

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

D.L., Appellant)
and) Docket No. 19-0831
DEPARTMENT OF HOMELAND SECURITY,) Issued: February 20, 2020
FEDERAL AIR MARSHALL SERVICE,)
Orlando, FL, Employer)

)

Appearances:
Appellant, *pro se*
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 March 11, 2019 appellant filed a timely appeal from a February 20, 2019 decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 19-0831.

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 14, 2013 appellant, then a 47-year-old federal air marshal, filed an occupational disease claim (Form CA-2) alleging that she sustained an aggravation of a right knee condition due to factors of her federal employment. OWCP accepted the claim for bilateral aggravation of

¹ The record contains a February 19, 2019 decision of OWCP granting appellant a schedule award for an additional eight percent permanent impairment of the right lower extremity consistent with the findings of the Board in its June 6, 2018 decision. Docket No. 18-0046 (issued June 6, 2018). Appellant has not appealed that decision and, thus, it is not before the Board at this time. 20 C.F.R. § 501.2(c).

² Docket No. 18-0046 (issued June 6, 2018).

internal derangement of the medial meniscus right chondromalacia patellae, and derangement of the left meniscus not elsewhere classified.

By decision dated September 13, 2017, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left leg and two percent permanent impairment of the right leg.

Appellant appealed to the Board. By decision dated June 6, 2018, the Board affirmed OWCP's September 13, 2017 decision as modified to reflect that she had no more than 10 percent permanent impairment of the left lower extremity and total of 10 percent permanent impairment of the right lower extremity.³

OWCP subsequently received additional evidence. On September 21, 2018 Dr. Mark A. Seldes, Board-certified in family medicine, discussed appellant's continued complaints of pain and swelling in her knees bilaterally. He provided examination findings and recommended additional physical therapy.

In a development letter dated November 28, 2018, OWCP informed appellant that it had received a request to authorize physical therapy for the period from September 24 to December 13, 2018. It advised her of the evidence needed, including a report from her attending physician addressing her injury-related residuals and explaining the need for physical therapy. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted a September 17, 2018 request for diagnostic testing. On December 17, 2018 she underwent x-rays and a magnetic resonance imaging (MRI) scan of the knees.

In a report dated December 17, 2018, Dr. Seldes reviewed OWCP's November 28, 2018 letter. He advised that appellant required physical therapy due to her pain and because she refused "any further opiate therapy." Dr. Seldes opined that physical therapy would help to decrease her daily pain, improve her daily disability, and allow her to perform her activities of daily living without as much discomfort.

By decision dated February 20, 2019, OWCP denied authorization for physical therapy. It advised that, subsequent to its November 28, 2018 development letter, it had received medical reports dated September 17 through December 17, 2018. OWCP referred to an enclosed notice of decision explaining its denial of medical authorization. However, there was no notice of decision attached to the February 20, 2019 decision.

Having reviewed the case record submitted by OWCP, the Board finds that the case is not in posture for decision.⁴

³ *Id.*

⁴ *J.R.*, Docket No. 18-0206 (issued October 15, 2018); *J.J.*, Docket No. 13-1666 (issued August 18, 2014).

The Board notes that section 8124(a) of the Federal Employees' Compensation Act⁵ (FECA) and section 10.126 of the implementing regulations⁶ 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.⁷ The Board finds that OWCP's February 20, 2019 decision was incomplete as it did not contain findings regarding the medical evidence nor did it provide a statement of reasons as to why it determined that the medical evidence was insufficient to support authorization for physical therapy. Appellant was, therefore, not apprised of the deficiencies OWCP had found in the medical evidence. As the February 20, 2019 decision did 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 request for authorization for physical therapy.⁸ OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining its disposition so that appellant could understand the basis for the decision, as well as the precise defect and the evidence needed to overcome the denial of authorization for physical therapy.⁹

For these reasons, the case will be remanded to OWCP to properly consider all of the evidence and provide clear reasons regarding its disposition of appellant's request for authorization for physical therapy.¹⁰ Following any further development as OWCP deems necessary, it shall issue a *de novo* decision.

⁵ 5 U.S.C. § 8124.

⁶ 20 C.F.R. § 10.126.

⁷ R.M., Docket No. 16-0532 (issued August 9, 2017).

⁸ *Id.*

⁹ R.M., Docket No. 19-0163 (issued July 17, 2019).

¹⁰ K.N., Docket No. 17-0771 (issued August 9, 2018).

IT IS HEREBY ORDERED THAT the February 20, 2019 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: February 20, 2020
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