



## **ISSUES**

The issue are: (1) whether appellant has met her burden of proof to establish that the acceptance of her claim should be expanded to include an emotional condition causally related to the accepted April 9, 2013 employment injury; and (2) whether appellant has met her burden of proof to establish a recurrence of total disability commencing March 6, 2014 causally related to her accepted April 9, 2013 employment injury and an expansion of the accepted work-related conditions in her shoulders and neck.

## **FACTUAL HISTORY**

On April 10, 2013 appellant, then a 44-year-old pension investigator, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2013 she developed soreness on her right side after she was involved in a motor vehicle accident while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that she was injured while in the performance of duty and that she stopped work at 12:00 a.m. on April 10, 2013.

OWCP subsequently received a statement from a supervisory investigator who recounted that while appellant was operating a government vehicle, a tire blew out on "18-wheeler" in front of her, causing her to hit some large truck tire debris. The supervisory investigator further noted that appellant nearly lost control of her vehicle and hit the median wall.

On May 14, 2013 OWCP accepted the claim for neck sprain and bilateral shoulder sprain.

In a May 16, 2013 report, Dr. Rashante Harris, a family medicine specialist, noted appellant's history of injury and diagnosed muscle spasms and strains. She noted that appellant had not been able to work since the date of her injury; however, she was capable of returning to work on May 13, 2013 without limitations. Appellant returned to full-time, regular-duty work on May 17, 2013.

In reports dated February 17 and 24, 2014, Dr. Aly Ahmed, a psychiatrist, indicated that appellant had been receiving treatment since June 2013 for severe depression, post-traumatic stress disorder (PTSD), and severe anxiety with panic attacks.<sup>3</sup> He opined that the onset of her symptoms began during a traumatic accident which had left appellant with bilateral shoulder, neck, and upper back pain. Dr. Ahmed noted that appellant had suffered from chronic pain daily and that due to the severity of her symptoms he opined that her cognitive and psychological level of functioning had declined.<sup>4</sup> He indicated that due to her work-related conditions that she was unable to work.

In a March 5, 2014 narrative statement, appellant indicated that she was undergoing treatment for severe depression, PTSD, and severe anxiety with panic attacks. She requested that the acceptance of her claim be expanded to include these additional conditions.

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<sup>3</sup> Dr. Ahmed indicated that appellant also received counseling from Dorothy Watts, a licensed clinical social worker, and he cosigned her reports.

<sup>4</sup> Appellant submitted physical therapy notes in support of her claim.

On March 7, 2014 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 6 to 7, 2014.

In a March 19, 2014 letter, OWCP advised appellant of the deficiencies of her wage-loss claim. It noted that she had returned to full-time, regular-duty employment on May 17, 2013 and if she was claiming a total disability from work from March 6 to 7, 2014, then she should have filed a notice of recurrence (Form CA-2a). OWCP indicated that no further action would be taken on her request for wage-loss compensation.

On March 21, 2014 appellant filed a Form CA-7 wage-loss compensation claim for disability from work for the period March 10 to 21, 2014.

In a report dated March 6, 2014, Dr. Sharrona S. Williams, a Board-certified orthopedic surgeon, diagnosed shoulder strain, neck sprain, rotator cuff syndrome, and cervical radiculopathy due to an April 9, 2013 employment injury.

In a letter dated March 25, 2014, OWCP again advised appellant of the deficiencies of her wage-loss compensation claims, noting that she had returned to full-time, regular duty on May 17, 2013. It again advised that she should have filed a notice of recurrence (Form CA-2a) and thus no further action would be taken on her requests for wage-loss compensation.

OWCP subsequently received progress reports dated February 17, 2014 and February 4, 2015 by Dr. Ahmed who diagnosed major depressive disorder and panic disorder. Dr. Ahmed noted that the onset of her symptoms began during her traumatic accident which led to bilateral shoulder, neck, back pain. He explained that she suffered from chronic, daily pain and due to the severity of her symptoms her cognitive and psychological level of functioning declined such that she was unable to complete any job functions and was thus totally disabled from work.

