

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

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**K.C., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS BENEFITS ADMINISTRATION,  
Indianapolis, IN, Employer**

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**Docket No. 13-585  
Issued: November 18, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
ALEC J. KOROMILAS, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On January 15, 2013 appellant filed a timely appeal of a December 17, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

**FACTUAL HISTORY**

On March 23, 2012 appellant, then a 47-year-old rating veterans service representative, filed a Form CA-2 for occupational disease. She alleged that her federal employment aggravated

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

her preexisting post-traumatic stress disorder (PTSD).<sup>2</sup> Appellant also claimed that she was subjected to harassment and retaliation because she filed grievances and equal employment opportunity (EEO) complaints.<sup>3</sup> She stopped work on April 8, 2012.

Appellant submitted a September 26, 2012 statement, as well as additional documents that detailed numerous work factors and incidents that she alleged contributed to her claimed condition. Ena Lima, the veterans service center manager, submitted a November 2, 2012 statement responding to appellant's assertions.

Appellant's primary duty was to adjudicate veterans' disability claims, including those relating to service-connected PTSD. She asserted that, review of these particular claims, in light of her own personal experience, induced emotional reactions that adversely affected her job performance. From August 7 to September 30, 2010, appellant worked 49 hours of mandatory overtime to dispose of claims older than 125 days. Due to office renovations in September and October 2010, she was temporarily transferred to a different worksite. On May 19, 2011 appellant requested a quieter work space and modified caseload to accommodate her PTSD symptoms. She was moved to a new work area in early June 2011.

Appellant received a 14-day suspension effective October 17, 2011 for her failure to process a claim in a timely manner. She had submitted a draft work product on August 19, 2010. The document, along with a two-page synopsis of proposed revisions, was returned to appellant, on September 16, 2010. A corrected draft was submitted almost nine months later on June 9, 2011.

On February 3, 2011 following a three-day snowstorm, appellant requested 12 hours of administrative leave for travel, citing inclement weather, county traffic advisories and aggravated PTSD symptoms. She stated that Ms. Lima, the veterans service center manager, denied the request and found her unwelcoming and unfairly critical. In a January 25, 2012 statement, Christina Clark, a union representative, alleged that Ms. Lima stated that disabled veteran employees exploit service-connected injuries to receive extended time off. By statement dated November 2, 2012, Ms. Lima denied this accusation.

In June 2011, appellant received a 10-day suspension for disclosing medical information belonging to Adam Smith, a coworker, to another employee without his consent. She conceded in a May 5, 2011 statement that she had violated the employing establishment's policy regarding personally identifiable information. Appellant alleged that, in an August 31, 2011 meeting, Ms. Lima told appellant that Mr. Smith had been promised a "clean" Standard Form 50 Notification of Personnel Action (SF-50) if he testified that appellant did not have permission to disclose his medical information to a third party. Ms. Lima denied this accusation in her November 2, 2012 statement.

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<sup>2</sup> Appellant sustained PTSD in the mid-1980s while in active military service.

<sup>3</sup> Appellant filed multiple EEO complaints since June 7, 2011. She incorporated allegations that were outlined in the November 30, 2012 statement of accepted facts and are to be addressed in this decision. Appellant also provided transcripts of depositions that replicated testimony found in the evidence of record. The case record, however, does not contain any final agency dispositions on the merits of her complaints.

On May 17, 2011 appellant's husband visited Mr. Smith's home and told Mr. Smith's fiancé that appellant and Mr. Smith "had some type of romantic involvement at work." Mr. Smith subsequently went to appellant's residence and threatened her, her husband and her children.<sup>4</sup> Appellant thereafter obtained a protection order and asked management to allow her to telecommute or to transfer either her or Mr. Smith to another team. On May 18, 2011 Ms. Lima informed appellant that her husband, who did not work for the employing establishment, was not allowed near the premises. Appellant's request to telecommute was also denied because of her recent suspension. In her statement, Ms. Lima specified that she did not move appellant to another team because Mr. Smith was no longer an employee.

On June 24, 2011 appellant requested unpaid leave under the Family and Medical Leave Act, donated leave under the voluntary leave transfer program and leave without pay for laser eye surgery. After she was advised that she first needed to exhaust her current annual and sick leave balance, she reapplied on July 13, 2011. On October 31, 2011 Anthony Coltrane, appellant's first-line supervisor, denied her request because the surgery was elective and she had ample opportunity to accrue enough leave to cover her absence.

