

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

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**C.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Kingston, TN, Employer**

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**Docket No. 20-0325  
Issued: July 17, 2020**

*Appearances:*

*C.B. Weiser, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 26, 2019 appellant, through counsel, filed a timely appeal from an October 22, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 20-0325.

On July 9, 2007 appellant, then a 48-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed swelling and pain in her hands and wrist due to factors of her federal employment including repetitive motions of casing and delivering mail. OWCP accepted her claim for bilateral carpal tunnel syndrome. On November 7, 2008 appellant underwent right carpal tunnel release surgery and stopped work. OWCP paid wage-loss compensation on the supplemental rolls from November 7 to December 17, 2008. On December 18, 2008 appellant returned to full-time limited duty. Appellant stopped work again on

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<sup>1</sup> 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.

November 21, 2010. OWCP reinstated appellant's wage-loss compensation and placed appellant on the periodic rolls, effective November 21, 2010.

By decision dated June 19, 2018, OWCP finalized a May 10, 2018 proposed determination to terminate appellant's wage-loss compensation and medical benefits, effective June 24, 2018. It found that the weight of medical evidence rested with a June 1, 2017 medical report<sup>2</sup> of Dr. Nicholas Grimaldi, a Board-certified orthopedic surgeon serving as an OWCP second-opinion examiner, who found that she no longer had residuals or disability causally related to her accepted bilateral carpal tunnel condition.

On July 6, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on November 5, 2018. By decision dated January 8, 2019, an OWCP hearing representative affirmed the June 19, 2018 termination decision.

Subsequent to the January 8, 2019 decision, OWCP received additional medical and diagnostic reports dated February 5 to March 11, 2019.

On August 9, 2019 appellant, through counsel, requested reconsideration. Counsel asserted that Dr. Grimaldi's opinion was speculative and not well rationalized as he had not conducted diagnostic testing to support his conclusion. In support of her claim, appellant submitted medical and diagnostic reports dated May 30, 2007 to March 11, 2019 and letters dated March 20, 2015 to June 13, 2018.

By decision dated October 22, 2019, OWCP summarily denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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 factual findings and legal conclusions in support of its October 22, 2019 decision.<sup>3</sup>

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.<sup>4</sup> Its regulations at section 10.126 of Title 20 of the Code of Federal Regulations provide: "The decision [of the Director of OWCP] shall

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<sup>2</sup> In a June 1, 2017 report, Dr. Grimaldi reviewed the statement of accepted facts (SOAF) and the medical evidence of record. He related appellant's complaints of continued right wrist pain and provided examination findings. Dr. Grimaldi diagnosed psoriatic arthritis affecting the right wrist that has resulted in auto fusion. He reported that appellant's current symptoms conformed more to her history of psoriatic arthritis. Dr. Grimaldi concluded that appellant had no significant clinical findings to support that she still had residuals of her accepted bilateral carpal tunnel syndrome and was unable to work due to her accepted condition.

<sup>3</sup> See *R.C., Order Remanding Case*, Docket No. 19-1386 (issued April 7, 2020); *G.L.*, Docket No. 17-1367 (issued August 17, 2018).

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

contain findings of fact and a statement of reasons.”<sup>5</sup> 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.”<sup>6</sup>

OWCP did not reference nor discuss any of the new medical reports submitted in support of appellant’s timely August 9, 2019 reconsideration request or the additional evidence submitted after the most recent January 8, 2019 merit decision.<sup>7</sup> In its October 22, 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 evidence had not met 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.<sup>8</sup>

Accordingly, the Board will set aside the October 22, 2019 decision and remand the case for OWCP to review the evidence and argument in support of appellant’s reconsideration request and make findings of fact and provide reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8124 (a) and 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it shall issue an appropriate decision.<sup>9</sup>

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<sup>5</sup> 20 C.F.R. § 10.126.

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

<sup>7</sup> *See R.T.*, Docket No. 19-0604 (issued September 13, 2019); *T.M.*, Docket No. 17-1609 (issued December 4, 2017).

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

<sup>9</sup> To preserve appellant’s right to file a timely request for reconsideration, and to afford her the ability to present further evidence or argument to establish her claim, on remand OWCP should consider reviewing the merits of the evidence of record. *See generally E.I.*, Docket No. 18-0634 (issued January 23, 2019).

**IT IS HEREBY ORDERED THAT** the October 22, 2019 nonmerit 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: July 17, 2020  
Washington, DC

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

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

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