

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

M.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Cloud, MN, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 20-0110
Issued: July 7, 2020**

Appearances:
*Douglas Sughrue, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 17, 2019 appellant, through counsel, filed a timely appeal from a September 5, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0110.

On September 19, 2016 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2016 she injured her low back when she lifted a heavy parcel while in the performance of duty.

By decision dated February 21, 2017, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed lumbar condition and the accepted September 15, 2016 employment incident.

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.

On August 8, 2019 appellant, through counsel, requested reconsideration. With her request, she submitted an April 6, 2018 report from Dr. Paul T. Wicklund, a Board-certified orthopedist, who examined her on March 31, 2018. This document was labeled “Exhibit A” to the reconsideration request. Dr. Wicklund discussed appellant’s work history and extensive medical treatment including a previous May 18, 1993 lumbar fusion and laminectomy, a January 8, 2001 decompression and posterior instrumentation and fusion, and an April 8, 2002 anterior approach surgery to remove the titanium cages at L5-S1. He diagnosed status post anterior/posterior fusion at L5-S1 and status post posterior fusion and decompression at L4-5 with average result. Dr. Wicklund opined that appellant sustained a permanent injury on “September 16, 2016.”² To her low back as a result of her letter carrier duties. He noted that she had essentially no treatment for her low back from 2003 to 2016 and it was not until she bent over to lift a package at work that she sustained an acute herniated disc at L4-5 which led to her subsequent treatment. Dr. Wicklund further opined that the claimed injury was a superseding and intervening event and had the bending and lifting injury not happened she would not have sought any further treatment for her low back. OWCP also received a copy of an October 20, 2016 report by Dr. Joseph D. Chabot, an osteopath specializing in neurosurgery, which was previously of record.

By decision dated September 5, 2019, OWCP denied appellant’s August 8, 2019 reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that the April 6, 2018 report from Dr. Wicklund referenced by counsel was not received as new evidence for OWCP to consider.

The Board, having duly considered the matter, notes that in denying appellant’s August 8, 2019 reconsideration request, OWCP failed to consider all of the submitted medical evidence on reconsideration, including Dr. Wicklund’s April 6, 2018 report, which addressed causal relationship between the accepted September 15, 2016 employment incident and appellant’s diagnosed lumbar condition.

Because Board decisions are final with regard to the subject matter appealed,³ it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁴ As OWCP did not review Dr. Wicklund’s April 6, 2018 report, which was of record prior to OWCP’s September 5, 2019 decision, the Board finds that this case is not in posture for decision.⁵ On remand OWCP shall review all submitted evidence of record and, following any further development of the medical evidence deemed necessary, it shall issue an appropriate decision.

² The Board notes that Dr. Wicklund’s report notes the date of injury was September 16, 2016, but this appears to be a typographical error as the date of the accepted employment incident was September 15, 2016.

³ 20 C.F.R. § 501.6(d).

⁴ See *B.C.*, Docket No. 15-1222 (issued October 20, 2015); *William A. Couch*, 41 ECAB 548, 553 (1990).

⁵ See *H.H.*, Docket No. 14-1985 (issued June 26, 2015).

IT IS HEREBY ORDERED THAT the September 5, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: July 7, 2020
Washington, DC

Alec J. Koromilas, 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