

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

C.D., Appellant	)	
	)	
and	)	<b>Docket No. 20-0168</b>
	)	<b>Issued: March 5, 2021</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>TRANSPORTATION SECURITY</b>	)	
<b>ADMINISTRATION, Newark, NJ, Employer</b>	)	
	)	

*Appearances:*  
Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On October 29, 2019 appellant, through counsel, filed a timely appeal from a May 20, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0168.

On August 18, 2016 appellant, then a 54-year-old transportation security officer, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury to her knees, hips, ankles, feet, and lower back due to factors of her federal employment, including lifting up to 70 pounds, twisting, bending, squatting, walking, and standing. She noted that she first became aware of her claimed conditions on March 1, 2015 and realized their relation to her employment on July 5, 2016. Appellant stopped work on July 27, 2016.

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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.

By decision dated December 5, 2016, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted factors of her federal employment.

On December 13, 2016 appellant, through counsel, requested an oral hearing before a representative of the Branch of Hearings and Review. A video hearing was held on March 1, 2017. By decision dated April 4, 2017, OWCP's hearing representative affirmed the December 5, 2016 decision.

On September 28, 2017 appellant, through counsel, filed a timely appeal with the Board. By decision dated November 6, 2018,<sup>2</sup> the Board affirmed the April 4, 2017 hearing decision finding that appellant had not met her burden of proof to establish a medical condition causally related to the accepted factors of her federal employment.

OWCP continued to receive additional medical evidence following the April 4, 2017 decision. The additional medical evidence included reports dated March 15, May 4, July 18, and August 3, 2017 from Dr. Mark A. P. Filippone, a Board-certified physiatrist.

OWCP also received reports dated September 12, 19, November 7, 21, 2017, May 15, and June 26, 2018 from Dr. Jahna Levy, Board-certified in physical medicine and rehabilitation. Treatment notes dated September 15, October 31, and December 12, 2017, January 19, and May 29, 2018 were also received from Dr. Neil Sinha, a specialist in pain management.

Minesh Patel, a physician assistant, also submitted reports dated October 3, 2017, April 30, 2018.

Progress reports were also received from Dr. Dipan Patel, a Board-certified anesthesiologist, dated August 21, 2017 and March 15, 2018.

On February 19, 2019 appellant, through counsel, requested reconsideration and submitted additional evidence.

In a January 10, 2019 report, Dr. Filippone noted appellant's history of injury and preexisting conditions. He opined that her work as a transportation security officer and a fall off of a chair in June 2014, aggravated her previously damaged right foot and ankle, both knees, and left hip.

By decision dated May 20, 2019, OWCP denied modification of its prior decision. It noted that the evidence on reconsideration consisted only of the January 10, 2019 report from Dr. Filippone.

The Board, having duly considered the matter finds that OWCP did not discuss medical evidence submitted in support of appellant's claim. Thus, the Board finds that this case is not in posture for decision.

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<sup>2</sup> Docket No. 17-2011 (issued November 6, 2018).

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.

While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that medical reports were not reviewed by OWCP in its May 20, 2019 decision.<sup>4</sup> OWCP only reviewed the January 10, 2019 report for Dr. Filippone. It provided no discussion of the numerous other medical reports submitted to the record following OWCP's April 4, 2017 decision.<sup>5</sup>

As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.<sup>6</sup> OWCP did not consider medical reports received following the April 4, 2017 decision and prior to the May 20, 2019 decision, the Board cannot review such evidence for the first time on appeal.<sup>7</sup>

For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.<sup>8</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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<sup>3</sup> 41 ECAB 548 (1990).

<sup>4</sup> See *T.G.*, Docket No. 19-1930 (issued January 8, 2021).

<sup>5</sup> The Board notes that it is unnecessary consider the evidence appellant submitted prior to the issuance of OWCP's April 4, 2017 merit decision because the Board considered that evidence in its November 6, 2018 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA. *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

<sup>6</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>7</sup> 20 C.F.R. § 501.2(c). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

<sup>8</sup> *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

**IT IS HEREBY ORDERED THAT** the May 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with the decision of the Board.

Issued: March 5, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board