In early August 2011, appellant filed for disability retirement on the grounds that management continued to harass her and attempted to terminate her employment. In late August 2011, she alleged that Mr. Coltrane informed her that her disability retirement application would be expedited if she withdrew her EEO complaint. In an October 25, 2011 statement, appellant's husband attested that he was "called in" and informed about this offer by Mr. Coltrane in a meeting. Ms. Lima advised that Mr. Coltrane denied discussing the agency influencing the outcome of her disability claim.

Throughout 2011, appellant alleged that she never received special recognition for her job performance pursuant to the employing establishment's Blue Ribbon Employee Program. On January 5, 2012 she was denied her share of a monetary award for her involvement in a pilot project for claims processing.

On December 27, 2011 Mr. Coltrane informed appellant that she needed to complete a complex case before he would approve five hours of official time for an EEO investigation. Appellant was then also told on January 9 and 25, 2012 that Ms. Clark would not be allowed to help her gather documents for the investigation. On February 6, 2012 she was unable to meet with Ms. Clark because the latter was limited to one hour of assistance. In separate statements, Ms. Clark asserted that the employing establishment did not allow her to assist with appellant's EEO investigation while Ms. Lima maintained that official time for the investigation was denied due to operational needs.

On February 9, 2012 Debra Street, an assistant manager, asked appellant for an updated statement from her physician certifying self-medication. After appellant submitted a statement on February 12, 2012 Mr. Coltrane informed her that the document did not include a physician's signature block. She provided additional forms, which Mr. Coltrane accepted. In a November 2, 2012 memorandum, Ms. Lima stated that Ms. Street and Mr. Coltrane acted in accordance with

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<sup>4</sup> Appellant clarified that she did not hear Mr. Smith's threats, but "did see how out of control his behavior was" toward her husband.

administrative procedures. On March 15, 2012 Mr. Coltrane warned appellant that she would be placed on a performance improvement plan effective May 1, 2012 unless she improved her work quality and production. On March 23, 2012 he reproached her for entering information related to her grievances and EEO complaints into the time and attendance system. Ms. Lima determined that appellant's actions violated the employer's rules regarding proper use of software and devices.

Appellant further contended that mishandling of her workers' compensation claim aggravated her service-connected PTSD.

The case record contains numerous medical records authored by Dr. David L. Wagner, a psychiatrist. In an October 7, 2010 report, Dr. Wagner diagnosed service-connected PTSD and depression, *inter alia*. He related that appellant had mental fatigue due to compulsory overtime and a temporary move to a new worksite. On February 23, 2011 Dr. Wagner noted that her symptoms worsened in anticipation of driving after a winter storm. In April 29 and May 12, 2011 reports, he opined that appellant's job duties, namely working more than 40 hours of mandatory overtime and adjudicating veterans' PTSD and *Nehmer* claims, aggravated her PTSD. Dr. Wagner advised that she be limited to a 40-hour workweek and exempt from reviewing PTSD and *Nehmer* claims. In a series of August 12, 2011 reports, he detailed that appellant's PTSD symptoms, including stress, anxiety, suicidal ideation, fear, guilt, panic attacks, disassociation, social isolation, hypervigilance and mistrust of authority, were exacerbated by an unsafe and hostile work environment. Specifically, appellant received threats from a coworker and was treated unfairly by management. As a result, she was reluctant to leave her house, unable to concentrate on her cases and prone to simple mistakes. Dr. Wagner authorized her to self-medicate at home and recommended that she telecommute.<sup>5</sup> In March 20 and September 13, 2012 reports, he reiterated that workplace stressors aggravated appellant's PTSD and depression, leading to mood swings, irritability, anhedonia, insomnia, recurrent nightmares, weight gain, lethargy, low self-esteem, impaired concentration and memory, feelings of hopelessness and helplessness, avoidance, hypervigilance and fleeting suicidal ideation.

Following a review of the November 30, 2012 statement of accepted facts, Dr. Wagner maintained in a December 4, 2012 report that appellant's job duties worsened her service-connected PTSD and depression. He opined that mandatory overtime and adjudication of veterans' PTSD claims "likely as not" elevated her stress. Dr. Wagner remarked that appellant remained symptomatic after she left the employing establishment in early April 2012 and concluded that she was unlikely to return to any competitive employment.<sup>6</sup>

By decision dated December 17, 2012, OWCP denied appellant's emotional condition claim, finding: (1) the medical evidence insufficient to establish that 49 hours of compulsory overtime for the period August 7 to September 30, 2010 and adjudication of veterans' PTSD and

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<sup>5</sup> Dr. Wagner restated his opinion in a December 16, 2011 report.

