

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

W.M., Appellant)	
)	
and)	Docket No. 17-1667
)	Issued: October 1, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
California, PA, Employer)	
)	

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

On July 28, 2017 appellant, through counsel, filed a timely appeal from a June 16, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 17-1667.

This case had previously been before the Board. In a March 8, 2018 order,² the Board found the case not in posture for decision because the record submitted did not include three digital video discs (DVDs) of surveillance video.³ These DVDs were obtained from February 6 to August 18, 2015 by the employing establishment's Office of the Inspector General. They allegedly documented that appellant performed private sector employment activities which exceeded his medical restrictions, including unreported employment at a cleaning company. The

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 Docket No. 17-1667 (issued March 8, 2018).

³ The imaged case record contained June 30, 2016 physical evidence receipts for three DVDs.

Board found that, in light of OWCP's reliance on the surveillance DVDs as evidence provided to Dr. Victoria Langa, a Board-certified orthopedic surgeon and a second opinion physician, accorded the weight of the medical evidence, the case was not in posture for decision as the record before the Board was incomplete. The Board remanded the case to OWCP to furnish the DVDs and for further reconstruction and assemblage deemed necessary, to be followed by an appropriate *de novo* decision.

Following remand, on March 15, 2018, the Director of OWCP filed a petition requesting that the Board set aside the March 8, 2018 order as the surveillance video had been located and forwarded to the Board.⁴ She noted that although the case record contained physical evidence receipts for three DVDs, they were in fact three copies of the same surveillance video.

By order issued August 1, 2018,⁵ the Board granted the Director's petition, set aside its March 8, 2018 order, and reinstated the appeal.

The Board, however, again finds the case not in posture for decision because the record submitted to the Board continues to be incomplete. The DVD provided to the Board was examined by the Board's technical staff who found it did not contain any video data. The Board's technical staff indicated that the DVD contained audio files only. In light of OWCP's reliance on the surveillance DVD as evidence to terminate appellant's compensation benefits, the Board finds this case is not in posture for decision. The Board will, therefore, remand the case to OWCP to furnish a readable DVD which includes the surveillance video as provided to Dr. Langa. After securing a complete and readable DVD and for such further reconstruction and assemblage as deemed necessary, OWCP shall issue an appropriate decision.

⁴ *Petition to Set Side Order Remanding Case* (Docket No. 17-1667, filed March 15, 2018).

⁵ Docket No. 17-1667 (issued August 1, 2018).

IT IS HEREBY ORDERED THAT the June 16, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: October 1, 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