

G.A., Appellant

Docket No. 21-0862

Issued: June 8, 2022

**DEPARTMENT OF THE AIR FORCE,
EIELSON AIR FORCE BASE, Clear, AK,
Employer**

Case Submitted on the Record

Kelley Craig, Esq., for the appellant¹

Office of Solicitor, for the Director

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On May 10, 2021 appellant, through counsel, filed a timely appeal from a November 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0862.²

On March 22, 2016 appellant, then a 46-year-old steam plant supervisor/office worker, filed a traumatic injury claim (Form CA-1) alleging that on March 16, 2016 he sustained depression and anxiety when he became aware of an Equal Employment Opportunity (EEO)

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 a 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.

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

complaint which cast him in a disparaging light. He indicated that he immediately felt depression and anxiety over the matter, and it adversely affected his preexisting conditions of diabetes and recovery from a recent orthopedic operation. Appellant stopped work on March 21, 2016.

In a development letter dated April 4, 2016, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It afforded him 30 days to submit the necessary evidence.

On May 10, 2016 OWCP denied appellant's emotional condition claim, finding that the factual evidence of record was insufficient to establish that the claimed employment factors occurred, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 18, 2016 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 24, 2017.

By decision dated March 1, 2017, OWCP's hearing representative affirmed the May 10, 2016 decision. The hearing representative noted that appellant claimed that his emotional condition related to receiving an email indicating that an employee would be naming him in an EEO complaint. The hearing representative determined that the claim related to a personnel matter, and therefore did not occur in the performance of duty.

On February 28, 2018 counsel for appellant requested reconsideration. By decision dated June 15, 2018, OWCP denied modification of the March 1, 2017 decision.

On May 28, 2019 counsel for appellant again requested reconsideration.

By decision dated August 12, 2019, OWCP denied modification of the June 15, 2018 decision.

On August 11, 2020 appellant, through counsel, requested reconsideration, and submitted further argument and evidence. He explained that appellant was mistakenly forwarded an email from an employee with whom he shared an office. The employee was filing an EEO complaint that portrayed appellant in a false and disparaging light regarding the performance of his duties as a supervisor, which caused appellant immediate anxiety and depression and worsened his preexisting medical conditions. Counsel argued that the EEO complaint had been filed, and he provided the docket number. He further argued that J.W., a supervisor, confirmed that the allegations in the EEO complaint were false. Counsel provided copies of emails dated February 7, 8, and 9, and March 8 and 9, 2016, and October 24, 2017, from C.A. that detailed complaints of harassment and discrimination, involving appellant, and a May 6, 2020 email in which J.W. noted that the coworker mistakenly sent the complaint to him and appellant. Counsel also provided a copy of a document entitled ratification action pertaining to the coworker. He submitted copies of Board decisions and argued that appellant had supported his factual allegations. Counsel also submitted a medical report from Dr. Mikki King Barker, an osteopath and Board-certified psychiatrist.

On August 14, 2020 counsel for appellant supplemented his request for reconsideration. He included an August 7, 2020 witness statement from J.W. regarding the email that was

mistakenly forwarded to him and appellant. The statement indicated that the allegations in the email were false and misleading and included an explanation regarding the allegations.

By decision dated November 16, 2020, OWCP denied modification of the August 12, 2019 decision.

The Board has duly considered the matter and finds that the case is not in posture for decision. In the case of *William A. Couch*,³ 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.

As detailed above, on reconsideration counsel for appellant submitted additional evidence and argument regarding the EEO complaint. The record includes a copy of a document entitled ratification action pertaining to the co-worker, copies of Board decisions a medical report from Dr. Barker, an August 14, 2020 supplemental request for reconsideration, and an August 7, 2020 witness statement from J.W. OWCP, however, did not consider this additional evidence in its November 16, 2020 decision. It thus failed to follow its procedures by not considering all the relevant evidence of record.⁴

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁵ The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its November 16, 2020 decision.⁶ On remand, following any further development as deemed necessary, OWCP shall issue an appropriate decision.

³ 41 ECAB 548 (1990); *see L.B.*, Docket No. 21-0140 (issued August 25, 2021); *see K.B.*, Docket No. 20-1320 (issued February 8, 2021); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁴ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁵ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *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 3.

⁶ *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).

IT IS HEREBY ORDERED THAT the November 16, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 8, 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