On April 26, 2014 appellant filed a notice of recurrence (Form CA-2a) claiming wage-loss compensation for total disability commencing January 6, 2014, and indicating that she had stopped work on March 6, 2014.<sup>5</sup>

In support of her claimed recurrence, appellant submitted a narrative status report dated March 6, 2014, in which Dr. Williams advised that appellant was totally disabled from work as of that date. In a visit status report dated March 27, 2014, Dr. Williams advised that appellant was capable of returning to work with restrictions of no lifting over five pounds and no reaching or working above shoulder level. Appellant also submitted a March 31, 2014 note, from Ms. Watts who indicated that she was totally disabled from work for the period February 19 to July 19, 2014.

In an April 10, 2014 development letter, OWCP advised appellant of the deficiencies of her recurrence claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

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<sup>5</sup> A time analysis form (Form CA-7a) dated March 31, 2014 indicated that appellant had not worked from March 6 to 27, 2014, per her physician's orders.

In a statement dated April 22, 2014, appellant indicated that while working there was no particular reason why her injury had worsened, but it did so without any intervening cause, and she experienced constant chronic pain in both shoulders and her neck.

Thereafter, in support of her recurrence claim, appellant submitted a March 27, 2014 report by Dr. Williams who diagnosed cervical degenerative disc disease with cervical strain with bilateral upper extremity radiculopathy, left greater than right; cervical trigger points; bilateral subacromial impingement with rotator cuff tendinitis; and bilateral acromioclavicular (AC) joint arthritis.

Appellant also submitted a March 12, 2014 magnetic resonance imaging (MRI) scan of the left shoulder which demonstrated a small, full-thickness nonretracted tear of the supraspinatus, tendinosis of the infraspinatus, mild osteoarthritis/fibrous expansion of the AC joint, and small subacromial enthesophyte/spur. A March 17, 2014 MRI scan of the cervical spine revealed an essentially unremarkable cervical spine with no evidence of disc extrusion, stenosis, or facet arthropathy.

By decision dated May 13, 2014, OWCP denied appellant's claimed recurrence, finding that the evidence of record was insufficient to establish a recurrence of disability, commencing March 6, 2014, causally related to the accepted April 9, 2013 employment injury.

Appellant subsequently submitted a May 1, 2014 report from Dr. Williams who reiterated her prior diagnoses and a February 4, 2015 report from Dr. Ahmed who indicated that appellant was unable to complete any job functions due to her emotional conditions.

On May 12, 2015 appellant, through her then-counsel, requested reconsideration.

In support of the reconsideration request, appellant submitted a report dated August 21, 2014, in which Dr. Williams reiterated her diagnoses and the factual and medical history of appellant's accepted April 9, 2013 employment injury. Dr. Williams reported that appellant's neck sprain had improved and her cervical radiculopathy had resolved, but she did not have full resolution of her subacromial impingement and rotator cuff tendinitis and recommended surgical intervention for these conditions. She also opined that appellant was able to return to work in a modified-duty position with restrictions on overhead activities, but once treatment was allowed, she would be able to return to full duty without restrictions.

By decision dated August 3, 2015, OWCP denied modification of its May 13, 2014 recurrence decision.

On August 2, 2016 appellant requested reconsideration and submitted an August 7, 2014 report in which Dr. Williams reiterated the diagnoses contained in her prior reports.

On August 2, 2016 OWCP received a report dated August 20, 2014, in which Dr. Timothy Ghattas, a Board-certified orthopedic surgeon, diagnosed full-thickness rotator cuff tear, arthritis of AC joint, impingement syndrome of the shoulder region, and biceps tendinitis. Dr. Ghattas indicated that appellant was seen for a surgical evaluation of her left shoulder following an injury which had occurred in April 2013.

In an August 22, 2016 report, Dr. Mark W. Feeman, an osteopath Board-certified in physiatry, diagnosed left shoulder full-thickness tear of the supraspinatus with tendinosis and some osteoarthritis at the AC joint, subacromial bone spur (left rotator cuff tear), bilateral C5-6 radiculopathy (cervical radiculopathy), impingement syndrome of right shoulder, impingement syndrome of the left shoulder, and carpal tunnel syndrome of the right and left upper limb. He indicated that her chronic pain in the cervical spine and both shoulders were sudden in onset and began more than three years prior.

