

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

L.M., Appellant)	
)	
and)	Docket No. 16-1464
)	Issued: November 1, 2017
)	
U.S. POSTAL SERVICE, SOUTH JERSEY)	
DISTRICT, Bellmawr, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, 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 July 7, 2016 appellant, through counsel, filed a timely application for review of a January 19, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP) affirming the denial of her claim for a recurrence of disability. The appeal was docketed as No. 16-1464.

OWCP accepted that on June 12, 2002 appellant, a clerk, sustained a cervical strain, lumbosacral strain, dorsal strain, contusion of the left forearm, and left shoulder sprain as a result of a motor vehicle accident. Appellant returned to limited-duty work on August 2, 2002. On March 6, 2007 OWCP accepted the claim for recurrence of disability commencing January 22, 2007. On April 1, 2009 appellant returned to a modified position, but only worked

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.

45 minutes.² On April 9, 2015 she filed a recurrence of disability claim (Form CA-2a) for disability beginning May 18, 2009. In an April 17, 2015 decision, OWCP accepted the recurrence of disability claim based on a May 18, 2009 medical report of an attending physician.

On May 1, 2015 appellant filed a Form CA-7 claim for compensation for leave without pay from May 18, 2009 to May 1, 2015. She submitted medical reports dated July 30, 2013 to July 15, 2015 regarding her medical condition. In a July 20, 2015 decision, OWCP denied appellant's claim for disability from May 18, 2009 to May 1, 2015, finding that the medical evidence was insufficient. Counsel requested an oral hearing before an OWCP hearing representative which was held on November 6, 2015. In support of her request, appellant submitted additional medical evidence. In a January 19, 2016 decision, an OWCP hearing representative affirmed the July 20, 2015 decision. He found that the medical evidence was insufficient to establish a recurrence of disability beginning May 18, 2009. The hearing representative noted that "Although [OWCP] notified the claimant, by letter dated April 17, 2015, that the claim for recurrence for the period in question was accepted, there is no evidence to reflect the payment of any disability compensation pursuant thereto and [OWCP] upon further review may alter its position regarding the acceptance of a claim."

The Board has duly considered the matter and finds that OWCP failed to address the relevant issue in this case. On January 19, 2016 OWCP's hearing representative affirmed the denial of appellant's claim for a recurrence of disability beginning May 18, 2009. Regarding OWCP's April 17, 2015 acceptance of her recurrence of disability claim for the same period, he advised that, upon further review, OWCP may alter its acceptance of a claim. The Board finds that this constitutes rescission of acceptance of a claim.³ As OWCP was attempting to rescind acceptance of appellant's claim for a recurrence of disability, it must follow its established procedures for rescission. OWCP's procedures require a proposed and final decision rescinding the original finding.⁴ These procedures further provide that a rescission decision should contain a brief background of the claim, discuss the evidence on which the original decision was based, and explain why OWCP finds that the decision should be rescinded. The evidence used to rescind the claim should be thoroughly discussed so that it is clear to the reader how the case was incorrectly adjudicated, and why the original decision is now being invalidated.⁵ OWCP did not follow the specific procedures for a rescission decision and did not inform appellant correctly

² In a June 15, 2009 decision, OWCP denied appellant's claim for a recurrence of disability commencing April 1, 2009. Its payment records indicate that appellant received a combination of wage-loss and schedule award compensation from January 19, 2004 to May 28, 2010. Appellant was separated from the employing establishment effective April 6, 2012 due to her inability to perform her work duties.

³ See *D.V.*, Docket No. 11-1629 (issued February 3, 2012).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.19(b) (February 2013).

⁵ *Id.* at Chapter 2.1400.19(d).

and accurately of the basis of its rescission decision.⁶ Consequently, it has not met its burden of proof to rescind acceptance of appellant's claim for a recurrence of disability.⁷

The case must be remanded to OWCP for a proper decision under its procedures with regard to any rescission proposed by OWCP regarding the acceptance of appellant's claim for a recurrence of disability. Following this and such other development as deemed necessary, OWCP shall issue an appropriate final decision on appellant's recurrence of disability claim.

IT IS HEREBY ORDERED THAT the January 19, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: November 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

⁶ *S.R.*, Docket No. 12-1404 (issued December 11, 2012).

⁷ *See S.R.*, Docket No. 09-2332 (issued August 16, 2010) (once OWCP accepts a claim, it has the burden of justifying the termination or modification of compensation benefits; this holds true where OWCP later decides that it erroneously accepted a claim).