<sup>6</sup> Appellant provided additional medical records for the period January 30, 2007 to February 13, 2012. However, these documents either: (1) addressed physical conditions not presently before the Board; (2) predated the period during which she allegedly aggravated her PTSD on the job; or (3) were not authored by a psychiatrist or clinical psychologist.

*Nehmer* claims aggravated her service-connected PTSD; and (2) the evidence insufficient to establish any other compensable factors of employment.

### **LEGAL PRECEDENT**

To establish a claim that he or she sustained an emotional or stress-related condition in the performance of duty, an employee must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to the condition; (2) medical evidence establishing that he or she has an emotional or stress-related disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to the condition. If a claimant implicates a factor of employment, OWCP should determine whether the evidence of record substantiates that factor. Allegations alone are insufficient to establish a factual basis for an emotional condition claim and must be supported with probative and reliable evidence. If a compensable factor of employment is established, OWCP must then base its decision on an analysis of the medical evidence.<sup>7</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment. In the case of *Lillian Cutler*,<sup>8</sup> the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that a disability resulted from this emotional reaction, the disability is generally regarded as due to an injury arising out of and in the course of employment. This holds true when the disability results from an emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work. On the other hand, there are disabilities that have some causal connection with the claimant's employment but nonetheless fall outside FECA's coverage because they are found not to have arisen out of employment, such as when a disability results from a fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or hold a particular position.<sup>9</sup>

### **ANALYSIS**

Appellant attributed aggravation of her service-connected PTSD to several incidents and activities. As a preliminary matter, the Board must first determine which of these constitute compensable factors of employment that necessitate an evaluation of the medical evidence.

Appellant objected to various managerial actions, including a temporary transfer to a different worksite; denial of numerous leave and accommodation requests; denial of a cash award and special recognition for her job performance; denial of access to union representation; denial of workplace access to her husband; 10-day and 14-day suspensions for violating policies regarding personally identifiable information and timely processing of veterans' disability

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<sup>7</sup> *G.S.*, Docket No. 09-764 (issued December 18, 2009).

<sup>8</sup> 28 ECAB 125 (1976).

<sup>9</sup> *William E. Seare*, 47 ECAB 663 (1996).

claims, respectively; Mr. Coltrane's warning that she would be placed on a performance improvement plan unless she improved her work quality and production; Mr. Coltrane's criticism for entering information related to her grievances and EEO complaints into the time and attendance system; and requiring self-medication certification from her physician. The Board has held that work space transfers,<sup>10</sup> leave matters,<sup>11</sup> accommodation requests,<sup>12</sup> cash awards,<sup>13</sup> special recognition,<sup>14</sup> access to union representation,<sup>15</sup> access to the workplace,<sup>16</sup> safety,<sup>17</sup> disciplinary actions,<sup>18</sup> performance appraisals,<sup>19</sup> counseling sessions,<sup>20</sup> criticism and reprimands,<sup>21</sup> submission of medical documentation,<sup>22</sup> and monitoring of work by a supervisor<sup>23</sup> are administrative and personnel matters. Administrative and personnel matters, although generally related to employment, are administrative functions of the employer rather than the regular or specially-assigned work duties of the employee and are not covered under FECA.<sup>24</sup>

An administrative or personnel matter will be considered a compensable factor of employment where the evidence discloses error or abuse on the part of the employer.<sup>25</sup> The employee bears the burden of proof to establish administrative error or abuse.<sup>26</sup> At the outset, appellant noted that she filed grievances and EEO complaints concerning many of the

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<sup>10</sup> *Dan F. Bennett*, Docket No. 05-60 (issued March 7, 2005).

<sup>11</sup> *J.C.*, 58 ECAB 594 (2007).

<sup>12</sup> *P.K.*, Docket No. 12-1640 (issued May 13, 2013).

<sup>13</sup> *B.M.*, Docket No. 08-327 (issued June 19, 2008).

<sup>14</sup> *Charles B. Markle*, Docket No. 00-514 (issued January 10, 2001).

<sup>15</sup> *Diane C. Bernard*, 45 ECAB 223 (1993).

<sup>16</sup> *R.W.*, Docket No. 06-2000 (issued February 22, 2007).

<sup>17</sup> *Ronald C. Hand*, 49 ECAB 113 (1997).

<sup>18</sup> *G.S.*, *supra* note 7.

