

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

A.O., Appellant

and

**U.S. POSTAL SERVICE, ANSONIA STATION,
New York, NY, Employer**

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**Docket No. 16-1804
Issued: March 23, 2017**

Appearances:

*Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On September 9, 2016 appellant, through her attorney, filed a timely appeal from a June 30, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP) finding. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The Board, having duly considered the matter, concludes that the case is not in posture for decision. By decision dated June 30, 2016, the hearing representative reviewed an additional claim² and "found medical documents ... which pertained to this claim." He specifically mentioned and relied on notes dated May 7 and July 30, 2015 from appellant's attending physician in OWCP File No. xxxxxx321. These notes are not in the record before the Board.

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 OWCP File No. xxxxxx321.

Section 501.2(c) of the Board's *Rules of Procedure*,³ provides that the Board has jurisdiction "to consider and decide appeals from the final decision of OWCP in any case arising under the [Federal Employees Compensation] Act."⁴ Additionally, the Board's review of the case is limited to the evidence which was before OWCP at the issuance of the final decision.⁵ Since the record as transmitted to the Board does not contain evidence that OWCP relied upon in reaching its final decisions, the Board is unable to properly "consider and decide" appellant's claim. Furthermore, OWCP procedures provide that cases should be combined where correct adjudication depends on cross-referencing between files.⁶ The June 30, 2016 decision of OWCP must be set aside and the case remanded to OWCP for reconstruction and proper assemblage of the case record including combining all the files relied upon by OWCP's hearing representative. Following this and such further development as OWCP deems necessary, OWCP shall issue a *de novo* decision. According,

IT IS HEREBY ORDERED that the June 30, 2016 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: March 23, 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

³ 20 C.F.R. § 501.2(c).

⁴ 5 U.S.C. §§ 8101-8193.

⁵ See 20 C.F.R. § 501.2(c)(1).

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).