

Beginning October 24, 2016, appellant's attending physicians, Drs. Ty Endean and Thomas Martens, osteopaths, reported the additional condition of herniated cervical disc.

On September 26, 2019 OWCP referred appellant, a statement of accepted facts, and a list of questions to Dr. Michael A. Steingart, an osteopath and sports medicine specialist, for a second opinion examination regarding her accepted cervical condition.

On October 16, 2019 appellant, through counsel, requested that the acceptance of her claim be expanded to include the additional condition of herniated cervical disc.

By decision dated April 6, 2020, OWCP denied appellant's request to expand her claim to include herniated cervical disc.

On April 7, 2020 appellant, through counsel, requested that the acceptance of appellant's claim be expanded to include the additional conditions of herniated cervical disc at C5-6 and aggravation of her herniated disc at C4-5.

OWCP received Dr. Steingart's November 6, 2019 second opinion report on April 16, 2020. Dr. Steingart diagnosed chronic sprain/strain with central disc herniation at C5-6 with myofascial pain, finding that the conditions were causally related to the accepted employment injury.

In an April 21, 2020 letter, OWCP provided appellant with Dr. Steingart's November 6, 2019 second opinion report and concluded that, "We do not find this report sufficient to overturn the [April 6, 2020] decision on our motion. If you disagree with the [April 6, 2020] decision report, please review the appeal rights attached."

The Board's *Rules of Procedure* provide that the Board has jurisdiction to consider and decide appeals from the final decision of OWCP in any case arising under FECA. In considering whether a document constitutes a final decision, it is not the form, but the content and the intention of OWCP that is determinative.²

The April 21, 2020 letter notes review of Dr. Steingart's November 6, 2019 report by OWCP. It attached a copy of his report, but did not make findings regarding his conclusions and diagnoses.

The April 21, 2020 letter made an adverse finding with respect to appellant's request for expansion of her claim and there is no indication that the finding was interlocutory or otherwise pending further development. Accordingly, the Board finds that the April 21, 2020 letter constitutes a final decision on the merits of appellant's claim for expansion of her accepted conditions and is, therefore, an appealable decision pursuant to 20 C.F.R. §§ 501.2(c) and 502.3(a).

² See *Henry F. Dyer*, Docket No. 05-452 (issued May 13, 2005) (the Board held that a July 22, 2004 letter with no appeal rights attached constituted a final decision. The letter noted that the medical evidence established 32 percent binaural hearing loss, but that appellant had previously received schedule awards for 53 percent binaural hearing loss and "there is not an increased hearing impairment documented at this time)." *Ralph Edmond Zollars*, 5 ECAB 617, 618 (1953) and the cases cited therein.

Section 8124(a) of the Federal Employees' Compensation Act (FECA) and section 10.126 of the implementing regulations³ require that final decisions of OWCP contain findings of fact and a statement of reasons. A decision denying a claim should contain a correct description of the basis for the denial in order that the parties of interest have a clear understanding of the precise defect of the claim and the kind of evidence which would overcome it.⁴ The Board finds that OWCP's April 21, 2020 decision was incomplete as it did not contain findings regarding the medical evidence from Dr. Steingart, nor did it provide a statement of reasons as to why it determined that his report was not entitled to be accorded weight or probative value as it was based on a proper factual background and a physical examination. Appellant was, therefore, not apprised of the deficiencies OWCP had found in Dr. Steingart's second opinion report. Because the April 21, 2020 decision does not explain the basis for the denial of expansion of her claim to include cervical herniated disc at C5-6 as diagnosed by him or the findings of fact reached therein, the Board finds that OWCP has not fulfilled its responsibility under section 8124 of FECA and section 10.126 of its implementing regulations in regard to her formal request for expansion of the acceptance of her claim to include additional diagnosed conditions.

Accordingly, the case must be remanded to OWCP for a proper decision, which includes findings of fact and a clear and precise statement regarding appellant's request for expansion of her accepted conditions. Following further development as OWCP deems necessary, it shall issue a *de novo* decision.⁵

³ 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126, respectively.

⁴ *K.K.*, Docket No. 19-0652 (issued September 19, 2019); *L.R.*, Docket No. 15-0235 (issued December 21, 2015); *Patrick Michael Duffy*, 43 ECAB 280 (1991).

⁵ Consequently, in view of the Board disposition of the April 21, 2020 decision, the Board will not address the April 6, 2020 decision.

IT IS HEREBY ORDERED THAT the April 21, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: June 16, 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