United States Department of Labor
Employees' Compensation Appeals Board

A.W., Appellant	)	
and	)	**Docket No. 14-0199**
	)	**Issued: September 1, 2017**
DEPARTMENT OF THE NAVY, PORTSMOUTH NAVAL SHIPYARD, Portsmouth, NH, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 4, 2013 appellant, through counsel, filed a timely appeal from a September 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP).

[1] Alan J. Shapiro, Esq., filed the instant appeal on appellant's behalf on November 4, 2013. The application for review form (AB-1) contains appellant's signature designating him as the authorized representative. On November 18, 2013 he submitted a brief in support of the appeal. Appellant subsequently submitted a letter to the Clerk of the Appellate Boards dated December 3, 2014, stating, in part, that "Attorney Tinkle still the attorney in this matter." On April 20, 2015 the Clerk of the Appellate Boards received from Marshall J. Tinkle, Esq. a brief dated November 27, 2013, which was nearly identical to the one previously submitted by Mr. Shapiro. In a letter dated October 13, 2015 appellant noted that he withdrew Attorney Shapiro and Attorney Tinkle and requested to proceed *pro se* as the attorneys were no longer his designated representatives.

Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUE

The issue is whether appellant has sustained permanent impairment causally related to his accepted work-related conditions, for schedule award purposes.

FACTUAL HISTORY

This case has previously been before the Board. The facts and circumstances of the case as set forth in the prior decision are incorporated herein by reference. The facts pertinent to this appeal will be summarized herein.

Appellant, a 46-year-old pipefitter helper, injured his back on January 21, 2004. He filed a traumatic injury claim (Form CA-1) on January 26, 2004, which OWCP initially accepted for lumbar and thoracic strains.

In a February 5, 2008 report, appellant's treating physician, Dr. Frank A. Graf, Board-certified in orthopedic surgery, reviewed the history of injury and noted that appellant had experienced mid-lower back pain which affected his performance at work. He noted that appellant had undergone a magnetic resonance imaging (MRI) scan of the thoracolumbar spine which documented a lumbar disc herniation at L4-5. Dr. Graf reported that, due to these conditions, he had assigned appellant to light duty. He reported that appellant had a lumbosacral spine rating of class 2 based on a disc herniation, single level, without surgery. Dr. Graf determined that under Table 17-4 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*), appellant had a default value of 12 percent, whole person permanent impairment, with a functional history adjustment grade modifier of 1; a physical examination grade modifier of 1; and a clinical studies grade modifier of 2. Dr. Graf assigned 10 percent whole person permanent impairment or 24 percent lower extremity permanent impairment.

On June 25, 2008 appellant filed a claim for a schedule award (Form CA-7).

In a July 30, 2008 report, Dr. David I. Krohn, a Board-certified internist and OWCP medical adviser, disagreed with Dr. Graf's interpretation of the May 5, 2004 MRI scan. He asserted that Dr. Graf had incorrectly interpreted the MRI scan to show a disc herniation, while the radiologist's report did not mention a herniated disc. Dr. Krohn found no documentation in the medical record or in Dr. Graf's examination to support that appellant had work-related

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board issued a decision and order dated September 16, 2015. An October 12, 2015 petition for reconsideration was granted by the Board. *Order Granting Petition for Reconsideration*, Docket No. 14-0199 (issued September 1, 2017). This decision and order on reconsideration is issued to correct errors in the September 16, 2015 decision. On August 10, 2016 the Board issued a decision and order on the issues relating to an overpayment of compensation and denial of waiver of recovery of the overpayment. Docket No. 15-0190. The August 10, 2016 decision became a final 30 days after issuance and is not subject to further review.

impairment of either lower extremity. In the absence of medical evidence, there was no basis to grant a schedule award.

