

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

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<b>J.C., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1360</b>
	)	<b>Issued: March 12, 2021</b>
	)	
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Williamsville, NY, Employer</b>	)	

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

**ORDER REMANDING CASE**

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

On July 1, 2020 appellant, through a representative, filed a timely appeal from a January 9, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1360.

On August 14, 2018 appellant, then a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2018 she sustained a right hip/buttocks strain from unloading a parcel from the rear of a postal vehicle onto a dolly.<sup>2</sup> (RD 8/16/2018) Appellant stopped work on August 13, 2018.

In support of her claim appellant submitted medical evidence including disability notes dated August 13, 16, and September 4, 2018, from Kristin Murchison, a physician assistant and

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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> OWCP assigned the claim File No. xxxxxx833.

Lisa Ann Feitshans, a nurse practitioner. Also submitted were emergency department notes and discharge summary dated August 13, 2018, and a September 4, 2018 duty status report (Form CA-17), bearing an illegible signature.

On August 14 2018 the employing establishment executed an authorization for examination and/or treatment (Form CA-16). The Form CA-16 listed the date of injury as August 11, 2018 and noted appellant's alleged injuries to her right hip/buttocks.

In a September 14, 2018 development letter, OWCP indicated that when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work and payment of a limited amount of medical expenses was administratively approved. It explained that it had reopened the claim for consideration because she had not returned to work in a full-time capacity. OWCP requested that appellant submit additional factual and medical evidence in support of her claim and provided a questionnaire for her completion. Appellant was provided 30 days to submit the requested evidence.

OWCP subsequently received an August 16, 2018 report and progress notes dated September 24 and October 9, 2018 from Ms. Feitshans diagnosing lumbago concurrent with right-sided sciatica, and a September 24, 2018 Form CA-17 from Dr. Manju Ceylony, a Board-certified internist, releasing appellant to return to work on September 26, 2018.

By decision dated October 24, 2018, OWCP denied appellant's traumatic injury claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

Following the denial of her claim, OWCP received additional medical evidence from Kristen Latona-Brezinski, a chiropractor, including duty status reports (Form CA-17) dated October 22, November 2, 16, and 30 2018, progress reports covering the period October 22, 2018 to January 18, 2019, and limited-duty work certification forms dated December 19 and, 28, 2018. OWCP also received an October 22, 2018 x-ray report from Dr. Maria Komissarova, Board-certified in diagnostic radiology, and an April 17, 2019 report from Dr. Dr. Andrea Wong, Board-certified in anesthesiology and pain medicine.

On May 9, 2019 OWCP received a letter from appellant dated May 2, 2019, in which she "appealed" the denial of her claim under OWCP File No. xxxxxx833. The letter was addressed to OWCP and OWCP labeled the request in its iFECS record as a reconsideration request. Along with appellant's letter, OWCP received additional medical evidence, including x-ray and magnetic resonance imaging reports dated January 7, 2019, and additional progress reports from chiropractor Latona-Brezinski.

On January 8, 2020 OWCP received a letter from appellant requesting the status of her request for reconsideration, which was received by OWCP on May 8, 2019.

By decision dated January 9, 2020, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It noted that medical evidence was received on May 9, 2019; however, no request for reconsideration was received until January 8, 2020.

The Board has duly considered this matter and finds that OWCP improperly determined that appellant's request for reconsideration was untimely filed.<sup>3</sup>

The case record contains a letter dated May 2, 2019 and received by OWCP on May 9, 2019. In the letter, appellant appealed the rejection of her claim. Appellant also identified the proper OWCP claim number and explicitly noted that she was appealing the denial of her claim. With her May 2, 2019 letter, appellant submitted medical evidence in support of her claim. Accordingly, the Board finds that her May 2, 2019 letter, received by OWCP on May 9, 2019, constituted a request for reconsideration of OWCP's October 24, 2018 merit decision.<sup>4</sup>

As the May 9, 2019 request for reconsideration was received within one year of OWCP's October 24, 2018 merit decision,<sup>5</sup> it was timely filed.<sup>6</sup> Therefore, OWCP should have applied the standard applicable to timely reconsideration requests as set forth in 20 C.F.R. § 10.606(b)(3), rather than the more stringent clear evidence of error standard for untimely reconsideration requests set forth in 20 C.F.R. § 10.607(a). Because it erroneously reviewed the evidence submitted in support of appellant's reconsideration request under the more stringent clear evidence of error standard which applies to untimely filed reconsideration requests, the Board will remand the case for review of this evidence under the proper standard of review for timely reconsideration requests.<sup>7</sup>

Thus, the Board finds that this case must be remanded for proper adjudication and application of the appropriate standard of review, to be followed by an appropriate decision.<sup>8</sup> Accordingly,

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<sup>3</sup> *I.A.*, Docket No. 19-1910 (issued September 29, 2020); *Order Remanding Case, D.F.*, Docket No. 20-0267 (issued June 29, 2020); *E.S.*, Docket No. 17-0698 (issued July 14, 2017).

<sup>4</sup> *T.L.*, Docket No. 19-1110 (issued August 11, 2020); *R.D.*, Docket No. 14-0896 (issued August 1, 2014); *C.M.*, Docket No. 11-1988 (issued June 6, 2012).

<sup>5</sup> *R.T.*, Docket No. 20-0298 (issued August 6, 2020); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (February 2016).

<sup>6</sup> *J.H.*, Docket No. 18-1367 (issued July 17, 2019); *R.M.*, Docket No. 17-0473 (issued June 6, 2017); *C.B.*, Docket No. 13-1732 (issued January 28, 2014).

<sup>7</sup> *Order Remanding Case, L.N.*, Docket No. 19-0170 (issued August 21, 2019).

<sup>8</sup> The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**IT IS HEREBY ORDERED THAT** the January 9, 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.<sup>9</sup>

Issued: March 12, 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

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<sup>9</sup> The Board notes that, following appellant's July 1, 2020 appeal to the Board, by decision dated September 11 2020, OWCP reviewed appellant's letter received on May 9, 2019, conducted a merit review and denied modification. The Board and OWCP may not exercise simultaneous jurisdiction over the same issues in a case on appeal. 20 C.F.R. § 501.2(c)(3). Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue(s) on appeal until after the Board relinquishes jurisdiction. *Id.* Therefore, the subsequent decision of OWCP dated September 11, 2020 is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See* 20 C.F.R. § 10.626; *see also M.J.*, Docket No. 20-1067 (issued December 23, 2020); *A.C.*, Docket No. 18-1730 (issued July 23, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).