

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

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M.M., Appellant

and

DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SECURITY  
ADMINISTRATION, Orlando, FL, Employer  
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**Docket No. 22-0411  
Issued: October 7, 2022**

*Appearances:*

*Wayne Johnson, Esq., for the appellant*<sup>1</sup>

*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

JANICE B. ASKIN, Judge

On January 26, 2022 appellant, through counsel, filed a timely appeal from a July 30, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 22-0411.<sup>2</sup>

On May 9, 2015 appellant, then a 48-year-old transportation security screener, filed a traumatic injury claim (Form CA-1) alleging on that date he injured his neck and left shoulder when processing luggage while in the performance of duty. OWCP accepted the claim for cervical displacement at C3-C4, sprains of the left neck, left shoulder, and chest wall.

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<sup>1</sup> 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.

<sup>2</sup> The Board notes that OWCP received additional evidence following the July 30, 2021 decision. 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.*

On October 16, 2019 counsel requested that the acceptance of appellant's claim be expanded to include a psychiatric condition as a consequence of the accepted injury.

OWCP received an October 10, 2019 report, wherein Dr. Fady Ashamalla, a Board-certified psychiatrist, noted that appellant was under his care since July 27, 2017. Dr. Ashamalla diagnosed bipolar II disorder; generalized anxiety disorder; adjustment disorder with mixed anxiety, depressed mood, and opioid use, unspecified, with opioid-induced psychotic disorder with hallucinations. He indicated that appellant had problems adjusting to some stressors, mainly uncontrolled pain and limitation of movement related to neck, back, shoulder, and knees injuries. Appellant had related that he had an employment injury, which led to his inability to work since October 2016 and led to his medical retirement in May 2017." Dr. Ashamalla opined that appellant's "uncontrolled pain and his inability to work and inability to regain his baseline level of functioning (prior to the injury) were the main factor that caused worsening of mental disorder symptoms and that made his mental disorders resistant to treatment."

By decision dated November 18, 2019, OWCP denied appellant's request to expand his claim.

On December 17, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on April 8, 2020. By decision dated May 21, 2020, OWCP's hearing representative affirmed the November 18, 2019 decision.

On May 21, 2021 appellant, through counsel, requested reconsideration.

OWCP received numerous medical reports, including reports from Dr. Paul Webster, Board-certified in pain medicine and anesthesiology, dated March 11, April 8, May 6, June 5, July 1, August 26, November 4, and December 1, 2020. Dr. Webster noted that appellant was seen for neck pain radiating to his left shoulder, left arm, and hand. He diagnosed bipolar disorder, unspecified; major depressive disorder, recurrence, mild; and panic disorder (episodic paroxysmal anxiety).

In a June 11, 2020 report, Dr. Evan Zimmer, a psychiatrist opined that appellant's symptoms and diagnoses were directly related to and consequential to his OWCP accepted conditions, pain, and disability. He diagnosed bipolar disorder type 2, mixed features by history, panic disorder with agoraphobia, major depression, persistent, severe, without psychotic features, and insomnia secondary to pain. Dr. Zimmer also noted that appellant fulfilled the criterion of obsessive-compulsive disorder. He opined that "all of the above are diagnoses that are consequential to his work-related injury, chronic pain, insomnia, destabilization, and failure to achieve his purpose and goals in life. These are consequential diagnoses that did not preexist his work injury."

In a June 17, 2020 report, Dr. Zimmer opined that examination of appellant's history revealed that appellant had a consequential condition. He opined that there was a "proximal relationship" between the emergence of psychiatric symptoms and appellant's disability. Dr. Zimmer referred to information from the World Health Organization and diagnosed bipolar disorder type 2, mixed features by history; panic disorder with agoraphobia; major depression, persistent, severe, without psychotic features; and insomnia secondary to pain. He opined that his diagnoses were consequential to appellant's work-related injury, chronic pain, insomnia,

destabilization, and failure to achieve his purpose and goals in life, and that “[t]hese are consequential diagnoses that did not preexist his work-related injuries.” Dr. Zimmer provided additional reports dated July 8, August 5, and October 26, 2020, in which he repeated his diagnoses.

In a January 19, 2021 report, Dr. Ruthe E. Gettes, a Board-certified in psychiatrist, noted that appellant was seen for chief complaints of anxiety and depression. She diagnosed bi-polar disorder type 2, mixed features; panic disorder with agoraphobia; major depression, consistent and severe without psychotic disorders; and insomnia secondary to pain. In a treatment note dated March 25, 2021, Dr. Gettes diagnosed bipolar disorder type 2, mixed features; panic disorder with agoraphobia; major depression, consistent and severe, without psychotic disorders; and insomnia secondary to pain; sprain of left shoulder and arm, sprain of ligaments of cervical spine, other cervical disc displacement, high cervical region, and cervical disc disorder with myelopathy, mid cervical region, unspecified level. In an April 30, 2021 report, she requested that appellant’s claim be expanded to include bipolar disorder type 2, mixed features; panic disorder with agoraphobia; major depression, consistent and severe, without psychotic disorders; and insomnia secondary to pain.

By decision dated July 30, 2021, OWCP denied modification of the May 21, 2020 decision. It noted that the evidence in support of appellant’s request for reconsideration included reports from Dr. Zimmer dated June 11 and June 17, 2020.

The Board has duly considered the matter and finds that this case is not in posture for decision.

In the case of *William A. Couch*,<sup>3</sup> 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. While OWCP is not required to list every piece of evidence submitted, the record is clear that OWCP only reviewed two reports from Dr. Zimmer and summarily denied reconsideration without reviewing the other evidence submitted after the May 27, 2020 merit decision.<sup>4</sup>

It is crucial that OWCP address all evidence received prior to the issuance of its final decision, as the Board’s decisions are final with regard to the subject matter appealed.<sup>5</sup>

Accordingly, the Board will set aside the July 30, 2021 decision and remand the case for OWCP to review the evidence and argument in support of appellant’s reconsideration request, make findings of fact, and provide a statement of reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it shall issue an appropriate decision.

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<sup>3</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>4</sup> *See C.D.*, Docket No. 20-0168 (issued March 5, 2020).

<sup>5</sup> *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.

**IT IS HEREBY ORDERED THAT** the July 30, 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: October 7, 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