

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

_____)	
B.G., Appellant)	
)	
and)	Docket No. 20-1613
)	Issued: October 24, 2022
DEPARTMENT OF HOMELAND SECURITY,)	
IMMIGRATION & CUSTOMS)	
ENFORCEMENT, Washington, DC, Employer)	
_____)	

Appearances:
*Stephen Larkin, for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER GRANTING REMAND

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On September 10, 2020 appellant, through his representative, filed a timely appeal from a June 11, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1613.

On August 21, 2019 appellant, then a 51-year-old deportation officer, filed an occupational disease claim (Form CA-2) alleging that he developed sleep disorder due to psychological distress while in the performance of duty. He noted that he first became aware of his claimed condition on February 11, 2011 and realized its relationship to his federal employment on June 27, 2019. In a July 1, 2019 narrative statement, appellant attributed his claimed condition to verbal harassment, the denial of a promotion, career advancement opportunities, a transfer, and overtime pay, and being subjected to investigations by management in retaliation for being a whistleblower. He

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.

noted that he retired from the employing establishment on September 29, 2018 due to harassment. Appellant also submitted medical evidence in support of his claim.

OWCP, in a September 25, 2019 development letter, advised appellant of the deficiencies of his claim and requested that he submit additional factual and medical evidence to establish his claim and provided a questionnaire for his completion.

On October 16, 2019 appellant responded to OWCP's questionnaire and reiterated his prior allegations and asserted additional allegations pertaining to his work duties.

By decision dated November 20, 2019, OWCP denied appellant's claim finding that he had not established a compensable factor of employment. It determined that he had not established fact of injury, noting that the evidence he submitted failed to establish that the claimed employment incidents had occurred as alleged. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 9, 2019 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 6, 2020. He subsequently additional factual evidence.

In a June 11, 2020 decision, OWCP's hearing representative affirmed the November 20, 2019 decision, as modified to find that the evidence of record substantiated events alleged by appellant. However, the claim remained denied because the substantiated events did not constitute compensable factors of his employment.

Following appellant's filing of this appeal, the Director of OWCP filed a motion to remand with the Clerk of the Appellate Boards. The Director requested that the Board remand the case to OWCP, noting that it failed to issue a development letter to the employing establishment and failed to contact witnesses identified by appellant for information addressing appellant's emotional condition claim.

The Board, having duly considered the matter, grants the Director's motion. On remand, OWCP shall further develop the evidence to include issuing a development letter to the employing establishment and requesting information from appellant's identified witnesses. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the June 11, 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: October 24, 2022
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board