

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

L.A., Appellant	)	
	)	
and	)	<b>Docket No. 21-0048</b>
	)	<b>Issued: July 19, 2021</b>
DEFENSE HEALTH AGENCY, NATIONAL	)	
CAPITAL REGION MEDICAL	)	
DIRECTORATE, Bethesda, MD, Employer	)	
	)	

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

**ORDER REVERSING CASE**

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

On October 14, 2020 appellant, through counsel, filed a timely appeal from a September 10, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0048.

This case has previously been before the Board.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior decision and prior order are incorporated herein by reference. The relevant facts are as follows.

On September 29, 2015 appellant, a 46-year-old medical technologist, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left wrist injury on July 21, 2015 when using a microscope and manual counter while in the performance of duty. By decision dated

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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> Docket No. 16-1352 (issued August 28, 2017); *Order Remanding Case*, Docket No. 18-0816 (issued May 26, 2020).

December 22, 2015, OWCP denied appellant's claim. On January 19, 2016 appellant requested reconsideration and submitted reports from Dr. Akhil Chhatre, a Board-certified physical medicine and rehabilitation specialist. By decision dated April 13, 2016, OWCP denied modification of its December 22, 2015 decision. On June 14, 2016 appellant appealed OWCP's April 13, 2016 decision to the Board. By decision dated August 28, 2017,<sup>3</sup> the Board affirmed the April 13, 2016 decision.

On November 2, 2017 appellant, through counsel, requested reconsideration and submitted a January 22, 2016 operative note and a series of reports from Dr. Chhatre, as well as other attending physicians. By decision dated January 31, 2018, OWCP denied modification of its prior decisions. It indicated that the evidence submitted on reconsideration consisted of Dr. Chhatre's May 19, 2016 report, which was insufficient to establish appellant's claim.

On March 7, 2018 appellant, through counsel, appealed OWCP's January 31, 2018 decision to the Board. By order dated May 26, 2020,<sup>4</sup> the Board set aside the January 31, 2018 decision and remanded the case to OWCP for further development, noting that OWCP had failed to evaluate all the evidence submitted by appellant upon reconsideration. The Board directed OWCP to issue an appropriate decision after evaluating this evidence.

On remand, OWCP issued a July 7, 2020 "*de novo* decision," denying appellant's traumatic injury claim. In an August 11, 2020 informational letter, it advised appellant that it had failed to provide appeal rights on July 7, 2020 and, therefore, would be issuing a valid final decision with appeal rights. On August 12, 2020 OWCP issued a decision with appeal rights, which denied appellant's traumatic injury claim, noting that the decision superseded the July 7, 2020 "*de novo* decision."

On August 18, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review in connection with the August 12, 2020 decision.

By decision dated September 10, 2020, OWCP denied appellant's hearing request, finding that she had "already previously requested reconsideration" and, therefore, was not, as a matter of right, entitled to a hearing. OWCP then, in its discretion, considered appellant's hearing request and determined that it was further denied because the traumatic injury issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting new evidence.

The Board has held that OWCP has the discretion to grant or deny a hearing request on a claim when the request is made after the 30-day period for requesting a hearing,<sup>5</sup> when the request is for a second hearing on the same issue,<sup>6</sup> and when the request is made after a reconsideration

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<sup>3</sup> *See id.*

<sup>4</sup> *Id.*

<sup>5</sup> *E.R.*, Docket No. 20-1110 (issued December 23, 2020); *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

<sup>6</sup> *D.M.*, Docket No. 19-0686 (issued November 13, 2019); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

request was previously submitted.<sup>7</sup> Section 10.616(a) of OWCP's regulations provides that the claimant seeking a hearing must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.<sup>8</sup>

OWCP asserted that appellant was not entitled to a hearing as a matter of right because she had previously requested reconsideration of the August 12, 2020 decision. The Board finds, however, that appellant had not previously requested reconsideration of the August 12, 2020 decision. Appellant had last requested reconsideration of an improperly issued decision, dated July 7, 2020. Appellant timely filed her hearing request on August 18, 2020, a date less than 30 days after OWCP's August 12, 2020 decision. Therefore, as she filed a valid, timely hearing request, the case must be remanded to OWCP for the holding of a hearing before a representative of OWCP's Branch of Hearings and Review, to be followed by the issuance of a *de novo* merit decision.<sup>9</sup>

**IT IS HEREBY ORDERED THAT** the September 10, 2020 decision of the Office of Workers' Compensation Programs is reversed.

Issued: July 19, 2021  
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

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<sup>7</sup> *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007).

<sup>8</sup> 20 C.F.R. § 10.616(a).

<sup>9</sup> *See id.* *See also supra* note 5.