

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

C.C., Appellant)	
)	
and)	Docket No. 22-0460
)	Issued: October 12, 2022
U.S. POSTAL SERVICE, BAKERSFIELD)	
PROCESSING & DISTRIBUTION CENTER,)	
Bakersfield, CA, Employer)	
)	

Appearances:
Daniel M. Goodkin, Esq., 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, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On February 5, 2022 appellant, through counsel, filed a timely appeal from an August 13, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-0460.

On March 8, 2008 appellant, then a 54-year-old carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained herniated disc, lumbar pain, bilateral hip pain, and left leg

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.

numbness and weakness due to factors of her federal employment, including repetitive lifting.² She noted that she first became aware of her conditions on January 21, 2008. On February 21, 2020 OWCP accepted the 2008 occupational claim for aggravation of lumbar herniated disc, aggravation of sciatica, aggravation of degenerative disc disease with radiculopathy, lumbar region, and sprain of ligaments of lumbar spine.

On June 29, 2020 appellant filed claims for wage-loss compensation (Form CA-7) for disability from work during the period October 31, 2009 through June 29, 2020.

On December 21, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Michael G. Klassen, a Board-certified orthopedic surgeon, for a second opinion examination to determine her work-related conditions and work restrictions. The SOAF failed to note the accepted conditions of the claim.

On January 6, 2021 OWCP denied appellant's claim for wage-loss compensation for the period October 31, 2009 through June 29, 2020.

On January 14, 2021 OWCP determined that a conflict in medical opinion evidence existed between appellant's treating physicians and the second opinion physician, Dr. Klassen with regard to the nature/extent of the accepted employment injury. It referred her, along with a SOAF, the medical record, and a series of questions to Dr. Brian Solberg, a Board-certified orthopedic surgeon, for an impartial medical examination. The SOAF failed to note the accepted conditions of the claim.

In a February 19, 2021 report, Dr. Solberg, serving as the impartial medical examiner (IME), reviewed the SOAF and the medical record, and provided examination findings. He opined that appellant had a new and worsening disability as a result of the increased physical demands from the change in her work duties in 2007. Dr. Solberg opined that she had permanent residuals of the injury, permanent work restrictions, and a need for further medical treatment.

In a March 12, 2021 report, Dr. Klassen, serving as OWCP's second opinion examiner, noted that appellant's 2008 claim was not accepted. He opined that her work injury from 1982 had not resolved and she continued to have lumbago, facet arthropathy and degenerative disc disease related to her work-related condition. Dr. Klassen indicated that, when appellant stopped work in 2008, she did not suffer an additional recurrence, as she was dealing with the continued problem that she has had since September 30, 1982. He further opined that she was able to work with restrictions.

On May 20, 2021 appellant, through counsel, requested reconsideration.

² OWCP assigned the present claim OWCP File No. xxxxxx312. Appellant has a prior occupational disease claim (Form CA-2) alleging that she sustained a back injury causally related to her employment duties as of September 30, 1982. OWCP assigned that claim OWCP File No. xxxxxx059 and accepted it for a lumbosacral strain. OWCP File Nos. xxxxxx059 and xxxxxx312 have been administratively combined, with the latter serving as the master file.

By decision dated August 13, 2021, OWCP denied modification of its January 6, 2021 decision.

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

The Board finds as the December 4, 2020 SOAF failed to list the accepted conditions of the claim, neither the second opinion physician nor the IME physician was provided an accurate SOAF to render their opinions.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.³ OWCP's procedures dictate that, when a DMA, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁴ It did not provide Dr. Solberg or Dr. Klassen with a complete SOAF as it did not list the accepted conditions under OWCP File No. xxxxxx312. Thus, the Board finds that reports of both Dr. Solberg and Dr. Klassen were not based on an accurate factual framework and cannot represent the weight of the medical evidence sufficient to deny appellant's claim for wage-loss compensation.⁵

Once OWCP undertakes develop of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.⁶ Accordingly, the Board finds that the case must be remanded to OWCP to prepare a complete and accurate SOAF.

On remand, OWCP shall prepare a complete and accurate SOAF and request that Dr. Klassen submit a supplemental opinion. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's wage-loss compensation claim.

³ *M.B.*, Docket No. 21-0060 (issued March 17, 2022); *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁴ *R.W.*, Docket No. 19-1109 (issued January 2, 2020); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

⁵ *See M.B.*, *supra* note 3; *G.C.*, Docket No 18-0842 (issued December 20, 2018).

⁶ *See M.B.*, *id.*; *D.S.*, Docket No. 19-0292 (issued June 21, 2019).

IT IS HEREBY ORDERED THAT the August 13, 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 12, 2022
Washington, DC

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

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

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