

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

E.D., Appellant)	
)	
and)	Docket No. 20-0620
)	Issued: November 18, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Monterey Park, CA, Employer)	
)	

Appearances:
Stephen Millard, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 27, 2020 appellant, through his representative, filed a timely appeal from a January 15, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0620.²

This case has previously been before the Board.³ The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

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 Appellant also filed a timely request for oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). Due to the disposition of this case, oral argument is rendered moot.

³ Docket No. 17-0540 (issued July 26, 2017); Docket No. 18-0667 (issued August 1, 2019).

On December 10, 2002 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a bilateral Achilles tendon condition as a result of his federal employment duties, which included delivering mail to business offices and private homes. He noted that he first became aware of his claimed condition on August 1, 2002 and its relationship to his federal employment on December 4, 2002. OWCP accepted the claim for bilateral calcaneus spurs and authorized resection of the fractured bone and multiple bone fragments posterior of the left calcaneus, repair of Achilles tendon of the left ankle, resection of the bone posterior right calcaneus, and repair of Achilles tendon of the right ankle with removal of a calcified bone. The procedures were performed on July 16, 2003 and March 3, 2004.

OWCP subsequently expanded the acceptance of appellant's claim to include bilateral Achilles tendinitis, crushing injury of the ankle and foot, multiple and unspecified open wound of the leg without complications, and bilateral shoulder, upper arm, and rotator cuff sprain and bilateral shoulder impingement syndrome. Appellant underwent authorized right and left shoulder open subacromial decompression with open rotator cuff repair on March 24, 2009 and October 26, 2010, respectively.

On March 25, 2013 appellant returned to modified-duty work as a customer care agent. He stopped work on July 18, 2013 and filed a notice of recurrence (Form CA-2a) alleging that he sustained right knee, left hip, and lower back injuries on that day due to his accepted work-related injuries.⁴

OWCP, by decision dated January 17, 2014, denied appellant's claim for a recurrence of disability commencing July 18, 2013. On February 12, 2014 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received additional medical evidence.

Following an August 8, 2014 telephonic hearing, appellant submitted additional medical evidence.

An OWCP hearing representative, by decision dated October 24, 2014, affirmed the January 17, 2014 recurrence decision, finding that the medical evidence submitted was insufficient to establish that appellant was disabled from work commencing July 2013 due to a material worsening of his accepted work-related conditions.

On July 6, 2015 appellant, through his representative, requested reconsideration and submitted additional medical evidence.

⁴ In an October 8, 2015 decision, OWCP again denied expansion of appellant's claim to include right knee, lower back, and left hip conditions. By decision dated December 16, 2016, it denied his request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a). The Board, by decision dated July 26, 2017, affirmed the December 16, 2016 decision. In a November 13, 2017 decision, OWCP denied appellant's request for reconsideration of the denial of his request to expand the acceptance of his claim as it was untimely filed and failed to demonstrate clear evidence of error. The Board, by decision dated August 1, 2019, affirmed the November 13, 2017 decision. Docket No. 17-0540 (issued July 26, 2017); Docket No. 18-0667 (issued August 1, 2019).

By decision dated October 20, 2015, OWCP denied modification of the October 24, 2014 decision, finding that the medical evidence submitted was insufficient to establish appellant's claim for recurrence of disability.

On October 21, 2019 appellant, through his representative, requested reconsideration of the October 24, 2014 recurrence decision. In a June 26, 2015 statement, the representative contended that appellant was unable to work from July 2013 to January 2014 because the employing establishment failed to accommodate his medical restriction, which required a rest bar to elevate his feet, and resulted in the worsening of his accepted bilateral foot conditions.

In support of his request for reconsideration, appellant submitted medical evidence, including an October 18, 2019 primary treating physician's progress report from Dr. Goldman. Dr. Goldman diagnosed bilateral Achilles tendinitis, right ankle spur, and bilateral shoulder rotator cuff tear. He advised that appellant was unable to work.

Appellant also submitted an August 29, 2019 order from the Equal Employment Opportunity Commission (EEOC) dismissing his request for a hearing with prejudice in light of a July 9, 2019 settlement agreement regarding his complaint against the employing establishment for failing to accommodate his medical requirement of a rest bar for his feet.

By decision dated January 15, 2020, OWCP denied appellant's October 21, 2019 request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted his submission of the August 29, 2019 EEOC order. OWCP, found, however, that appellant did not identify any errors in its October 20, 2015 decision.

The Board, having duly considered the matter, notes that in denying appellant's October 21, 2019 reconsideration request, OWCP provided no discussion of the new medical evidence submitted in support of the reconsideration request by appellant, which addressed his bilateral lower extremity and bilateral shoulder conditions, and disability from work.

Because Board decisions are final with regard to the subject matter appealed,⁵ it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁶ As OWCP did not review the medical evidence, which was of record prior to OWCP's January 15, 2020 decision, the Board finds that this case is not in posture for decision.⁷ On remand OWCP shall review all submitted evidence of record at the time of the January 15, 2020 decision and, following any further development of the medical evidence deemed necessary, it shall issue an appropriate decision.

⁵ 20 C.F.R. § 501.6(d).

⁶ See *B.C.*, Docket No. 15-1222 (issued October 20, 2015); *William A. Couch*, 41 ECAB 548, 553 (1990).

⁷ See *M.N.*, Docket No. 20-0110 (issued July 7, 2020); *Y.B.*, Docket No. 20-0205 (issued July 7, 2020); *H.H.*, Docket No. 14-1985 (issued June 26, 2015).

IT IS HEREBY ORDERED THAT the January 15, 2020 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: November 18, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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