

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

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M.C., Appellant)	
)	
and)	Docket No. 21-1153
)	Issued: February 14, 2022
DEPARTMENT OF DEFENSE, DEFENSE COMMISSARY AGENCY, ARNOLD AIR FORCE BASE, TN, Employer)	
)	

Appearances:
Victor A. Walker, 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 July 23, 2021 appellant, through his representative, filed a timely appeal from a June 3, 2021 merit decision of the Office of Workers’ Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-1153.

On July 12, 2018 appellant, then a 30-year-old meat cutter helper, filed a traumatic injury claim (Form CA-1) alleging that on June 13, 2018 he cut his right hand index finger on the blade of a boneless saw which became infected while in the performance of duty. He stopped work on July 12, 2018 and has not returned. OWCP assigned the claim OWCP File No. xxxxxx310. On September 21, 2018 it accepted laceration and bacterial skin infection of the right index finger. On October 19, 2018 OWCP expanded the acceptance of the claim to include boutonniere deformity of the right finger. It paid appellant wage-loss compensation on the supplemental rolls, effective September 2, 2018. On February 12, 2019 appellant underwent authorized extensor

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.

tendon repair of the right index finger. He underwent OWCP-authorized removal of hardware from the right index finger on June 4, 2019.²

On September 13, 2019 OWCP obtained a second opinion medical report from Dr. Stanley Askin, a Board-certified orthopedic surgeon regarding appellant's residuals and ability to return to work. Dr. Askin opined that the accepted June 13, 2018 employment injury had caused arthrofibrosis of the right index digit, proximal interphalangeal joint. He further opined that the accepted conditions of boutonniere deformity and bacterial skin infection of the right index finger had not resolved. In a work capacity evaluation (Form OWCP-5c) dated September 13, 2019, Dr. Askin opined that appellant was unable to perform his usual job, however, he advised that appellant could work eight hours per day with restrictions which included pushing, pulling, lifting, squatting, kneeling, and climbing up to 50 pounds, and no forceful gripping and grasping with his right index finger.

On February 4, 2020 OWCP authorized right index proximal interphalangeal joint surgery. On February 27, 2020 it expanded the acceptance of appellant's claim to include athrofibrosis of the right index proximal interphalangeal joint.

On May 15, 2020 based on Dr. Askin's September 13, 2019 restrictions, the employing establishment offered appellant a full-time, temporary modified sales store checker position, which included customer service and cashier duties. Appellant was required to adhere to his physician's 20-pound lifting restriction.

The employing establishment subsequently revised its May 15, 2020 job offer to reflect new work hours and the physical requirements of limited forceful gripping and grasping with the right index finger.

By letter dated June 17, 2020, OWCP informed the employing establishment that the offered position was not suitable because the medical evidence of record established that appellant remained unable to perform forceful gripping and grasping with his right index finger. It advised that he was right-hand dominant and requested that the employing establishment clarify whether he would be required to grip and grasp with his right index finger.

In responses dated June 17 and 25, and August 18, 2020, the employing establishment noted that following appellant's employment-related back injury he was released to return to full-duty work in June 2019 and was later placed back on restrictions in August 2019. Appellant was in the process of being assigned the sales store checker position, but on the same day that he was to report to the assignment, he filed the present claim under OWCP File No. xxxxxx310 for his June 13, 2018 right index finger injury.

On September 14, 2020 Dr. Askin reviewed a description of the offered sales store checker position and opined that appellant could perform the duties of the position.

² Appellant previously filed a claim for a May 31, 2017 traumatic injury under OWCP File No. xxxxxx005. OWCP accepted that claim for a aggravation of intervertebral disc disorder, lumbar region. Appellant's claims have not been administratively combined.

A supplemental rolls payment record dated October 9, 2020 reflects that OWCP authorized payment of wage-loss compensation for the period September 13 through 26, 2020.

On October 12, 2020 appellant filed a claim for compensation (Form CA-7) for disability during the period September 27 to October 10, 2020.

In a letter dated October 14, 2020, OWCP informed appellant that the record established that he had declined to accept an offered position. It informed him that under 20 C.F.R. § 10.500(a) compensation or total wage-loss compensation was not payable to claimants who declined an offered position within their work restrictions for the duration of the assignment. OWCP informed appellant that he was expected to accept the position and report for work. It afforded him 30 days to report to the assigned position or show that his refusal was justified.

On October 19 and 27 and November 3, 2020 appellant maintained that he was totally disabled from work due to his accepted employment-related back injury.

By decision dated November 19, 2020, OWCP denied appellant's September 30, 2020 claim for wage-loss compensation for disability from work commencing September 27, 2020.³ I noted that he had declined an offer of temporary light duty, which it found to be suitable as it accommodated his work restrictions provided by Dr. Askin.

On December 10, 2020 appellant, through his representative, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a decision dated February 11, 2021, OWCP accepted that appellant sustained a recurrence of disability effective December 26, 2020 due to his accepted right index finger conditions.

By decision dated June 3, 2021, OWCP's hearing representative affirmed the November 19, 2020 decision. The hearing representative found that OWCP had met its burden of proof to terminate appellant's monetary benefits.

The Board, having duly considered the matter, concludes that this case is not in posture for decision.

OWCP's regulation at 20 C.F.R. § 10.500(a) specifically provides that an employee is not entitled to compensation for any wage-loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such light duty was available.

³ Although the November 19, 2020 decision reflects that OWCP denied appellant's claim for disability commencing September 13, 2020, it paid him compensation for disability for the period September 13 through 26, 2020. Following the November 19, 2020 decision, a appellant continued to submit Form CA-7s claiming compensation for intermittent periods of disability.

In its November 19, 2020 decision, OWCP denied appellant's claim for wage-loss compensation. At the time of the November 19, 2020 decision, appellant was not on the periodic rolls for temporary total disability, he filed CA-7 forms claiming wage-loss compensation for disability from work, and had been receiving intermittent wage-loss compensation on the supplemental rolls.

The hearing representative phrased the underlying issue as whether OWCP had properly terminated wage-loss compensation under section 10.500(a). As noted above, OWCP did not terminate appellant's wage-loss compensation under section 10.500(a), but instead denied his claim for wage-loss compensation commencing September 27, 2020⁴ and continuing because appellant had not accepted the offered temporary position for eight hours of work per day with restrictions. In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make proper findings of fact.⁵ Its procedure further specifies that a final decision of OWCP should be clear and detailed so that the reader understands the reasons for the disallowance of the benefit.⁶ Accordingly, the case must be remanded for OWCP to make findings of facts and provide reasons for its decision pursuant to the standards set forth in 20 C.F.R. §§ 10.500(a) and 10.126.

The case is also remanded to OWCP to administratively combine all of appellant's claims. In adjudicating appellant's present claim, OWCP File No. xxxxxx310, the hearing representative specifically referenced factual and medical evidence obtained from an earlier claim, OWCP File No. xxxxxx005.⁷ All evidence that forms the basis of a decision must be in that claimant's case record.⁸ OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁹ Therefore, on remand, OWCP shall administratively combine OWCP File Nos. xxxxxx005 and xxxxxx310. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's claim for wage-loss compensation for disability from work commencing September 27, 2020.

⁴ *Id.*

⁵ 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

⁶ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁷ *See D.B.*, Docket No. 19-0262 (issued December 31, 2019).

⁸ *Id.*; *R.L.*, Docket No. 20-0901 (issued July 27, 2021).

⁹ Federal (FECA) Procedure Manual, Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

IT IS HEREBY ORDERED THAT the June 3, 2021 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: February 14, 2022
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