

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

P.D., Appellant)	
)	
and)	Docket No. 19-0541
)	Issued: December 18, 2019
U.S. POSTAL SERVICE, BULK MAIL)	
CENTER, Atlanta, GA, Employer)	
)	

Appearances:
Eric B. Blowers, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On January 11, 2019 appellant, through counsel, filed a timely appeal from a July 26, 2018 decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned the appeal Docket No. 19-0541.

On January 31, 1993 appellant filed an occupational disease claim (Form CA-2) alleging that she sustained hand, arm, and shoulder conditions due to factors of her federal employment duties. OWCP assigned File No. xxxxxx667 and accepted the claim for left shoulder strain, and subsequently expanded acceptance to include the additional conditions of left shoulder rotator cuff

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 The Board notes that following the July 26, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

strain/sprain, joint derangement of the left shoulder, bilateral affections of the shoulder region, bicipital tenosynovitis, and cervical and lumbar intervertebral disc displacements.

On August 10, 1995 appellant filed an occupational disease claim (Form CA-2) alleging that she sustained a right shoulder injury on October 13, 1994 due to factors of her federal employment. OWCP assigned File No. xxxxxx098 and accepted the claim for right shoulder impingement syndrome. It administratively combined these claims, with File No. xxxxxx667 serving as the master file.

On January 21, 1997 OWCP issued a loss of wage-earning capacity (LWEC) determination finding that appellant's employment as a service monitor clerk at the employing establishment fairly and reasonably represented her wage-earning capacity.

OWCP accepted an April 22, 1997 claim for cervical sprain and other affections of the right shoulder.³ This claim was assigned OWCP File No. xxxxxx833 and combined with the mater claim file, OWCP File No. xxxxxx667.

A February 21, 2007 statement of accepted facts (SOAF) noted that appellant's January 31, 1993 occupational disease claim was accepted for left shoulder strain, and that the acceptance was subsequently expanded to include the additional conditions of left rotator cuff sprain/strain, left shoulder joint derangement, bilateral affections of the shoulder regions, bicipital tenosynovitis, and lumbar and cervical intervertebral disc displacements.

On October 4, 2012 OWCP issued a modified LWEC determination finding that appellant's employment as a personnel clerk at the employing establishment fairly and reasonably represented her wage-earning capacity.

An August 14, 2014 SOAF addendum listed the accepted conditions as lumbar intervertebral disc displacement, cervical intervertebral disc displacement, left shoulder and upper arm sprain, bicipital tenosynovitis, shoulder region derangement, and bilateral shoulder region affections and advised that appellant was currently receiving wage-loss compensation every 28 days based on an LWEC and continued to receive medical treatment.

On August 14, 2014 and December 28, 2015 OWCP referred appellant for a second opinion evaluation with Dr. Alexander N. Domes, a Board-certified orthopedic surgeon, to determine whether her accepted employment conditions had resolved and whether she could return to her date-of-injury position.

In reports dated September 26, 2014 and January 26, 2016, Dr. Doman, based upon review of the SOAF, the medical evidence, and his physical examination responded "yes" that the accepted conditions had resolved and that appellant could perform the full duties of her date-of-injury position.

By decision dated April 1, 2016, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective April 3, 2016.

³ A claim form is not of record.

By decisions dated August 18, 2016, February 2, 2017, and April 10 and July 26, 2018, OWCP denied modification of its termination decision.

The Board has duly considered the matter and finds that OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.⁴ OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁵

Appellant was receiving wage-loss compensation based upon an LWEC determination which was issued after OWCP File No. xxxxxx667 was consolidated with appellant's claims in OWCP File No. xxxxxx098 and OWCP File No. xxxxxx884. OWCP did not provide Dr. Doman with an accurate SOAF as it did not list all of appellant's accepted claims or contain an accurate list of the accepted conditions. Therefore, his report is not based on an accurate factual framework and cannot represent the weight of the medical evidence sufficient to terminate wage-loss compensation and medical benefits.⁶ Accordingly,

IT IS HEREBY ORDERED THAT the July 26, 2018 decision of the Office of Workers' Compensation Programs is reversed.

⁴ *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁵ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

⁶ *Id.*; *G.C.*, Docket No 18-0842 (issued December 20, 2018).

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Washington, DC

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

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

Janice B. Askin, Judge
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