In a work capacity evaluation (Form OWCP-5c) dated November 23, 2016 and a report dated December 8, 2016, Dr. Walter Hill, a psychiatrist, diagnosed major depressive disorder and panic disorder due to a chronic back and shoulder injury. He opined that appellant's emotional conditions arose out of and in the course of her employment which contributed to her injuries and impairments. Dr. Hill identified severe depression symptoms and severe anxiety. Based upon the medical record and history of injury he identified PTSD which had symptoms including flashbacks, insomnia, panic attacks, hopelessness, and crying spells.

On January 3, 2017 appellant, through her then-counsel, requested reconsideration.

In a letter dated February 3, 2017, OWCP notified appellant that it had received a request for expansion of her claim on March 5, 2014, however, that it was mis-indexed and as such afforded appellant 30 days to submit evidence in furtherance of her expansion claim. It indicated that it was her burden to submit evidence sufficient to establish any additional conditions. OWCP requested additional evidence in support of appellant's claim, including a medical report with a physician's rationalized medical opinion fully explaining how any current diagnosis of an emotional condition was causally related to the accepted employment injury. It afforded her 30 days to submit additional evidence.

Appellant subsequently submitted a series notes dated October 22, 2013 through November 30, 2015 from Ms. Watts regarding treatment for her emotional conditions.

Appellant also submitted a February 8, 2017 report from Dr. Hill who indicated that since 2013 appellant had reported severe anxiety, panic attacks, flashbacks, insomnia, and feeling overwhelmed from environmental and psychosocial stressors. Dr. Hill reiterated that she had been diagnosed with major depressive disorder, panic disorder, and PTSD and further indicated that she suffered from significant symptoms, such as severe depressed mood, poor concentration, low energy, crying spells, diminished appetite, flashbacks, night terrors, insomnia, panic attacks, feelings of hopelessness, as well as chronic shoulder and back pain. He opined that due to appellant's symptoms, she had had significant deficits in her cognitive, emotional, and psychological functioning. Dr. Hill explained that as a result of her emotional conditions she experienced loss of energy, limited interest in activities of living, poor concentration, and isolation from friends and family. He further explained that appellant's emotional distress was causally related to the conditions from her workplace injury which had caused her to experience chronic pain daily and isolated her from her family and friends.

By decision dated May 10, 2017, OWCP denied expansion of appellant's claim to include an emotional condition as caused or aggravated by her accepted work-related conditions of neck

sprain and bilateral shoulder sprain. It found the record did not contain medical evidence to support causal relationship between the accepted compensable factor and diagnosed conditions.

By decision dated May 11, 2017, OWCP denied modification of its August 3, 2015 decision which denied her claimed recurrence of disability.

In a narrative statement dated July 26, 2017, appellant indicated that she had returned to work on May 17, 2013 and realized that her return might not have been the best decision for her because she was not ready to physically handle the demands of her job. After returning to work, she indicated that she had continued to experience significant pain in her shoulders and neck that was not improving and was significantly impacting her ability to carry out her activities of daily living, including performance of her job duties.

Appellant also submitted an addendum report dated January 16, 2018 from Dr. Feeman, wherein he noted that the jerking motion she had to make with her arms to swerve, along with breaking created enough force on the rotator cuff tendon when combined with a jerking motion to cause it to tear completely. Dr. Feeman further indicated that the mechanics of the accident caused the tendons in her shoulders to swell causing impingement syndrome and radiculopathy. Therefore, it was his medical opinion that the resulting impact of appellant having to hit the brake, swerve, and jerk the steering wheel while driving on the highway to avoid debris caused additional cervical and bilateral shoulder conditions. Dr. Feeman was also noted his agreement with Dr. Williams that appellant was totally disabled from work as of March 6 to 27, 2014 pending results of her diagnostic studies and that she was unable to perform any overhead activities as of March 27, 2014 and continuing due to her ongoing functional deficits from her work-related neck and shoulder conditions.

On January 11, 2018 appellant requested reconsideration of the May 10, 2017 expansion decision and reiterated the factual history of her claim in a narrative statement dated July 26, 2017. She contended that her psychological symptoms from her employment injury had become so severe and debilitating that she finally sought help for these issues in September 2013, and she was forced to take time off from work using the Family and Medical Leave Act after that time.

