

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

C.C., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
IMMIGRATION & CUSTOMS)
ENFORCEMENT, Rouses Point, NY, Employer)

Docket No. 17-1548
Issued: February 16, 2018

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 7, 2017 appellant, through counsel, filed a timely appeal from February 27 and April 13, 2017 merit decisions of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 17-1548.

Appellant, then a 52-year-old special agent, filed an occupational disease claim (Form CA-2) on February 16, 2016 alleging that he developed numbness and pain in his right upper extremity due to factors of his federal employment. In a checklist for evidence required in support of a claim for work-related carpal tunnel syndrome (Form CA-35H) dated February 16, 2016, appellant elaborated as to duties of his employment, hobbies, and symptoms. He stated that he had worked as a special agent with the employing establishment since 2000, and 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.

duties of this position included daily, extensive writing of reports, preparing court documents, writing subpoenas and search warrants, extensive record searches on a computer, and writing memoranda. Appellant also noted that he had to participate in firearms, handcuffing, and arrest techniques training.

By decision dated May 18, 2016, OWCP denied appellant's claim. It explained that his claim was denied because he had failed to respond to the questionnaire contained in the development letter of March 17, 2016 and had therefore failed to establish the alleged factors of employment. OWCP noted that, while appellant had identified use of a computer as a factor of employment, he had not indicated the frequency and duration of the tasks on a computer alleged to cause his condition.

On June 3, 2016 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. The hearing was held on January 23, 2017. At the hearing, appellant explained that his position required handwriting and typewriting extensive reports daily. He stated that he performed these tasks for the entire day at his desk with a computer. Appellant further explained that he underwent firearms training and defensive tactics training once a year, and was a firearms instructor for 10 years.

By decision dated February 27, 2017, the hearing representative affirmed OWCP's May 18, 2016 decision. She found that appellant's treating physician had not submitted a well-rationalized report regarding causal relationship.

On March 15, 2017 appellant, through counsel, requested reconsideration. By decision dated April 13, 2017, OWCP denied modification of the February 27, 2017 decision. It found that the hearing representative had modified the denial of appellant's claim from the third element, "Fact of Injury," to a denial based on the fifth element "Causal Relationship." OWCP thereafter denied modification of the prior decision as the newly submitted evidence did not establish causal relationship.

The Board has duly considered the matter and notes that section 8124(a) of the Federal Employees' Compensation Act² (FECA) and section 10.126 of the implementing regulations³ require that final decisions of OWCP contain findings of fact and a statement of reasons. A decision denying a claim for benefits should contain a correct description of the basis for the denial in order that the parties of interest have a clear understanding of the precise defect of the claim and the kind of evidence which would overcome it.⁴ The Board finds that OWCP's February 27, 2017 decision was incomplete as it did not make findings regarding the third element of "Fact of Injury." Appellant was therefore not apprised of the factors of employment which were accepted by OWCP. The medical evidence submitted in support of causal relationship could therefore not be properly evaluated in any subsequent decision to determine whether it supported causal relationship between the diagnosed condition and the accepted

² 5 U.S.C. § 8124.

³ 20 C.F.R. § 10.126.

⁴ *Patrick Michael Duffy*, 43 ECAB 280 (1991); *L.R.*, Docket No. 15-0235 (issued December 21, 2015).

factors of employment. Because the February 27, 2017 decision does not contain a completed description of the basis for the denial of the claim or the findings of fact reached therein, the Board finds that OWCP has not fulfilled its responsibility under section 8124 of FECA.

IT IS HEREBY ORDERED THAT the April 13 and February 27, 2017 decisions of the Office of Workers' Compensation Programs be set aside and the case remanded to further action consistent with this decision.

Issued: February 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