

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

J.S., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Atwater, CA, Employer**

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**Docket No. 16-0505
Issued: July 18, 2016**

Appearances:

*Debra Hauser, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 21, 2016 appellant, through counsel, filed a timely appeal of a December 1, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 16-0505.

The Board has duly considered the matter and notes that on March 28, 2011 appellant, then a 50-year-old correctional treatment specialist (contract manager), filed a traumatic injury claim (Form CA-1) alleging that on February 24, 2011 she sustained herniated discs and nerve impingement due to her employment duties. OWCP accepted the claim for lumbar sprain. Appellant stopped work on March 2, 2011, was paid wage-loss compensation on the supplemental rolls before being placed on the periodic rolls for temporary total disability by letter dated February 23, 2012. By decision dated August 6, 2014, OWCP terminated appellant's wage-loss compensation and medical benefits effective August 6, 2014.² In a letter dated

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² On June 6, 2015 appellant elected to receive benefits from the Office of Personnel Management in lieu of FECA benefits effective August 6, 2014.

June 11, 2015, appellant's counsel requested reconsideration and submitted a May 26, 2015 medical report. By decision dated December 1, 2015, OWCP denied reconsideration without considering the report. It noted that the only evidence received on reconsideration was a letter from counsel.

Board precedent holds that OWCP must review all the evidence submitted by a claimant and received by OWCP prior to the issuance of a final decision.³ As the Board's jurisdiction is final as to the subject matter, it is crucial that OWCP accomplish this.⁴

Because the OWCP made no mention of any new evidence in denying appellant's request for a merit review, it is clear to this Board that OWCP did not consider the evidence submitted by appellant in reaching its decision denying merit review. The May 26, 2015 report was received by OWCP on June 11, 2015. As OWCP did not consider the May 26, 2015 report, the Board concludes that the case must be remanded for review of this evidence. Following any further necessary development, OWCP shall issue an appropriate decision to protect appellant's rights to future appeals.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 1, 2015 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: July 18, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

³ See *M.B.*, Docket No. 09-176 (issued September 23, 2009); *Yvette N. Davis*, 55 ECAB 475 (2004); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision); *William A. Couch*, 41 ECAB 548 (1990); 20 C.F.R. § 501.6(c).

⁴ See *id.*