In support of her reconsideration request, appellant submitted an October 10, 2017 report by Dr. Hill who continued to diagnose major depressive disorder, panic disorder, and PTSD and opined that appellant's conditions started shortly following the employment injury on April 9, 2013. Dr. Hill opined that her emotional conditions were caused as a direct result of the employment injury, both from the trauma of the accident itself as well as the chronic pain she developed from the injuries she suffered to her shoulders and neck during the accident. He noted that PTSD was triggered by experiencing or witnessing a traumatic event that involved actual or threatened death or serious injury, such as a motor vehicle accident. Dr. Hill opined that appellant's PTSD triggered depression and anxiety symptoms such as panic attacks and led to the development of her major depressive disorder and panic disorder. He further opined that her chronic pain limited her mood, her activities, and her lifestyle, which contributed to her development of depression and exacerbated her PTSD and panic disorder. Dr. Hill concluded that appellant was totally disabled for work due to her emotional conditions.

Appellant also submitted an October 10, 2017 report from Dr. Ahmed who reiterated his diagnoses and opinions regarding her emotional conditions.

On March 23, 2018 appellant, through her then-counsel, requested reconsideration of the May 11, 2018 decision regarding the denial of her recurrence claim. The request was resubmitted on April 2, 2018.

By decision dated July 26, 2019, OWCP denied modification of its May 11, 2017 decision regarding the denial of her recurrence claim.

By decision dated September 30, 2019, OWCP denied modification of its May 10, 2017 decision regarding the denial of appellant's request to expand the acceptance of her claim to include additional conditions.

### **LEGAL PRECEDENT -- ISSUE 1**

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>6</sup>

The claimant bears the burden of proof to establish a claim for a consequential injury.<sup>7</sup> As part of this burden, he or she must present rationalized medical opinion evidence, based on a complete factual and medical background, establishing causal relationship. The opinion must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship of the diagnosed condition and the specific employment factors or employment injury.<sup>8</sup>

Causal relationship is a medical issue and the medical evidence required to establish causal relationship is rationalized medical evidence.<sup>9</sup> Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish causal relationship.<sup>10</sup>

In discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that,

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<sup>6</sup> V.S., Docket No. 19-1370 (issued November 30, 2020); M.M., Docket No. 19-0951 (issued October 24, 2019); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

<sup>7</sup> I.S., Docket No. 19-1461 (issued April 30, 2020).

<sup>8</sup> K.W., Docket No. 18-0991 (issued December 11, 2018).

<sup>9</sup> G.R., Docket No. 18-0735 (issued November 15, 2018).

<sup>10</sup> *Id.*

a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

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

In support of her claim, appellant submitted a series of medical reports from Dr. Hill who opined that appellant's diagnosed emotional conditions were a direct cause of the chronic pain she had developed and suffered from following the April 9, 2013 employment injury because it had limited her mood, her activities, and her lifestyle. Dr. Hill explained how the accepted conditions were sufficient to have resulted in the development of the emotional conditions he had diagnosed. Further, he diagnosed PTSD and explained how appellant's injury during a motor vehicle incident triggered depression and anxiety symptoms such as panic attacks and led to the development of her major depressive and panic disorders due to her fear and the trauma associated with the motor vehicle incident which was sufficient to have caused physical injury.

The Board finds that the opinion of Dr. Hill is sufficient to require further development of the medical evidence on the issue of whether the acceptance of the claim should be expanded to include emotional conditions as causally related to the accepted April 9, 2013 employment injury. Dr. Hill is a psychiatrist qualified in the appropriate field of medicine to render rationalized opinions on the issue of causal relationship and he provided a comprehensive understanding of the medical record and case history. He provided consistent diagnoses of mental health conditions and directly opined that they were causally related to the accepted injury explaining how each condition had developed as a result of the employment injury. Accordingly, the medical opinion of Dr. Hill is sufficient to require further development of appellant's claim.<sup>12</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>13</sup> OWCP has an obligation to see that justice is done.<sup>14</sup>

On remand OWCP shall follow its procedures for the development of emotional condition claims and refer appellant to an appropriate specialist, along with the case record and a statement of accepted facts, for an examination and a rationalized medical opinion as to whether the acceptance of her claim should be expanded to include emotional conditions as causally related to

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<sup>11</sup> *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

<sup>12</sup> *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>13</sup> *See id.* *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>14</sup> *See B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).



her accepted employment injury.<sup>15</sup> If the second opinion physician disagrees with the opinion provided by Dr. Hill, he or she must provide a fully-rationalized explanation explaining why the accepted employment injury and the previously accepted conditions are insufficient to have caused or aggravated emotional conditions. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding expansion of the acceptance of the claim to include additional conditions.

