

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

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<b>D.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0208</b>
	)	<b>Issued: May 4, 2018</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Pittsburg, PA, Employer</b>	)	
_____	)	

*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*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 7, 2017 appellant, through counsel, filed a timely appeal from a July 7, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 18-0208.

Appellant, then a 60-year-old postmaster/officer in charge, filed an occupational disease claim (Form CA-2) on February 25, 2013<sup>2</sup> alleging that on December 29, 2012 he realized that he developed bilateral knee pain due to factors of his federal employment. The employing establishment noted that appellant retired effective February 28, 2013.

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<sup>1</sup> 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.

<sup>2</sup> On January 15, 2016 an employing establishment supervisor signed the form, the same date that OWCP received the form.

In support of his claim appellant submitted an OWCP hearing representative's decision from OWCP File No. xxxxxx240 dated January 19, 2017.

By decision dated July 7, 2017, OWCP denied appellant's claim as it found the claim was untimely pursuant to 5 U.S.C. § 8122, as it was not filed within three years of the date of injury. It also found that his immediate supervisor had no actual knowledge within 30 days of the December 29, 2012 injury date, and that he filed his claim on February 25, 2013.

The Board has duly considered the matter and finds that this case is not in posture for a decision.

Section 8124(a) of the Federal Employees' Compensation Act provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.<sup>3</sup> Its regulations also provide that the decision shall 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.<sup>4</sup>

The Board finds that the findings in OWCP's February 7, 2017 decision were incomplete as it found that appellant filed his claim on February 25, 2013, but that he had failed to timely file his claim within three years of the December 29, 2012 date of injury.

While the record is unclear as to whether appellant actually filed the claim on February 25 2013, the case must be returned to OWCP for a proper decision which includes findings of fact and a clear, correct, and precise statement regarding why it is found that appellant's claim was untimely filed. If OWCP finds that it was timely filed, then it must provide reasons for approving or denying his claim. Following this and other such further development as OWCP deems necessary, it shall issue an appropriate decision.

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<sup>3</sup> 5 U.S.C. § 8124(a); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013). *See also R.B.*, Docket No. 17-0912 (issued January 23, 2018); *L.R.*, Docket No. 15-0235 (issued December 21, 2015); *Patrick Michael Duffy*, 43 ECAB 280 (1991).

**IT IS HEREBY ORDERED THAT** the July 7, 2017 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: May 4, 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