<sup>19</sup> *David C. Lindsey, Jr.*, 56 ECAB 263 (2005).

<sup>20</sup> *Andrew Wolfgang-Masters*, 56 ECAB 411 (2005).

<sup>21</sup> *Roger W. Robinson*, 54 ECAB 846 (2003).

<sup>22</sup> *M.T.*, Docket No. 11-606 (issued January 5, 2012).

<sup>23</sup> *James P. Inzetta*, Docket No. 03-1899 (issued October 27, 2003).

<sup>24</sup> *M.C.*, Docket No. 10-1628 (issued June 8, 2011); *Matilda R. Wyatt*, 52 ECAB 421 (2001).

<sup>25</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>26</sup> *M.W.*, Docket No. 09-2036 (issued June 2, 2010).

aforementioned managerial actions. However, grievances and EEO complaints, by themselves, do not establish that unfair treatment occurred.<sup>27</sup>

Appellant presents arguments of error or abuse on the part of the employing establishment for two of the aforementioned managerial actions. First, she suggested that her 10-day suspension for violating the employing establishment's policy regarding personally identifiable information was unwarranted because Ms. Lima admitted during an August 31, 2011 meeting that Mr. Smith's testimony was elicited in exchange for a favorable SF-50. Ms. Lima denied that this testimony was obtained in an inappropriate manner. In addition, the Board points out that appellant conceded in a May 5, 2011 statement that she violated the policy. With respect to this administrative matter, the Board finds that she did not discharge her burden of proof to establish error or abuse. Second, Ms. Clark, the union representative, asserted that the employing establishment did not allow her to assist with appellant's EEO investigation. Ms. Lima countered that official time for the investigation was denied due to operational needs. In view of just these statements and in the absence of other corroborating evidence, the Board finds that appellant did not establish administrative error or abuse.

Appellant also claimed that management subjected her to a hostile work environment and retaliated against her because she lodged EEO complaints. She specified that she was forced to file for disability retirement; that Ms. Lima was unwelcoming and unfairly critical; that Ms. Lima remarked that disabled veteran employees exploit service-connected injuries to receive extended time off; and that Mr. Coltrane tried to convince her to withdraw EEO complaints in exchange for expedited processing of her disability retirement application.

An act of a supervisor that is characterized by the employee as harassment may constitute a compensable factor of employment giving rise to coverage under FECA. However, probative and reliable evidence must establish that the act alleged did, in fact, occur. An employee's unsubstantiated charge of harassment or discrimination is not determinative. Mere perceptions of harassment and discrimination are not compensable.<sup>28</sup> Appellant mentioned that she filed grievances and EEO complaints pertaining to the alleged acts of harassment and retaliation. As noted, grievances and EEO complaints, by themselves, do not establish that harassment occurred.

Appellant did not present probative and reliable evidence substantiating that she was forced to retire on disability or that Ms. Lima was unwelcoming and unfairly critical. She did offer Ms. Clark's January 25, 2012 e-mail corroborating that Ms. Lima verbally maligned disabled veteran employees but Ms. Lima denied acting inappropriately. The Board has recognized that verbal abuse by a supervisor may constitute a compensable factor of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under FECA.<sup>29</sup> Assuming *arguendo* that Ms. Lima made an offensive remark about disabled veteran employees, was not made directly to appellant or otherwise in her

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<sup>27</sup> See *A.O.*, Docket No. 12-462 (issued July 26, 2012). The Board notes that the case record does not contain any final agency dispositions of appellant's EEO complaints. See *supra* note 3. Even if such decisions were provided, they are not binding on issues raised under FECA. See *infra* note 40.

<sup>28</sup> *H.C.*, Docket No. 12-457 (issued October 19, 2012); *Sylvester Blaze*, 42 ECAB 654 (1991).

<sup>29</sup> *Leroy Thomas III*, 46 ECAB 946 (1995).

presence. An emotional reaction to such a comment is considered to be self-generated and not to arise out of or in the course of employment.<sup>30</sup> Also, in an October 25, 2011 statement, appellant's husband attested that he was summoned to a meeting with Mr. Coltrane and informed that appellant's disability retirement application would be expedited if she withdrew her EEO complaint. His account, though, conflicted with the allegation that he was not allowed near the work premises since May 2011. Unexplained inconsistencies diminish evidentiary weight.<sup>31</sup>