OWCP found a conflict in medical evidence between the opinions of Dr. Graf, appellant's treating physician, and Dr. Krohn, as to whether appellant had any permanent impairment. It referred appellant to Dr. Jonathan W. Sobel, a specialist in general surgery, for an impartial medical examination to resolve the conflict. In a November 20, 2008 report, Dr. Sobel found that appellant had no ratable impairment of the lower extremities under either the fifth or sixth edition of the A.M.A., *Guides*. He noted that appellant's May 7, 2004 MRI scan showed mild degenerative disc disease in the lower lumbar spine and some minor disc bulging with narrowing at L4-5. Dr. Sobel ascribed this condition to age-appropriate degenerative disc disease with minor disc bulges and no evidence of disc herniation. He concluded that appellant had sustained an overuse sprain/strain of the lumbosacral spine on January 28, 2004. Dr. Sobel found no evidence in the medical record showing that appellant had sustained a herniated disc at any level in the lumbar spine causally related to his January 2004 work injury.

Based upon the report of Dr. Sobel, OWCP found in a January 2, 2009 decision that appellant had no ratable impairment from an accepted condition and denied appellant's request for a schedule award.

On April 22, 2009 appellant requested reconsideration and submitted additional medical evidence. In reports dated March 4 and April 8, 2010, Dr. Andrew Forrest, a physiatrist, found 25 percent whole person impairment of appellant's left lower extremity using both the fifth and later the sixth edition of the A.M.A., *Guides.*

In a June 15, 2010 report, Dr. George L. Cohen, a Board-certified internist and OWCP medical adviser, reviewed Dr. Forrest's March 4 and April 8, 2010 reports. Using the same information, the medical adviser found nine percent impairment of the left lower extremity due to lumbar radiculopathy. He explained that the accepted back condition affected an extremity and caused impairment of that extremity. The medical adviser explained that Dr. Forrest improperly rated the lumbar spine and/or whole person which is not allowed under FECA.

OWCP granted appellant a schedule award on June 24, 2010 for nine percent permanent impairment of the left lower extremity.

Appellant requested reconsideration of the schedule award on August 30, 2010 and submitted a June 28, 2010 report from Dr. Forrest, who reiterated his disagreement with the earlier findings. Dr. Forrest reiterated that appellant had 25 percent left leg permanent impairment under the sixth edition of the A.M.A., *Guides*.

In a September 13, 2010 report, Dr. Craig Uejo, Board-certified in occupational medicine, and serving as an OWCP medical adviser, reviewed Dr. Forrest's April 8, 2010 report. He thoroughly explained the impact of the July/August 2009 edition of *The Guides Newsletter* and found that appellant had no ratable impairment of the left leg under the sixth edition of the A.M.A., *Guides.* Dr. Uejo explained that Dr. Forrest's impairment rating did not follow the A.M.A., *Guides.*

Based on Dr. Uejo's report, by decision dated September 20, 2010, OWCP modified the June 24, 2010 schedule award decision finding that there had been no impairment of the left lower extremity under the sixth edition of the A.M.A., *Guides* as there were no notable findings of sensory or motor loss in the lower extremity.

A December 10, 2010 request for reconsideration was filed and a November 24, 2010 report of Dr. Forrest was submitted in support of the reconsideration request. Dr. Forrest disagreed that there were no findings of sensory or motor loss and identified a hyporeflexic internal hamstring tendon jerk that demonstrated "in an indirect sense" motor and/or sensory weakness. Dr. Uejo, as OWCP medical adviser, disputed Dr. Forrest's opinion finding that the reflex abnormalities were not ratable factors under the sixth edition. OWCP denied appellant's request for reconsideration by decision dated April 22, 2011. It further determined that the earlier modification of the schedule award was incorrect and that OWCP was rescinding the schedule award and establishing an overpayment based on the payment for the original schedule award. A May 30, 2011 request for reconsideration was filed, but by decision dated July 28, 2011 OWCP denied the request without reviewing the merits of the case.

On July 28, 2011 appellant filed a notice of recurrence of disability (Form CA-2a) commencing June 23, 2011 noting more frequent attacks of back spasms at T10-11. He claimed that the recurrence occurred as he was exposed to sitting too long as a result of two training classes on June 23, 2011, aggravating the original thoracic strain and eliciting the same pain symptoms. Appellant did not stop work at this time. In support of the recurrence claim he submitted a July 13, 2011 report of Dr. Graf who noted an increase in appellant's non-radiating mid-back pain after sitting in class for "too long" in a straight back chair. He noted appellant received a prescription or oxycodone from a sports medicine physician. Dr. Graf noted he rated pain as 8 on a scale of 0 no pain to 10 pain as bad as it can get. He assessed an exacerbation of thoracic spinal pain and recommended that due to the use of opioids that appellant should not be working on the boats or in the dry dock.

