

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

_____	)	
<b>R.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1605</b>
	)	<b>Issued: May 28, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Santa Maria, CA, Employer</b>	)	
_____	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**ORDER REMANDING CASE**

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

On July 23, 2019 appellant, through counsel, filed a timely appeal from a June 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> The Clerk of the Appellate Boards docketed the appeal as No. 19-1605.

On January 31, 1998 appellant, then a 30-year-old carrier, filed an occupational disease claim (Form CA-2) attributing her lower back, hip, knee, and ankle pain to sorting and carrying mail. OWCP accepted the claim for right knee medial meniscus tear, left knee lateral meniscus tear, bilateral hips and knee sprain, and greater trochanteric bursitis. Appellant had periods of

---

<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.

<sup>2</sup> The Board notes that, following the June 19, 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.*

intermittent disability before stopping work on July 31, 2004. OWCP paid appellant wage-loss compensation on the periodic rolls for temporary total disability effective August 7, 2005. Appellant returned to modified work for four hours per day on March 16, 2016 and OWCP paid wage-loss compensation on the supplemental rolls commencing that date. On April 6, 2016 appellant reduced her work hours to three hours per day, four days per week.

On January 20, 2017 the employing establishment offered appellant a limited-duty position as a modified city letter carrier. Appellant refused the job offer that day indicating that it did not accommodate her work restrictions.

On April 29, 2017 appellant filed a claim for intermittent compensation (Form CA-7) requesting wage-loss compensation from March 6 through April 28, 2017. The employing establishment advised that work was available within her restrictions for eight hours per day. It requested medical verification for the reduced work hours prior to payment.

In a letter dated May 15, 2017, OWCP informed appellant that the record established that she had declined to accept an offered position. It informed her that under 20 C.F.R. § 10.500(a) compensation or total wage-loss compensation was not payable to claimants who declined an offered position within their work restrictions for the duration of the assignment. OWCP informed appellant that she was expected to accept the position and report for work. It afforded appellant 30 days to report to the assigned position or show that her refusal was justified.

A supplemental rolls payment record dated May 15, 2017 reflects that OWCP authorized payment of intermittent wage-loss compensation for the period March 6 through April 28, 2017.

On July 11, 2017 appellant filed a claim for intermittent wage-loss compensation (Form CA-7) for the period May 1 through June 23, 2017. The employing establishment advised that work was available within her restrictions for eight hours per day. It requested medical verification for the reduced work hours prior to payment.

By decision dated July 24, 2017, OWCP denied appellant's April 29, 2017 claim for intermittent wage-loss compensation for the period March 6 through April 28, 2017.<sup>3</sup> It noted that she had declined an offer of temporary light duty, which it found to be suitable as it accommodated her work restrictions.

On December 20, 2017 counsel requested reconsideration. By decision dated December 28, 2017, OWCP denied reconsideration finding the evidence insufficient to warrant a merit review.

On February 22, 2018 appellant, through counsel, requested reconsideration and submitted a February 9, 2018 report from her treating physician.

On March 20, 2019 OWCP referred appellant for impartial medical examination with Dr. Mitchel Silverman, a Board-certified orthopedic surgeon, to resolve the conflict in the medical

---

<sup>3</sup> Following the July 24, 2017 decision, appellant continued to submit Form CA-7s claiming intermittent compensation.

opinion evidence between a second opinion physician and her treating physician regarding her work restrictions and work capacity. In a May 13, 2019 report, Dr. Silverman concluded that appellant was capable of work eight hours per day with restrictions and opined that the January 20, 2017 modified temporary light-duty job offer was within her work restrictions.

By decision dated June 19, 2019, OWCP denied modification of the July 24, 2017 decision. It noted that the July 24, 2017 decision terminated appellant's wage-loss compensation pursuant to 20 C.F.R. § 10.500(a) as it found the January 20, 2017 modified temporary job offer accommodated her work restrictions. OWCP found that Dr. Silverman's opinion constituted the special weight of the evidence regarding her work restrictions and ability to perform the January 20, 2017 temporary job offer.

Having duly reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision as OWCP, in its June 19, 2019 decision, failed to correctly identify the underlying issue presented in the July 24, 2017 decision, which was the denial of appellant's claim for intermittent wage-loss compensation from March 6 through April 28, 2017.

OWCP's regulation at 20 C.F.R. § 10.500(a) specifically provides that an employee is not entitled to compensation for any wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such light duty was available.

In its July 24, 2017 decision, OWCP denied appellant's claim for intermittent wage-loss compensation for the period March 6 through April 28, 2017. At the time of the July 24, 2017 decision, appellant was not on the periodic rolls for temporary total disability, she filed Form CA-7s claiming wage-loss compensation for intermittent periods of disability for the period March 6 through June 23, 2017, and had been receiving intermittent wage-loss compensation on the supplemental rolls. Furthermore, on May 15, 2017 the record reflects that OWCP authorized payment of intermittent wage-loss compensation for the period March 6 through April 28, 2017.

OWCP phrased the underlying issue as whether it had properly terminated wage-loss compensation under section 10.500(a). As noted above, OWCP did not terminate appellant's wage-loss compensation under section 10.500(a), but instead denied her claim for intermittent wage-loss compensation for the period March 6 through April 28, 2017 because appellant had not accepted the offered temporary position for eight hours of work per day with restrictions.

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make proper findings of fact.<sup>4</sup> Its procedure further specifies that a final decision of OWCP should be clear and detailed so that the reader understands

---

<sup>4</sup> 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

the reasons for the disallowance of the benefit.<sup>5</sup> These requirements are upheld by Board precedent.<sup>6</sup>

Accordingly, the Board will set aside the June 19, 2019 decision and remand the case for OWCP to make findings of facts and provide reasons for its decision pursuant to the standards set forth in 20 C.F.R. §§ 10.500(a) and 10.126. After such further development as OWCP deems necessary it shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the June 19, 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: May 28, 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

---

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>6</sup> See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960); see also *J.N.*, Docket No. 17-1408 (issued December 11, 2017); *R.B.*, Docket No. 16-1696 (issued September 7, 2017).