

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

\_\_\_\_\_  
**J.N., Appellant**

**and**

**DEPARTMENT OF JUSTICE, DRUG  
ENFORCEMENT ADMINISTRATION,  
New York, NY, Employer**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 21-0086  
Issued: May 17, 2021**

*Appearances:*

*Alan J. Shapiro, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 28, 2020 appellant, through counsel, filed a timely appeal from an August 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0086.

This case has previously been before the Board.<sup>2</sup> The facts and circumstances of the case as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On March 11, 2019 appellant, then a 46-year-old special agent/criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2019 he strained the lumbar

---

<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> Docket No. 19-1847 (issued April 30, 2020).

region of his back and experienced pain when he stood up from his desk and picked up a heavy case file while in the performance of duty.

Under OWCP File No. xxxxxx508, appellant had previously filed a Form CA-1 on September 7, 2004 alleging that on September 3, 2004 he injured his neck, back, shoulders, and right leg when he was rear ended while operating a government vehicle while in the performance of duty. OWCP accepted the claim for a neck sprain and strain, and cervical subluxation. It additionally accepted appellant's November 2, 2005 recurrence claim.

Under OWCP File No. xxxxxx533, appellant had also previously filed a Form CA-1 on June 4, 2012 alleging that on May 31, 2012 he injured his back when he was exercising in the employing establishment gym while in the performance of duty. OWCP accepted appellant's claim for an aggravation of a preexisting L3-L4 disc annular tear.

In a development letter dated May 2, 2019, OWCP informed appellant that additional evidence was needed in support of his claim. It advised appellant of the type of factual and medical evidence needed to establish his claim and attached a questionnaire for his completion. OWCP provided appellant 30 days to submit the requested evidence.

By decision dated June 12, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed cervical and lumbar conditions and the accepted February 6, 2019 employment incident.

On July 19, 2019 appellant requested reconsideration. By decision dated July 25, 2019, OWCP denied modification of its June 12, 2019 decision.

On September 3, 2019 appellant, through counsel, appealed OWCP's decision to the Board.

An October 1, 2019 medical report by Dr. Seung Kim, Board-certified in physical medicine and rehabilitation, submitted under OWCP File No. xxxxxx533 indicated that appellant complained of severe neck pain that radiated down his arms and caused numbness and tingling in his arms and hands. Dr. Kim indicated that appellant related that he was involved in a work-related motor vehicle accident on May 31, 2012, where he injured his neck and low back. He further indicated that appellant's cervical spine magnetic resonance imaging (MRI) scan revealed disc herniations. Dr. Kim conducted a physical examination, which revealed tenderness, muscle spasm, and a limited range of motion in the cervical paraspinal muscles and tenderness and muscle spasm in the trapezius muscles. It additionally revealed a positive Spurling maneuver and a decreased deep tendon reflex in the left biceps. Dr. Kim provided electromyography/nerve conduction velocity (EMG/NCV) diagnostic imaging for appellant's upper extremities and paraspinal muscles of the cervical spine and indicated that the electrodiagnostic studies revealed evidence of bilateral cervical radiculopathy of mid-cervical levels.

By order dated April 30, 2020, the Board set aside the July 25, 2019 decision and remanded the case to OWCP to administratively combine OWCP File Nos. xxxxxx508, xxxxxx533, and xxxxxx621 and issue a *de novo* decision.<sup>3</sup>

Upon return of the case record OWCP administratively combined OWCP File Nos. xxxxxx508, xxxxxx533, and xxxxxx621, with the latter serving as the master file.

By decision dated August 19, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed cervical and lumbar conditions and the accepted February 6, 2019 employment incident. It found that the relevant evidence from OWCP File No. xxxxxx533 consisted of medical reports and notes from Dr. Elizabeth Nguyen, Board-certified in physical medicine, and Dr. David Matusz, a Board-certified orthopedic spine surgeon. OWCP however, did not reference the October 1, 2019 medical report by Dr. Kim.

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,<sup>4</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 the October 1, 2019 medical report by Dr. Kim was not referenced or reviewed by OWCP in its August 19, 2020 decision.<sup>5</sup> OWCP's August 19, 2020 decision indicated that the relevant evidence from OWCP File No. xxxxxx533 consisted of medical reports and notes from Dr. Nguyen and Dr. Matusz. It did not mention the October 1, 2019 medical report from Dr. Kim.

It is crucial that OWCP address all evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.<sup>6</sup> The Board finds that this case is not in posture for decision as OWCP did not review the above-noted evidence in its August 19, 2020 decision.<sup>7</sup> On remand OWCP shall review all evidence of record and following any further development as it deems necessary, it shall issue an appropriate decision.

---

<sup>3</sup> *Id.*

<sup>4</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>5</sup> *See C.D.*, Docket No. 20-0168 (issued March 5, 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 4.

<sup>7</sup> *See V.C.*, Docket No. 16-0694 (issued August 19, 2016).

**IT IS HEREBY ORDERED THAT** the August 19, 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: May 17, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board