Appellant was evaluated by Dr. Daniel S. Zipin, Board-certified in physical medicine and rehabilitation due to an increase in his pain. In a note dated July 15, 2011 Dr. Zipin noted a likely exacerbation of his ongoing chronic pain and recommended an exercise program. He cautioned against the use of narcotic pain medications. Upon review of x-rays and lumbar MRI scan Dr. Zipin noted multilevel disc herniation with minor disc bulge at the T10-11 level and some disc degeneration at the L4-5 level.

Appellant filed a series of claims for wage-loss compensation (Form CA-7) for intermittent leave without pay.

On January 5, 2012 OWCP scheduled appellant for a second opinion evaluation with Dr. John J. Walsh, Jr., a Board-certified orthopedic surgeon, to determine whether appellant had ongoing objective medical findings upon physical examination. It provided Dr. Walsh with an updated SOAF and a copy of the medical records and it requested that he provide his professional medical opinion as to the current diagnosis or diagnoses regarding appellant's back as well as his medical opinion as to whether appellant sustained a new injury in the performance of duty on February 12, 2010, or a recurrence of the work injury of January 21, 2004.

Following his examination of appellant, on January 12, 2012 Dr. Walsh noted that he had continued to experience pain in his mid-back in the thoracic region as well as low back with radiation into both lower extremities. Dr. Walsh noted oxycodone use on average of every other day. He also noted that appellant continued with no lost time from work other than for medical appointments and that he had work restrictions in place for a number of years. Dr. Walsh provided the following diagnoses after the physical examination: lumbar intervertebral disc displacement without myelopathy L4-5 left; degenerative disc disease, thoracic and lumbar spine, L4-5; lumbar radiculopathy, L5; thoracic intervertebral disc displacement T10-11 without myelopathy; and cumulative trauma disorder, bilateral upper extremities with carpal tunnel syndrome. He opined that appellant sustained a recurrence of the work injury of January 21, 2004, rather than a new injury on February 12, 2010 as the medical records evinced consistent and persistent complaints of pain in the mid as well as the low back since the initial work injury and that the medical records document the origin of the injury in the lumbar area as well as his mid-back (thoracic region). Dr. Walsh further opined that the episode in February 2010 was an exacerbation of the pre-existing injury.

In a decision dated August 21, 2012, the Board affirmed OWCP's April 22, 2011 decision rescinding the schedule award.[4] The Board found that OWCP had not accepted a herniated disc as a result of the January 2004 employment injury. While the impairment ratings were premised on an October 14, 2009 MRI scan which identified a herniated disc and provided a medical cause for a diagnosis of radiculopathy, the medical record did not support that this condition was causally related to appellant's 2004 injury. The facts presented in the Board's August 21, 2012 decision are incorporated herein by reference.

On August 25, 2012 appellant again requested a schedule award (Form CA-7). In support of his schedule award claim he subsequently provided an updated impairment rating report of Dr. Graf.

Dr. Graf, in his capacity as appellant's treating physician, provided an October 2, 2012 report which repeated his earlier diagnosis of a herniated disc at L4-5. He found on examination that appellant had a slow and hesitant gait with no motor deficits; he showed pain reaction on manipulative, palpation spring tests at thoracic levels T7-8 in a prone position and at lumbar levels L3-4, L4-5, and L5-S1, with tenderness to palpation in both sciatic notches. Dr. Graf noted that appellant's symptoms correlated with objective findings from MRI scan results. He advised that these findings supported the existence of a herniated L4-5 level disc and with intermittent inflammation of the L5 spinal nerve roots. Dr. Graf opined that these physical findings also correlated with a secondary diagnosis of thoracic level intervertebral disc and facet joint with myofascial trigger points to the right of the midline at thoracic levels.

