

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

Y.B., Appellant)	
)	
and)	Docket No. 20-0205
)	Issued: July 7, 2020
U.S. POSTAL SERVICE, CHURCH STREET)	
STATION, New York, NY, Employer)	
)	

Appearances: *Case Submitted on the Record*
James D. Muirhead, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

On November 4, 2019 appellant, through counsel, filed a timely appeal from a September 10, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0205.²

On December 8, 2016 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained a left shoulder, left pelvic bone, left

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 September 10, 2019 merit 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.*

hand, and right knee injury when she slipped and fell while in the performance of duty. She stopped work on December 8, 2016 and has not returned.

Following initial development of the claim, by decision dated March 13, 2018 OWCP denied the claim finding that the evidence of record was insufficient to establish causal relationship between the accepted employment incident and the diagnosed medical conditions. OWCP thereafter received additional medical evidence including: a March 23, 2018 note from Dr. Amin Tehrany, a Board-certified orthopedic surgeon; reports dated December 8, 2016 and May 30, June 1, and August 3, 2018 from Dr. Billy Ford, a Board-certified anesthesiologist; reports dated May 31, 2018 and March 19 and July 11, 2019 from Dr. Demetrios Mikelis, an internal medicine specialist; and chiropractic reports dated October 6, November 3, and December 1 and 29, 2017 and January 26, February 23, March 23, April 20, May 18, June 15, July 13, August 10, September 7, November 2 and 30, and December 28, 2018, and March 28, June 12, and August 21, 2019.

OWCP also received a February 4, 2019 report from a physician assistant, physical therapy reports dating from December 8, 2016 to August 23, 2019, and a copy of a notice of grievance from appellant to the employing establishment.

On September 5, 2019 appellant, through counsel, requested reconsideration. Counsel argued that appellant's claim originally was denied as she had not established fact of injury and was subsequently denied as she had not established causal relationship. He argued that she had submitted sufficient medical evidence to establish that she sustained a severe injury to several parts of her body and that it was clear error to deny the claim or to fail to further develop the evidence by sending appellant and her medical record for a second opinion examination.

By decision dated September 10, 2019, OWCP denied appellant's request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error. It explained that although, counsel indicated that appellant had provided medical evidence to support her claim, she failed to present a clear argument or evidence in support of an error committed by OWCP. OWCP did not address the medical evidence.

In the instant case, OWCP provided no discussion of the new medical evidence submitted in support of the reconsideration request by appellant. Its failure to provide factual findings and explain the basis for its conclusion that she had not demonstrated clear evidence of error precludes the Board's review of the decision.

The Board therefore finds that the case is not in posture for decision because OWCP failed to make findings regarding the evidence submitted in support of the reconsideration request.³ OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁴ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against

³ C.R., Docket No. 17-0964 (issued September 9, 2019).

⁴ *Id.*; see also 20 C.F.R. § 10.607(b); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3d (February 2016).

payment of compensation.⁵ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.

For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the September 10, 2019 decision to be followed by an appropriate decision on whether appellant has demonstrated clear evidence of error.

ORDER

IT IS HEREBY ORDERED THAT the September 10, 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: July 7, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁵ 5 U.S.C. § 8124(a).