

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

D.H., Appellant)	
)	
and)	Docket No. 17-0224
)	Issued: August 16, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Baton Rouge, LA, Employer)	
)	

Appearances:
Frank Granger, 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
ALEC J. KOROMILAS, Alternate Judge

On November 3, 2016 appellant, through counsel, filed a timely appeal from a July 13, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 17-0224.

By decision dated June 27, 2002, OWCP reduced appellant's compensation after, finding that his actual earnings as a modified distribution clerk effective April 3, 2002 fairly and reasonably represented his wage-earning capacity.² By decision dated December 17, 2007, it modified in part its June 27, 2002 loss of wage-earning capacity (LWEC) determination. OWCP found that the evidence of record was sufficient to establish that appellant was entitled to compensation for total disability beginning August 23, 2007. It further determined, however, that

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 By decisions dated June 6, 2003, May 11, 2004, September 1, 2005, and September 14, 2006, OWCP denied modification of its loss of wage-earning capacity determination.

the evidence was insufficient to support total disability or modify the LWEC prior to August 23, 2007.³

On April 13, 2016 appellant, through counsel, requested reconsideration. He argued that the July 27, 2002 LWEC determination erroneously found that appellant could work as a part-time modified distribution clerk. Counsel further asserted that OWCP erred in failing to find that he sustained a recurrence of disability such that he was totally disabled from April 2, 2002 to August 23, 2007. He maintained that the impartial medical examiner only released appellant to work a four-day week rather than the five offered by the employing establishment.

By decision dated July 13, 2016, OWCP denied appellant's request for reconsideration as it was untimely filed and failed to demonstrate clear evidence of error. It found that he had not submitted any relevant new medical evidence or raised a new legal condition sufficient to show error in its prior decision.

The Board has duly reviewed the matter and finds that the case is not in posture for decision as the case record is incomplete. Appellant maintained that the case record does not contain a report from an impartial medical examiner. The record is devoid of medical evidence prior to 2001.

Section 501.2(c) of the Board's *Rules of Procedure*,⁴ 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.⁵ Because the record as transmitted to the Board is incomplete and would not permit an informed adjudication of the case,⁶ the Board is unable to properly consider and decide appellant's claim. The case, therefore, is remanded to OWCP for reconstruction and proper assemblage of the record.⁷ After such further development as deemed necessary, OWCP should issue a *de novo* decision on appellant's request for modification of the June 27, 2002 LWEC determination.

³ Appellant submitted multiple requests for reconsideration of OWCP's denial of modification of its June 27, 2002 LWEC determination prior to August 23, 2007, which OWCP denied by merit decisions dated February 27, 2009, March 17, 2010, June 20, 2011, September 25, 2012, February 5, 2014, and April 8, 2015.

⁴ 20 C.F.R. § 501.2(c).

⁵ 5 U.S.C. §§ 8101 et seq.

⁶ See *Victor Verenbec*, Docket No. 90-1429 (1991).

⁷ See *W.B.*, Docket No. 15-1751 (issued March 8, 2016).

IT IS HEREBY ORDERED THAT the July 13, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: August 16, 2018
Washington, DC

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

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

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