

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

M.K., Appellant)	
)	
and)	Docket No. 22-1093
)	Issued: December 7, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Woodbury, NY, Employer)	
)	

Appearances:
Thomas S. Harkins, 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, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 8, 2022 appellant, through counsel, filed a timely appeal from a February 2, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-1093.

On October 15, 2019 appellant, then a 57-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an injury as a result of her federal employment duties. She noted that she first became aware of her condition on March 28, 2019 and, realized its relationship to her federal employment on September 25, 2019. Appellant stopped work following her claimed injury. On December 9, 2020 OWCP accepted the claim for disorder of ligament, left foot (plantar plate tear of the left second metatarsophalangeal (MTP) joint). It paid appellant wage-loss compensation on the supplemental rolls from September 25, 2019 until November 5, 2021, and then again commencing January 22, 2022.

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.

On December 13, 2021 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work during the period November 6 through December 3, 2021.

On January 26, 2022 appellant filed additional Form CA-7 claims for compensation for intermittent disability from work for during the period December 4, 2021 through January 1, 2022. By decision dated February 2, 2022, OWCP denied appellant's claim for compensation for disability from work "commencing January 1, 2021," finding that the medical evidence of record was insufficient to establish that her claimed disability was causally related to her accepted employment condition of left foot ligament disorder. It further found that, "There is no medical evidence to support ... your need for the unauthorized surgery."

The Board, having duly considered the matter, 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.² OWCP's 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.³

In its February 2, 2022 decision, OWCP denied appellant's Form CA-7 claims for intermittent disability "commencing January 1, 2021." However, appellant filed Form CA-7 claims for intermittent disability commencing November 6, 2021 through January 1, 2022. OWCP neither addressed the period of intermittent disability claimed by appellant, nor did it analyze any of the medical evidence appellant submitted in support of her claim. Similarly, it found that surgery was not warranted without analyzing any of the medical evidence that appellant submitted. In both instances, OWCP failed to provide adequate facts and findings to support its denial of appellant's claims. It, therefore, summarily denied appellant's claims without complying with the review requirements of FECA and its implementing regulations.⁴

The Board finds that OWCP, in its February 2, 2022 decision, 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.⁵ The Board will therefore set aside OWCP's February 2, 2022 decision. The case shall be remanded to OWCP for such other further development as deemed necessary, to be followed by a *de novo* decision which contains

² 5 U.S.C. § 8124 (a).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013); *see also Order Remanding Case, D.M.*, Docket No. 22-0329 (issued July 1, 2022).

⁴ *See Order Remanding Case, T.B.*, Docket No. 22-0360 (issued October 27, 2022); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); *Order Remanding Case, T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607(b).

⁵ 20 C.F.R. § 10.126.

findings of fact and a clear and precise statement regarding the denial of appellant's disability claims and request for authorization for surgery. Accordingly,

IT IS HEREBY ORDERED THAT the February 2, 2022 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: December 7, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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