2) of FECA provides as follows: (2) 'physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. See also *Roy L. Humphrey*, 57 ECAB 238 (2005).

<sup>26</sup> It is not possible to establish the cause of a medical condition, if the physician has not stated a diagnosis, but only notes pain. *T.G.*, Docket No. 13-76 (issued March 22, 2013); *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>27</sup> *S.A.*, Docket No. 11-286 (issued August 16, 2011).

<sup>28</sup> See *Glen E. Shriner*, 53 ECAB 165, 169 (2001).

<sup>29</sup> See *M.C.*, Docket No. 12-64 (issued May 10, 2012); *Gary L. Whitmore*, 43 ECAB 441 (1993) (where the Board found that payment of compensation by OWCP does not in and of itself, constitute acceptance of a particular condition or disability in absence of evidence from OWCP indicating that a particular condition or disability has been accepted as work related).

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that his lumbar injury is causally related to the June 7, 2013 employment incident, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 15 and July 14, 2014 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: May 4, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board