As to his opinion of permanent impairment, Dr. Graf found that appellant had a class 1 impairment of seven percent lower extremity impairment under Table 17-4, Lumbar Spine Regional Grid, Lower Extremity Impairments, at page 570 of the A.M.A., *Guides*.[5] Using the Adjustment Grid, functional history, at Table 17-6, section 17.3a, at page 575 of the A.M.A.,

[4] Docket No. 11-1915 (issued August 21, 2012).

[5] A.M.A., *Guides* 570.

Guides,[6] he found that appellant had a grade modifier of 2 for functional history based on his score of 40 for the daily activities lower extremities questionnaire, a moderate problem; with regard to physical examination, he assigned a grade modifier of 1, for a mild problem, pursuant to Table 17-7, section 17.3b, at page 576 of the A.M.A., *Guides*;[7] and a grade modifier of 1 for clinical studies, a mild problem pursuant to Table 17-8, section 17.3c at page 578 of the A.M.A., *Guides*[8] based on clinical studies. Based on the above findings, Dr. Graf applied the net adjustments from functional history, physical examination, and clinical studies to reach a net, adjusted grade modifier of plus one, at the net adjustment formula at page 582 of the A.M.A., *Guides*.[9] He concluded:

> "An eight percent impairment of the thoracolumbar spine is present. This impairment of the thoracolumbar spine directly affects lower extremity functions. An 8 percent thoracolumbar impairment affecting lower extremity functions including capacity to maintain strength and function and including intermittent L5 lower extremity radiculopathy, the 8 percent impairment is converted to a 19 percent lower extremity permanent impairment, reference Table 16-10."

In a December 6, 2012 report, Dr. Morley Slutsky, Board-certified in occupational medicine and an OWCP medical adviser, determined that Dr. Graf's report was unclear as to whether the 19 percent lower extremity impairment rating represented a total for both lower extremities or 19 percent for each lower extremity. He also indicated that Dr. Graf's rating lacked validity because he also had relied on Chapter 17, the spinal chapter in the A.M.A., *Guides*; he asserted that this chapter is not used by OWCP and is not considered in the final rating calculations. Finally, the medical adviser explained that because Dr. Graf had not diagnosed objective sensory or motor deficits in appellant's lower extremities, there was no basis for an impairment rating in either lower extremity using the July/August 2009 edition of *The Guides Newsletter* or the A.M.A., *Guides*.

By decision dated April 2, 2013, OWCP denied appellant's schedule award claim. It noted his claim was accepted for sprain of back, thoracic region; sprain of back, lumbar region; displacement of cervical intervertebral disc without myelopathy; displacement of lumbar intervertebral disc without myelopathy; thoracic or lumbosacral neuritis or radiculitis NOS; and displacement of thoracic intervertebral disc without myelopathy. OWCP found that the medical evidence of record did not support a permanent impairment to a member or function of the body included on the schedule, nor did it document a new employment-related exposure or show the progression of an employment-related condition resulting in permanent impairment or increased impairment. It found that Dr. Graf's October 2, 2012 report was insufficient to alter its previous finding of no permanent impairment in the lower extremities under the A.M.A., *Guides*.

[6] *Id.* at 575.

[7] *Id.* at 576.

[8] *Id.* at 578.

[9] *Id.* at 582.