Appellant also attributed aggravation of her service-connected PTSD to her commute following a three-day snowstorm in early February 2011, the Board has held that the stress and strain of highway travel experienced by an employee commuting to work can be characterized as self-generated and arising from the hazards of the journey shared in common by all travelers.<sup>32</sup> To the extent that she attributed aggravation to the May 17, 2011 verbal altercation between her husband and Mr. Smith at her home, the Board notes that this event occurred outside of the workplace and stemmed from a personal, nonwork-related matter: her husband's accusation that she and Mr. Smith were romantically involved. When the subject matter of a verbal altercation is imported into the employment from a claimant's domestic or private life and there is no indication that work contributed to or facilitated the dispute, the dispute is not a compensable factor of employment and any injury resulting therefrom does not arise out of employment.<sup>33</sup>

Appellant asserted that her PTSD was exacerbated by mishandling of her compensation claim. However, the Board has held that a condition related to OWCP's or the employer's mismanagement of a compensation claim does not arise in the performance of duty because the processing of such claim has no relation to appellant's regular or specially-assigned duties.<sup>34</sup>

OWCP accepted that appellant worked 49 hours of compulsory overtime for the period August 7 to September 30, 2010 and adjudicated veterans' PTSD claim. Because these activities related to her work duties, they constitute compensable factors of employment and the Board must evaluate the medical evidence to determine whether these factors aggravated her service-connected PTSD.<sup>35</sup>

A claim for an emotional condition must be supported by an opinion from a psychiatrist or a clinical psychologist before the condition can be accepted.<sup>36</sup> In reports for the period October 7, 2010 to May 12, 2011, Dr. Wagner opined that appellant's duties, namely working

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<sup>30</sup> See *Mary A. Sisneros*, 46 ECAB 155 (1994).

<sup>31</sup> See *Mary S. Brock*, 40 ECAB 461 (1989).

<sup>32</sup> *Hasty P. Foreman*, 54 ECAB 427 (2003).

<sup>33</sup> *C.O.*, Docket No. 09-217 (issued October 21, 2009). See also *H.J.*, Docket No. 06-743 (issued August 3, 2006).

<sup>34</sup> *Foreman*, *supra* note 32; *George A. Ross*, 43 ECAB 346 (1991).

<sup>35</sup> See *K.H.*, Docket No. 09-1651 (issued June 3, 2010).

<sup>36</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(3)(c) (January 2013). See also *L.C.*, Docket No. 10-2271 (issued July 21, 2011). For this reason, medical evidence of record authored by an individual other than Dr. Wagner lacked probative value. See *supra* note 6.

more than 40 hours of mandatory overtime and adjudicating veterans' PTSD and *Nehmer* claims, aggravated her PTSD and depression. Following a review of the November 30, 2012 statement of accepted facts, he reiterated in a December 4, 2012 report that mandatory overtime and adjudication of veterans' PTSD claims "likely as not" elevated her stress.<sup>37</sup>

The Board finds that Dr. Wagner's opinion did not sufficiently establish that compensable factors of employment aggravated appellant's service-connected PTSD. Although Dr. Wagner indicated that, a causal relationship existed, his reports did not contain adequate medical rationale explaining the basis for his conclusion.<sup>38</sup> Instead, he couched his opinion in speculative terms.<sup>39</sup> In the absence of rationalized medical opinion evidence, appellant failed to establish that she sustained an emotional condition while in the performance of duty.

Appellant contends on appeal that the medical evidence shows that her employment aggravated her service-connected PTSD. The Board has already addressed the deficiencies of the medical evidence. Appellant also questions why her claim arising under FECA was denied when she was approved for both disability retirement and social security disability benefits. The Board has long held that entitlement to benefits under statutes administered by other federal agencies does not establish entitlement to benefits under FECA. Decisions made by such federal agencies are pursuant to different statutes that have varying standards for establishing disability and eligibility for benefits and are not dispositive in FECA proceedings.<sup>40</sup>

Appellant may submit new evidence or argument as part of a formal written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant did not establish that she sustained an emotional condition while in the performance of duty.

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<sup>37</sup> Dr. Wagner's remaining reports were of diminished probative value because they did not address the factors of employment found compensable by OWCP. *Beverly R. Jones*, 55 ECAB 411 (2004).

<sup>38</sup> *K.W.*, 59 ECAB 271 (2007).

<sup>39</sup> *Kathy A. Kelley*, 55 ECAB 206 (2004); *Thomas A. Faber*, 50 ECAB 566 (1999).

<sup>40</sup> *R.S.*, Docket No. 10-2221 (issued August 19, 2011).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 17, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 18, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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