

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

C.K., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS HEALTH ADMINISTRATION,)
ANN ARBOR MEDICAL CENTER,)
Ann Arbor, MI, Employer)

Docket No. 19-0274
Issued: September 4, 2019

Appearances:
Debra Hauser, 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
JANICE B. ASKIN, Judge

On November 19, 2018 appellant, through counsel, filed a timely appeal from a June 21, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0274.

On February 22, 2016 appellant, then a 57-year-old occupational therapist, filed a traumatic injury claim (Form CA-1) alleging that on February 18, 2016, while in the performance of duty, she slipped on an ice patch and fell on the sidewalk, hitting her head and left eye, and straining her neck. On June 21, 2016 OWCP denied the claim finding that she was not in the performance of duty at the time of the alleged incident because she was not on the employing establishment's premises when she fell. On February 14, 2017 appellant, through counsel, requested

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.

reconsideration. By decision dated August 25, 2017, OWCP denied modification of its June 21, 2016 decision.

On April 2, 2018 appellant, through counsel, requested reconsideration. In support thereof, counsel submitted new evidence and made several new arguments regarding the employing establishment premises, the availability of parking to employees and the general public, the maintenance and control of the parking lot, and the need to traverse between the lot and the employing establishment's premises. The evidence included an overhead map of the area surrounding the employing establishment premises, and signs related to parking at the employing establishment.

By decision dated June 21, 2018, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It found that her request "neither raised substantive legal questions nor included new and relevant evidence."

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 Act² provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.³ Its regulations also provide that the decision shall contain findings of fact and a statement of reasons.⁴ The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim.⁵

OWCP, in its June 21, 2018 decision, did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition, so that appellant could understand the basis for the decision, *i.e.*, why she was not entitled to a merit review of its prior decision despite the submission of additional evidence with her request. It did not discharge its responsibility to provide appellant a statement explaining the disposition so that she could understand the basis for the decision, as well as the precise defect and the evidence required to establish the claim for a traumatic injury. A plain reading of OWCP's decision does not make clear whether it had received additional evidence from appellant which it found not relevant or pertinent, or whether it had not received the additional evidence. If it found the new evidence not relevant or pertinent it did not provide a basis for its finding.

The Board therefore finds that the case must be remanded for a proper decision which includes findings of fact and a clear and precise statement regarding appellant's request for reconsideration on the denial of her claim. Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

² 5 U.S.C. § 8101 *et seq.*

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

⁴ 20 C.F.R. § 10.126. *See M.G.*, Docket No. 18-0699 (issued March 22, 2019); *see also M.L.*, Docket No. 09-0956 (issued April 15, 2010); *O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5(c) (February 2013).

IT IS HEREBY ORDERED THAT the June 21, 2018 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: September 4, 2019
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
Employees' Compensation Appeals Board