On April 13, 2013 appellant requested an oral hearing and submitted a March 27, 2013, report of Dr. Graf. Dr. Graf reported that on examination appellant had a diminished sensibility to touch with brush in the lateral thigh, lateral leg below the knee on the left, and diminished vibration sense in the same areas. Appellant's symptoms followed an L5 spinal nerve root pattern of the left lower extremity compared with the right lower extremity. Dr. Graf diagnosed a left-sided disc herniation at the L4-5 level with mild impingement on the exiting nerve root. He also diagnosed a thoracic disc bulge, and degenerative endplate changes at T4-5, as noted by MRI scan. Dr. Graf reported that, although appellant had normal electromyogram (EMG) and nerve conduction velocity (NCV) studies, he opined that negative studies do not rule out radiculopathy. He asserted that given the consistency and findings over time and the functional impairments involved that he believed appellant had objective sensory deficits in a predominantly L5 peripheral spinal nerve root pattern. Dr. Graf determined that additional changes at thoracic levels did not appear to cause radiculopathy, but contributed to his functional impairments. He related that other physicians had found diminished light touch and pinprick sensation in the same pattern he described above. Dr. Graf found that appellant had a class 2 impairment, a moderate problem, which yielded 24 percent left lower extremity impairment under Table 16-12, Peripheral Nerve Impairment Grid, Lower Extremity Impairments, at page 534 of the A.M.A., *Guides*.[10] Using the Adjustment Grid, functional history, at Table 16-6, section 16.3a, at page 516 of the A.M.A., *Guides*,[11] Dr. Graf found that appellant had a grade modifier of 2 for functional history based on his score of 36 for the daily activities lower extremities questionnaire, a moderate problem; with regard to physical examination, he assigned a grade modifier of 2, for a moderate problem, pursuant to Table 16-7, section 16.3b, at page 517 of the A.M.A., *Guides*;[12] and a grade modifier of 2 for clinical studies, a moderate problem based on MRI scan results showing far lateral L4-5 foraminal disc herniation pursuant to Table 16-8, section 17.3c at page 519 of the A.M.A., *Guides*.[13] Dr. Graf applied the net adjustments from functional history, physical examination, and clinical studies, with grade modifiers to reach a net, adjusted grade modifier of zero, at the net adjustment formula at page 521 of the A.M.A., *Guides*.[14] He concluded that under Table 16-11 at page 533 of the A.M.A., *Guides*[15] appellant had sensory abnormalities in the L5 spinal nerve root, with objective evidence of lower extremity motor loss with absent reflex activity.

By decision dated September 24, 2013, an OWCP hearing representative affirmed the April 2, 2013 decision. The hearing representative noted that OWCP had referred appellant for a second opinion examination with Dr. Walsh, who opined in his January 30, 2012 medical report that appellant had a recurrence of his January 21, 2004 work injury. She further noted that based upon the report of Dr. Walsh that appellant's claim was expanded to include displacement of

[10] *Id.* at 534.

[11] *Id.* at 516.

[12] *Id.* at 517.

[13] *Id.* at 519.

[14] *Id.* at 582.

[15] *Id.* at 533.

cervical, thoracic, or lumbosacral neuritis. While noting the additional accepted conditions in the claim, she found, however, that Dr. Graf's updated impairment rating lacked probative value, due to the inconsistent findings in appellant's examinations, and that it was essentially duplicative of his prior reports which had served to create the original conflict of opinion. Therefore, OWCP's hearing representative determined that the weight of medical opinion continued to rest with Dr. Sobel, the impartial medical examiner, who found no permanent impairment in the lower extremities.

LEGAL PRECEDENT

The schedule award provision of FECA[16] and its implementing regulations[17] 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. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.[18] The claimant has the burden of proving that the condition for which a schedule award is sought is causally related to his or her employment.[19]

The sixth edition of the A.M.A., *Guides* does not provide a separate mechanism for rating spinal nerve injuries as impairments of the extremities. Recognizing that FECA allows ratings for extremities and precludes ratings for the spine, *The Guides Newsletter* offers an approach to rating spinal nerve impairments consistent with sixth edition methodology.[20] OWCP has adopted this approach for rating impairment to the upper or lower extremities caused by a spinal injury.[21]

ANALYSIS

The issue on appeal is whether appellant has sustained permanent impairment causally related to his accepted work-related conditions, for schedule award purposes. The Board finds the case is not in posture for decision.

Appellant's claim was initially accepted for lumbar and thoracic strains. OWCP found a conflict in medical evidence had developed between the opinions of Dr. Graf, appellant's

[16] 5 U.S.C. § 8107.

[17] 20 C.F.R. § 10.404. Effective May 1, 2009, OWCP began using the A.M.A., *Guides* (6th ed. 2009).

[18] *Id.*

[19] *Veronica Williams*, 56 ECAB 367, 370 (2005).

