

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

_____)
B.M., Appellant)

and)

DEPARTMENT OF THE TREASURY,)
INTERNAL REVENUE SERVICE,)
Fresno, CA, Employer)
_____)

Docket No. 22-0506
Issued: July 21, 2022

Appearances:

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

Case Submitted on the Record

ORDER DISMISSING APPEAL

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On February 18, 2022 appellant, through counsel, filed a timely appeal from a January 27, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0506.

On August 24, 2018, appellant filed a claim for a traumatic injury (Form CA-1) alleging that on June 18, 2018 she sustained tendinitis syndrome in both hands and arms due to inputting data in a computer. On October 9, 2018 OWCP accepted the claim for right trigger thumb, left shoulder bicipital tendinitis; and right forearm calcific tendinitis. On October 29, 2019, OWCP expanded the acceptance of the claim to include unspecified rotator cuff tear or rupture of right shoulder, not specified as traumatic. Appellant stopped work on June 19, 2018. She returned to

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 an 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.

work on February 23, 2021, but stopped work again completely on February 25, 2021 and did not return.

Appellant filed claims for compensation (Form CA-7) for disability from work commencing February 25, 2021. OWCP adjudicated appellant's Form CA-7 claims for compensation as a claim for a recurrence of disability.

By decision dated June 11, 2021, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish causal relationship between the claimed disability and the accepted employment injury.

On June 22, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 6, 2021.

By decision dated December 16, 2021, OWCP's hearing representative affirmed OWCP's June 11, 2021 decision.

On January 25, 2022 appellant requested reconsideration of the December 16, 2021 decision.

On January 26, 2022, appellant, through counsel, appealed the December 16, 2021 decision to the Board. The Clerk of the Appellate Boards assigned that appeal Docket No. 22-0410.

During the pendency of the appeal in Docket No. 22-0410, on January 27, 2022 OWCP issued a nonmerit decision, denying reconsideration of the merits of the recurrence claim.

The Board finds that this appeal must be dismissed as the January 27, 2021 decision, which is the subject of this appeal, is null and void.

The Board's *Rules of Procedure*, at section 501.2(c)(3), provides:

"The Board and OWCP may not exercise simultaneous jurisdiction over the same issue in a case on appeal. Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue on appeal until after the Board relinquishes jurisdiction."²

Similarly, section 10.626 of OWCP's regulations provides in pertinent part:

"While a case is on appeal to the [the Board], OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. [It] continues to administer the claim and retains jurisdiction over issues unrelated

² 20 C.F.R. §§ 501.2(c)(3). See also *Order Dismissing Appeal, T.T.*, Docket No. 20-0864 (issued December 17, 2020); *M.S.*, Docket Nos. 19-1090 & 20-0408 (issued April 20, 2020); *J.W.*, Docket No. 19-1688 (issued March 18, 2020); *George Simpson*, Docket No. 93-0452 (issued February 18, 1994); *Douglas E. Billings*, 41 ECAB 880 (1990).

to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case.”³

The Board, having duly considered the matter, notes that on January 27, 2022 OWCP denied appellant’s January 25, 2022 request for reconsideration regarding her recurrence claim. However, once appellant, through counsel, filed the Board appeal on January 26, 2022 of OWCP’s December 16, 2021 merit decision, OWCP had no jurisdiction to issue its January 27, 2022 decision.⁴ Consequently, the January 27, 2022 decision is null and void.⁵

Pursuant to 5 U.S.C. § 8149 and 20 C.F.R. §§ 501.2(c) and 501.3(a), the Board’s jurisdiction is limited to the review of final adverse decisions of OWCP issued under the Federal Employees’ Compensation Act (FECA). As the January 27, 2022 the OWCP decision is null and void, the appeal assigned Docket No. 22-0506 does not contain a final adverse decision over which the Board may properly take jurisdiction. Therefore, the Board finds that the appeal docketed as No. 22-0506 is dismissed. Accordingly,

IT IS HEREBY ORDERED THAT the appeal docketed as No. 22-0506 is dismissed.

Issued: July 21, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees’ Compensation Appeals Board

³ 20 C.F.R. § 10.626.

⁴ *Douglas E. Billings, supra* note 2; *see also D.F.*, Docket No. 19-1257 (issued July 14, 2020).

⁵ *Id.* *See also G.W.*, Docket No. 19-0260 (issued July 10, 2020); *Cathy B. Millin*, 51 ECAB 331 (2000).