

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

C.C., Appellant)	
)	
and)	Docket No. 17-1953
)	Issued: February 8, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Lake George, NY, 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 September 20, 2017 counsel filed an appeal from a July 24, 2017 decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 17-1953.

Appellant, then a 54-year old postmaster, filed an occupational disease claim (Form CA-2) on August 18, 2010 alleging that she developed right wrist conditions including burning and aching due to factors of her federal employment.

By decision dated November 15, 2010, OWCP accepted her claim for the condition of tenosynovitis of the right wrist and hand. On November 15, 2013 appellant filed a claim for a schedule award (Form CA-7). The schedule award claim was initially denied by decision dated January 27, 2014. However, following additional development of the claim, appellant was granted

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.

a schedule award for nine percent permanent impairment of the right upper extremity by decision dated September 23, 2015. She has claimed, but has been denied an increased schedule award.

On November 11, 2016 counsel filed a letter requesting that appellant's claim be expanded to include the additional conditions of calcification of the triangular fibrocartilage, osteoporosis of the proximal pole of the triquetrum, lunate triquetrum arthritis, traumatic right wrist arthritis, and arthritis of the distal radial ulnar joint. In support of his request, he submitted a July 14, 2016 report of Dr. Douglas M. Petroski, a Board-certified orthopedic surgeon, who provided examination findings and the five additional diagnoses. By letter dated June 21, 2017, counsel requested an update on the status of the request to expand the claim to include the additional conditions diagnosed by Dr. Petroski. By decision dated June 28, 2017 appellant's claim was expanded to include the additional condition of triangular fibrocartilaginous complex tear of the right wrist. The June 28, 2017 decision did not make findings as to the four other diagnoses for which expansion was claimed.

By letter dated July 24, 2017, OWCP notified appellant that the claim had recently been reviewed by a district medical adviser (DMA) regarding the request to expand the claim. It noted that on July 7, 2017 Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a DMA, had reviewed the medical record and determined that "there is no causal link established to expand the accepted conditions." Attached to the letter was a copy of the DMA's report.

On August 1, 2017 appellant, through counsel, requested a telephonic hearing from the purported July 24, 2017 decision. In a letter dated August 23, 2017, OWCP's Branch of Hearings and Review notified appellant that her request for a telephonic hearing had been denied because the correspondence dated July 24, 2017 was an informational letter and not a final decision. Appellant was informed that her case was therefore not in posture for a hearing and that she would be notified of her appellate rights upon the issuance of a decision in her case.

The Board has duly considered the matter and finds that the letter dated July 24, 2017 is a formal decision. The letter notes the review of medical record by the DMA and her request for the expansion of her claim to include additional diagnosed conditions. The letter then advised appellant that her "claim cannot be expanded at this time" and notes that the DMA had indicated that there was "no causal link established to expand the accepted conditions." No appeal rights were attached to this letter which denied expansion of the claim.

The Board 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 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 July 24, 2017 decision was incomplete as it did not make

² 5 U.S.C. § 8124.

³ 20 C.F.R. § 10.126.

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

findings regarding the medical evidence appellant submitted from Dr. Petroski, nor did it provide a statement of reasons as to why it determined that the opinion of the DMA was sufficient to constitute the weight of the evidence on the issue of claim expansion. Appellant was therefore not apprised of the deficiencies OWCP had found in Dr. Petroski's opinion. Because the July 24, 2017 decision does not explain 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 and section 10.126 of its implementing regulations in regards to appellant's formal request for expansion of her claim to include additional diagnosed conditions.

Accordingly, the case must be returned to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding appellant's request for expansion of her claim. Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the July 24, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order.

Issued: February 8, 2019
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