[20] *L.J.*, Docket No. 10-1263 (issued March 3, 2011).

[21] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

treating physician, and Dr. Krohn, as to whether appellant had any permanent impairment resulting from his lumbar and thoracic strains. It referred appellant to Dr. Sobel for an impartial medical examination to resolve the conflict. In a November 20, 2008 report, Dr. Sobel determined that appellant had no ratable impairment of the lower extremities under either the fifth or sixth edition of the A.M.A., *Guides* for his work-related conditions.

Appellant filed a recurrence claim on July 28, 2010. In development of the claim OWCP scheduled a second opinion evaluation for appellant with Dr. Walsh. In his report of January 12, 2012 Dr. Walsh provided the following diagnoses after the physical examination of appellant: lumbar intervertebral disc displacement without myelopathy L4/5 left; degenerative disc disease, thoracic and lumbar spine, L4-5; lumbar radiculopathy, L5; thoracic intervertebral disc displacement T10-11 without myelopathy; and cumulative trauma disorder, bilateral upper extremities with carpal tunnel syndrome. He opined that appellant sustained a recurrence of the work injury of January 21, 2004, rather than a new injury on February 12, 2010

Relying upon the medical opinion of Dr. Walsh, on March 2, 2012, OWCP expanded the accepted conditions in the claim. It accepted conditions in the claim including: sprain of back, thoracic region; sprain of back, lumbar region; displacement of cervical intervertebral disc without myelopathy; displacement of lumbar intervertebral disc without myelopathy; thoracic or lumbosacral neuritis or radiculitis NOS; and displacement of thoracic intervertebral disc without myelopathy.

In the hearing representative's September 24, 2013 decision denying appellant's claim for a schedule award, the hearing representative found that the impairment ratings of Dr. Graf lacked probative value due to inconsistent findings in appellant's examinations and because his latest reports were duplicative of his earlier reports assigning permanent impairment. She further determined that as the reports of Dr. Graf were primarily duplicative in nature that they would be insufficient to give rise to a new conflict as to the issue of permanent impairment for schedule award purposes. The hearing representative found in conclusion that the weight of the medical opinion as to appellant's permanent impairment continued to rest with Dr. Sobel, the referee physician.

The Board finds that the September 24, 2013 decision affording the weight of the medical opinion to Dr. Sobel is in error. While Dr. Sobel had previously resolved the medical opinion conflict between Dr. Graf and Dr. Krohn, at the time of his medical examination OWCP had only accepted lumbar and thoracic strains as work related. Following acceptance of appellant's recurrence claim, OWCP accepted sprain of back, thoracic region; sprain of back, lumbar region; displacement of cervical intervertebral disc without myelopathy; displacement of lumbar intervertebral disc without myelopathy; thoracic or lumbosacral neuritis or radiculitis NOS; and displacement of thoracic intervertebral disc without myelopathy as work related. Therefore the medical opinion of Dr. Sobel predated the acceptance of the additional medical conditions, is stale, and lacks probative value as to the extent of permanent impairment on the presently accepted medical conditions in this claim.

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 schedule award compensation, OWCP shares the responsibility in the development of the

evidence to see that justice is done. As OWCP undertook development of the evidence by referring appellant to an independent medical examining physician and later to a second opinion physician, it has the duty to secure an appropriate impairment rating report based upon all accepted conditions in the claim and addressing all relevant issues as opposed to relying upon an impairment rating report which was not updated to include all conditions it has accepted in the claim.[22]

CONCLUSION

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

[22] *Peter C. Belkind*, 56 ECAB 580 (2005).

ORDER

IT IS HEREBY ORDERED THAT the September 24, 2013 decision of the Office of Workers' Compensation Programs is set aside and remanded to OWCP for further action consistent with this decision of the Board.[23]

Issued: September 1, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[23] Richard J. Daschbach, Chief Judge, participated in the preparation of the decision but was no longer a member of the Board after May 16, 2014. In addition, James A. Haynes, Alternate Judge, participated in the preparation of the decision but was no longer a member of the Board after November 16, 2015.