### **LEGAL PRECEDENT -- ISSUE 2**

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous compensable injury or illness and without an intervening injury or new exposure in the work environment.<sup>16</sup> This term also means an inability to work because a light-duty assignment made specifically to accommodate an employee's physical limitations, and which is necessary because of a work-related injury or illness, is withdrawn or altered so that the assignment exceeds the employee's physical limitations.<sup>17</sup>

OWCP's procedures provide that a recurrence of disability includes a work stoppage caused by a spontaneous material change in the medical condition demonstrated by objective findings. That change must result from a previous injury or occupational illness rather than an intervening injury or new exposure to factors causing the original illness. It does not include a condition that results from a new injury, even if it involves the same part of the body previously injured.<sup>18</sup>

An employee who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that a claimant furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that, for each period of disability claimed, the disabling condition is causally related to the employment injury, and supports that conclusion with medical reasoning.<sup>19</sup> Where no such rationale is present, the medical evidence is of diminished probative value.<sup>20</sup>

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<sup>15</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *C.C.*, Docket No. 19-1631 (issued February 12, 2020).

<sup>16</sup> 20 C.F.R. § 10.5(x); *see J.D.*, Docket No. 18-1533 (issued February 27, 2019).

<sup>17</sup> *See id.* A recurrence does not occur when such withdrawal occurs for reasons of misconduct, nonperformance of job duties, or a reduction-in-force. *Id.*

<sup>18</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.2b (June 2013); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

<sup>19</sup> *J.D.*, Docket No. 18-0616 (issued January 11, 2019); *see C.C.*, Docket No. 18-0719 (issued November 9, 2018).

<sup>20</sup> *H.T.*, Docket No. 17-0209 (issued February 8, 2018).

## ANALYSIS -- ISSUE 2

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

In support of her claim, appellant submitted an addendum report dated January 16, 2018 from Dr. Feeman who noted that the jerking motion she had to make with her arms to swerve, along with breaking created enough force on the rotator cuff tendon when combined with a jerking motion to cause it to tear completely. Dr. Feeman further indicated that the mechanics of the accident caused the tendons in her shoulders to swell causing impingement syndrome and radiculopathy. Therefore, it was his medical opinion that the resulting impact of appellant having to hit the brake, swerve, and jerk the steering wheel while driving on the highway to avoid debris caused additional cervical and bilateral shoulder conditions. Dr. Feeman was also in agreement with Dr. Williams that appellant was totally disabled from work as of March 6 to 27, 2014 pending results of her diagnostic studies and that she was unable to perform any overhead activities as of March 27, 2014 and continuing due to her ongoing functional deficits from her work-related neck and shoulder conditions.

It is well established that, proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>21</sup> While Dr. Feeman's reports do not contain sufficient rationale to discharge appellant's burden of proof by the weight of the reliable, substantial, and probative evidence that her neck and bilateral shoulder condition were caused or aggravated by the accepted employment factors, these reports raise an inference of causal relationship sufficient to require further development of the case record by OWCP.<sup>22</sup>

The Board, therefore, finds that the case must be remanded for further development of the medical evidence. On remand OWCP shall prepare a statement of accepted facts and refer appellant, together with the case record, to a specialist in the appropriate field of medicine for a reasoned opinion as to whether her accepted employment factors either caused or aggravated her neck and bilateral shoulder conditions and whether those conditions caused her to be disabled from work commencing March 6, 2014.<sup>23</sup> If the physician opines that the diagnosed condition is not causally related to the accepted employment factors, he or she must explain with rationale how or why their opinion differs from that of Dr. Feeman. 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 with regard to expansion of emotional conditions. The Board further finds that the case is not in posture for decision with

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<sup>21</sup> *J.H.*, Docket No. 18-1637 (issued January 29, 2020). *See also A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>22</sup> *See T.K.*, Docket No. 20-0150 (issued July 9, 2020); *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>23</sup> *Supra* note 15 at Chapter 2.805.3e (January 2013). *See R.D.*, Docket No. 18-1551 (issued March 1, 2019).

regard to the claim of recurrence of disability and expansion to include neck and bilateral shoulder conditions.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 30 and July 26, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 5, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board