

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

R.C., Appellant)	
)	
and)	Docket No. 19-1386
)	Issued: April 7, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Gilroy, CA, Employer)	
)	

Appearances:
Mark Coby, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On June 10, 2019 appellant, through her representative, filed a timely appeal from a May 14, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-1386.²

On October 29, 2012 appellant, then a 52-year-old rural carrier, sustained work-related back, neck, and bilateral hand injuries when her postal vehicle was rear-ended while sitting at a stoplight. OWCP accepted the claim for lumbar sprain, neck sprain, and bilateral wrist sprain. Appellant was released to regular-duty work on the date of injury and continued in this capacity

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 May 14, 2019 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.*

until April 23, 2013 when she was provided work restrictions. She stopped work and filed a wage-loss compensation claim (Form CA-7) for total disability commencing April 28, 2014. On July 8, 2014 OWCP denied appellant's wage-loss compensation claim. Appellant subsequently requested reconsideration. OWCP, however, denied modification of its prior decision on: January 7, March 23, July 24, and December 21, 2015; April 25 and September 28, 2016; and October 17, 2017.

On February 15, 2018 appellant, through her representative, requested reconsideration. By decision dated May 7, 2018, OWCP denied modification of the October 17, 2017 decision finding that the evidence of record was insufficient to establish total disability or that the acceptance of the claim should be expanded to include additional conditions causally related to the accepted October 29, 2012 employment injury.

On May 7, 2019 appellant, through her representative, again requested reconsideration. In support of her claim she submitted medical and diagnostic reports dated March 28, 2018 through May 6, 2019.

By decision dated May 14, 2019, OWCP denied appellant's request for reconsideration of its May 7, 2018 decision.

Having duly reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision as OWCP failed to provide adequate facts and findings in support of its May 14, 2019 decision.³

Section 8124(a) of FECA provides: OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁴ Its regulations at section 10.126 of Title 20 of the Code of Federal Regulations provide: "The decision [of the Director of OWCP] shall contain findings of fact and a statement of reasons."⁵ Moreover, the Federal (FECA) Procedure Manual provides that the claims examiner's "evaluation of the evidence should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."⁶

OWCP did not discuss any new medical reports submitted in support of appellant's timely May 7, 2019 reconsideration request.⁷ In its May 14, 2019 decision, it 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 the new medical

³ *G.L.*, Docket No. 17-1367 (issued August 17, 2018).

⁴ 5 U.S.C. § 8124(a); *see J.J.*, Docket No. 19-0448 (December 30, 2019); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006).

⁵ 20 C.F.R. § 10.126.

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c.(3)(e) (February 2013).

⁷ *See D.M.*, Docket No. 19-0286 (issued August 22, 2019).

evidence did not meet any of the requirements of 20 C.F.R. § 10.606(b)(3), requiring OWCP to reopen the case for review of the merits of the claim.⁸

Accordingly, the Board will set aside the May 14, 2019 decision and remand the case for OWCP to make findings of fact and provide reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the May 14, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 7, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *J.M.*, Docket No. 18-0729 (issued October 17, 2019); *J.J.*, Docket No. 11-1958 (issued June 27, 2012).