

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

O.O., JR., Appellant	)	
	)	
and	)	<b>Docket No. 20-0142</b>
	)	<b>Issued: September 29, 2020</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Hickory, NC, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Daniel F. Read, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 15, 2019 appellant, through counsel, filed a timely appeal from a July 2, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0142.<sup>2</sup>

On June 6, 1997 appellant, then a 51-year-old distribution clerk, filed an occupational disease claim (Form CA-2) alleging that he injured both shoulders and his left finger due to factors of his federal employment. OWCP accepted the claim for right shoulder adhesive capsulitis, left trigger finger, bilateral rotator cuff sprain/strain, and left brachial neuritis or radiculitis. 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.

<sup>2</sup> The Board notes that, following the July 2, 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 evidence for the first time on appeal. *Id.*

August 10, 2000 OWCP granted appellant a schedule award for 25 percent permanent impairment of his left arm and on January 11, 2005 granted a schedule award for 13 percent permanent impairment of his right upper extremity. It paid appellant wage-loss compensation on the supplemental rolls, commencing November 5, 2003, and on the periodic rolls commencing July 3, 2011.

By notice dated December 15, 2017, OWCP proposed terminating appellant's wage-loss compensation benefits and medical benefits because he no longer had residuals or a disability causally related to his accepted employment-related conditions. It found that the weight of the medical evidence rested with Dr. Joseph Estwanik, a Board-certified orthopedic surgeon and OWCP's second opinion examiner, who indicated that appellant had no objective findings to support further ongoing disability or residuals caused by his employment-related conditions.

By decision dated January 24, 2018, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date. It found that the weight of medical evidence rested with Dr. Estwanik, OWCP's second opinion examiner, who concluded in his July 28 and August 23, 2017 reports that appellant no longer had residuals or a disability due to his accepted bilateral shoulder and left finger conditions.

On February 7, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. The hearing was held on July 10, 2018. By decision dated September 17, 2018, OWCP's hearing representative affirmed the January 24, 2018 decision.

On April 18, 2019 appellant, through counsel, requested reconsideration.

Appellant submitted a series of additional medical evidence, including new medical reports dated November 2016 to February 2018 from Dr. David Cabral, an internal medicine specialist, an undated report from Dr. Karyn Rahn, Board-certified in occupational therapy, and reports by various nurse practitioners from April 2017 to May 2019.

By decision dated July 2, 2019, OWCP denied modification to its September 17, 2018 decision. In its decision, OWCP indicated that the evidence received in support of appellant's reconsideration request included medical reports previously received and a new undated medical report from Dr. Rahn who examined the appellant on August 7, 2018.

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,<sup>3</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its July 2, 2019 decision, OWCP indicated that the only new medical evidence received was an undated medical report by Dr. Rahn who had examined appellant on August 7, 2018. However, appellant additionally submitted new medical reports dated November 2016 to

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<sup>3</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

February 2018 by Dr. Cabral and medical reports by various nurse practitioners dated from April 2017 to May 2019.

It is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.<sup>4</sup> The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its July 2, 2019 decision.<sup>5</sup> On remand OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the July 2, 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: September 29, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>4</sup> See *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 3.

<sup>5</sup> See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).