

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

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**A.W., Appellant** )

**and** )

**U.S. POSTAL SERVICE, LOS ANGELES BULK )  
MAIL CENTER, Los Angeles, CA, Employer** )  
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**Docket No. 19-1615  
Issued: March 30, 2021**

*Appearances:*

*Daniel M. Goodkin, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:

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

On July 25, 2019 appellant, through counsel, filed a timely appeal from an April 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> The Clerk of the Appellate Boards assigned the appeal Docket No. 19-1615.

On March 23, 2007 appellant, then a 35-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained stomach and lower back injuries when a coworker pushed an over-the-road-container (OTR) full of sacks into the employing establishment where she was standing while in the performance of duty. She did not stop work.

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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 April 8, 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.*

OWCP assigned File No. xxxxxx340, accepted the claim for minor lumbar strain and abdominal contusion, and closed the case effective June 21, 2007.

On June 27, 2014 appellant filed a Form CA-1 alleging that on June 26, 2014 she sustained left-sided shoulder and neck injuries while attempting to unhook an OTR which was stuck. She stated that she felt pain shooting up her left arm to her neck and shoulders when pulling on the OTR. OWCP accepted the claim for neck sprain and left shoulder impingement syndrome. It paid appellant wage-loss compensation on the supplemental rolls from August 11, 2014 to February 7, 2015 and on the periodic rolls commencing February 8, 2015. OWCP assigned File No. xxxxxx935.

A September 17, 2014 statement of accepted facts (SOAF) noted that OWCP accepted appellant's June 26, 2014 traumatic injury claim, under File No. xxxxxx935, for neck sprain and that she had not returned to work since June 26, 2014. The SOAF did not note acceptance of appellant's left shoulder impingement syndrome or appellant's prior claim accepted under OWCP File No. xxxxxx340.

On March 2, 2017 OWCP referred appellant to Dr. Joon Y. Koh, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the extent of her employment injury, work capacity, and treatment recommendations. In an April 20, 2017 report, Dr. Koh, diagnosed chronic cervical strain without radiculopathy and mild left shoulder impingement and noted appellant had no prior injuries. He provided work restrictions, based on her cervical and left shoulder conditions, which included no reaching above her left shoulder and no lifting more than 20 pounds up to eight hours per day. Dr. Koh did not examine appellant's lower back or address her lower back pain as he explained that it was excluded from his examination.

OWCP referred appellant to Amy Koellner, a rehabilitation counselor, for vocational rehabilitation services. On July 18, 2017 Ms. Koellner identified the position of customer complaint clerk, Department of Labor, *Dictionary of Occupational Titles* (DOT) No. 241.367-014 as suitable to appellant's work experience, physical restrictions, and education.

A memorandum of record related that appellant attended a vocational rehabilitation orientation on July 28, 2017. After appellant went to her car to retrieve medication, she fell asleep in the class room, and refused to participate during the orientation.

In a letter dated August 2, 2017, OWCP advised appellant of its determination that she had failed to participate in vocational rehabilitation services. It informed her that, pursuant to 5 U.S.C. § 8113 (b), an individual who refuses or impedes a vocational rehabilitation effort without good cause could have her compensation reduced based on what would have been her wage-earning capacity had the vocational process been successfully completed. OWCP further advised appellant that she had 30 days in which to contact her rehabilitation counselor and resume the training. Appellant did not respond.

By decision dated April 9, 2018, OWCP reduced appellant's compensation, effective April 16, 2018 under 5 U.S.C. § 8113(b) to reflect her loss of wage-earning capacity had she continued to participate in vocational rehabilitation efforts. It determined that she had failed, without good cause, to undergo vocational rehabilitation as directed. With respect to her wage-

earning capacity, OWCP further found that, if appellant had participated in good faith in vocational rehabilitation, she would have been able to perform the position of customer complaint clerk and it reduced her compensation based on her ability to earn wages in this position.

On January 8, 2019 appellant, through counsel, requested reconsideration. Counsel asserted that OWCP could not rely on Dr. Koh's opinion regarding appellant's work capacity as the physician did not consider her preexisting lumbar condition when providing work restrictions.

By decision dated April 8, 2019, OWCP denied modification of its April 9, 2018 decision.

The Board has duly considered the matter and finds that OWCP has not met its burden of proof to reduce appellant's compensation, effective April 16, 2018, pursuant to 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519 for failure to cooperate with vocational rehabilitation without good cause.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.<sup>3</sup> OWCP's procedures dictate that when an OWCP medical adviser, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.<sup>4</sup>

OWCP did not provide Dr. Koh with an accurate SOAF as it did not list all of appellant's accepted claims or provide an accurate list of the accepted conditions. As a result, Dr. Koh did not evaluate appellant's lumbar spine, to determine if appellant had any restrictions regarding work or attendance at vocational rehabilitation training due to a back condition. His findings in his report were not based on an accurate factual framework and on a complete physical examination. As his report initiated the vocational rehabilitation process, the Board finds that Dr. Koh's report was an insufficient basis for the reduction of appellant's wage-loss compensation under 5 U.S.C. § 8113(b) based upon her wage-earning capacity had she continued to participate in vocational rehabilitation efforts.<sup>5</sup> Accordingly,

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<sup>3</sup> *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

<sup>5</sup> *Id.*; *G.C.*, Docket No 18-0842 (issued December 20, 2018).

**IT IS HEREBY ORDERED THAT** the April 8, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: March 30, 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