

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

C.C., Appellant)	
)	
and)	Docket No. 20-1323
)	Issued: March 2, 2021
SOCIAL SECURITY ADMINISTRATION,)	
Albuquerque, NM, Employer)	
)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

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

On June 23, 2020 appellant, through counsel, filed a timely appeal from an April 28, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 20-1323.³

¹ 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.

² Counsel did not appeal from OWCP's January 15, 2020 merit decision. Therefore, it is not properly before the Board on this appeal. *See* 20 C.F.R. § 501.3.

³ The Board notes that, following the April 28, 2020 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.*

On May 18, 1994 appellant, then a 28-year-old contact representative, filed a traumatic injury claim (Form CA-1) alleging that on that date, she slipped on the restroom floor, hit her left arm, and landed on her tail bone, while in the performance of duty. OWCP assigned this claim File No. xxxxxx445 and accepted it for lumbar sprain, right knee and leg sprain, left wrist sprain, recurrent dislocation of the left forearm, tear of the medial meniscus of the right knee and lumbosacral spondylosis, without myelopathy.⁴

Appellant stopped work on May 18, 1994, was referred to vocational rehabilitation by OWCP on August 31, 1995, started classes, but was unable to complete the program due to nonwork-related issues. She subsequently was able to secure employment on her own. Appellant stopped work again on August 24, 2005, was released to return to limited-duty work on October 5, 2005, but did not return. The record reflects that OWCP initially paid appellant intermittent wage-loss compensation on the supplemental rolls and then on the periodic rolls, as June 16, 2002.

Appellant's treating physician, Dr. Kira A. Paisley, a Board-certified family practitioner, continued to submit medical reports to OWCP. In a report dated September 24, 2019, she related that appellant was seen for lumbosacral spondylosis, without myelopathy, which caused pain and limited her ability to sit, stand for long periods of time, or walk for more than a few blocks; sprain and strain of the lumbosacral joint/ligament; tear of the medial meniscus of the knee which was chronic and likely to deteriorate; chronic left wrist sprain which was not likely to improve; and recurrent joint dislocation of the forearm.

OWCP referred appellant to Dr. Adam J. Farber, Board-certified in sports medicine and orthopedic surgery for a second opinion examination. In a report dated November 8, 2019, Dr. Farber related that appellant's accepted employment-related conditions included lumbar, right knee, and left wrist sprains; as well as lumbosacral spondylosis; and status post right knee partial medial and lateral meniscectomy and chondroplasty. He concluded that appellant's lumbar, right knee and left wrist sprains had resolved. Dr. Farber also noted that appellant appeared to be suffering residual symptoms related to the accepted diagnosis of lumbar spondylosis, based upon her pain complaints as well as x-ray and magnetic resonance imaging scan findings. He further noted that appellant's lumbar spine pathology did not require work restrictions, because appellant's treating orthopedic surgeon had not provided work restrictions when he last saw her on December 15, 2014. In a supplemental report dated November 22, 2019, Dr. Farber repeated his previous conclusions.

By decision dated January 15, 2020, OWCP terminated appellant's wage-loss compensation effective that date. It relied upon the report of the second opinion physician, Dr. Farber. OWCP found that the reports from the treating physician, Dr. Paisley, did not provide a clear and well-reasoned explanation, supported by objective findings, as to how the accepted

⁴ The statements of accepted facts (SOAF) dated June 6, 2005, January 23, 2006, February 28, 2011, and November 25, 2014 described a prior OWCP claim pertaining to a motor vehicle accident on August 20, 1991, which OWCP accepted for exacerbation of a preexisting fibromyalgia condition. In the SOAFs, OWCP related that appellant remained off work until November 1991, when she returned to her regular duties part time, four hours per day, five days per week, taking intermittent sick leave. Appellant stopped work again in June 1992 and then returned to sedentary duties of a contact representative/tele-service representative. The record does not identify an OWCP file number associated with this claim and no other evidence is available regarding this claim.

conditions disabled appellant from performing her date-of-injury position. It explained that the reports from Dr. Paisley did not explain how the accepted conditions of lumbar sprain, right knee sprain, and left wrist sprain had not resolved within six months.

OWCP received additional evidence including February 14, and March 10, 2020, reports from Dr. Paisley, a February 17, 2020 request for medical equipment related to appellant's LS-S1 spondylosis for pain management from Dr. A. Paterson, a Board-certified orthopedic surgeon, and physical therapy notes dating from December 4, 2019 to January 30, 2020.

On April 20, 2020 appellant, through counsel, requested reconsideration. Counsel argued that the report from Dr. Farber suggested that he was under the impression that the claim was only approved for lumbar sprain, right wrist sprain, and left wrist sprain. He argued that Dr. Farber failed to fully address the approved condition of lumbosacral spondylosis, and his report therefore was of limited probative value. Counsel argued that the January 15, 2020 decision should be vacated and appellant's benefits restored.

By decision dated April 28, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

The Board finds that this case is not in posture for decision.

Section 8124(a) of FECA provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation. Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons. As well, OWCP's procedures provide that the reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁵

In the April 28, 2020 decision, OWCP did not reference or discuss the argument and evidence submitted after the January 15, 2020 merit decision.⁶ Appellant's counsel had alleged that the reports from the second opinion physician, Dr. Farber had not fully addressed all of the accepted conditions. Furthermore, the Board notes that OWCP had received additional medical reports following January 15, 2020 decision, including additional medical reports from appellant's treating physician, Dr. Paisley dated February 14 and March 10, 2020. As such, OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition so that appellant could understand the basis for the decision, *i.e.*, why the argument and evidence had not met any of the requirements of 20 C.F.R. § 10.606(b)(3), to require OWCP to reopen the case for review of the merits of the claim.⁷ This case must therefore be remanded to OWCP for an appropriate decision on appellant's reconsideration request that describes the

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁶ *See B.S.*, Docket No. 20-1008 (issued November 13, 2020); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *T.M.*, Docket No. 17-1609 (issued December 4, 2017).

⁷ *See J.J.*, Docket No. 11-1958 (issued June 27, 2012).

evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.

IT IS HEREBY ORDERED THAT the April 28, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 2, 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