

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

V.G., Appellant	)	
	)	
and	)	Docket No. 22-0805
	)	Issued: October 20, 2022
U.S. POSTAL SERVICE, CHICAGO	)	
INTERNATIONAL SERVICE CENTER,	)	
Chicago, IL, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 28, 2022 appellant, through counsel, filed a timely appeal from an April 4, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> Pursuant to the Federal Employees' Compensation Act (FECA) and 20 C.F.R. § 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

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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> Counsel identified only the April 4, 2022 nonmerit decision on the application for review (AB-1 Form). As such, the March 14 and April 19, 2022 merit decisions are not before the Board on the current appeal. *See* 20 C.F.R. § 501.3; *see also* S.K., Docket No. 22-0248 (issued June 27, 2022); M.M., Docket No. 20-0523 (issued August 25, 2020).

## ISSUE

The issue is whether OWCP abused its discretion in denying appellant's request for a second hearing, pursuant to 5 U.S.C. § 8124(b).

## FACTUAL HISTORY

On July 25, 2019 appellant, then a 60-year-old casual clerk, filed a traumatic injury claim (Form CA-1) alleging that on that day she injured her right upper arm when she tripped over a bolt that held a post upright and fell, while in the performance of duty. She stopped work on July 25, 2019. On September 12, 2019 OWCP accepted the claim for right shoulder complete rotator cuff tear or rupture. It authorized right shoulder arthroscopy with rotator repair, right shoulder arthroscopy with extensive debridement and synovectomy of the glenohumeral joint, and right shoulder arthroscopy with subacromial decompression with acromioplasty, which was performed on November 20, 2019. OWCP paid appellant wage-loss compensation on the supplemental rolls as of September 9, 2019, and on the periodic rolls as of September 15, 2019.

In a letter dated September 20, 2019, appellant requested expansion of the acceptance of her claim to include left shoulder and fingers, neck, and bilateral hand and wrist injuries also due to the fall on July 25, 2019.

In a December 3, 2019 work status form, Dr. David Saper, a Board-certified orthopedic surgeon, diagnosed left trigger thumb and right shoulder complete rotator cuff tear or rupture.

In a letter dated February 27, 2020, OWCP requested that Dr. Saper provide medical rationale explaining how appellant's diagnosed left thumb trigger finger condition was causally related to the accepted July 25, 2019 employment injury.

In a report dated March 4, 2020, Dr. Saper diagnosed right shoulder complete rotator cuff tear or rupture and left thumb trigger finger. He opined that appellant's left thumb trigger finger was related to the accepted July 25, 2019 work injury as she had not experienced any pain prior to the injury.

In a memorandum of telephone call (Form CA-110) dated April 16, 2020, appellant again requested expansion of the acceptance of her claim to include wrist and finger conditions.

In a letter dated April 20, 2020, OWCP informed appellant that her claim had been reviewed and advised that the evidence of record was insufficient to require expansion of the acceptance of her claim.

Dr. Saper, in a June 9, 2020 report, provided examination findings and diagnosed left shoulder pain and right shoulder complete rotator cuff tear or rupture. He noted that, since the accepted injury, appellant had complaints of substantial left shoulder pain.

In a report dated June 30, 2020, Dr. Saper noted appellant's physical examination findings and reviewed her diagnostic test results. He diagnosed right shoulder complete rotator cuff tear or rupture and left shoulder incomplete rotator cuff tear or rupture. Dr. Saper noted that appellant's left shoulder has been bothering her since the July 25, 2019 employment injury.

In a letter dated July 27, 2020 to Dr. Saper, OWCP noted that it had received appellant's request for authorization of left shoulder arthroscopy. It noted that a left shoulder condition had not been accepted and requested that he submit a well-rationalized opinion explaining how the diagnosed left shoulder condition was causally related to the accepted July 25, 2019 employment injury. OWCP afforded Dr. Saper 30 days to provide the requested evidence.

In a report dated November 3, 2020, Dr. Saper diagnosed right shoulder complete rotator cuff tear or rupture and left shoulder incomplete rotator cuff tear or rupture. He further related that when appellant fell at work on July 25, 2019 that she fell onto her left shoulder. Based on her history, physical examination, and diagnostic test results, Dr. Saper opined that appellant's partial left shoulder tear was due to her fall on July 25, 2019.

On November 3, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF), the medical record, and a series of questions, to Dr. Allan Brecher, a Board-certified orthopedic surgeon, for an opinion as to whether appellant's left shoulder condition and her recommended left shoulder surgery were the result of the accepted July 25, 2019 employment injury. In a report dated December 2, 2020, Dr. Brecher, based upon a review of the medical record, SOAF and physical examination, concluded that her left shoulder condition was unrelated to the accepted July 25, 2019 employment injury. He explained that appellant's left shoulder condition was not noted until June 2020, approximately 11 months after her injury. Dr. Brecher opined that the only injury sustained on July 25, 2019 was the accepted right shoulder condition.

Dr. Saper, in a January 28, 2021 report, reviewed Dr. Brecher's report. He diagnosed right shoulder complete rotator cuff tear or rupture and left shoulder incomplete rotator cuff tear or rupture. Dr. Saper indicated that he could not dispute Dr. Brecher's report and opined that the left shoulder condition did not appear to be work related.

By decision dated September 16, 2021, OWCP denied appellant's request for expansion of the acceptance of her claim to include additional diagnoses of left trigger finger and left shoulder incomplete rotator cuff tear or rupture.

On September 22, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 11, 2022.

By decision dated March 14, 2022, OWCP's hearing representative affirmed the September 16, 2021 decision denying expansion of the acceptance of appellant's claim.

On March 15, 2022 OWCP received appellant's request for an oral hearing before an OWCP hearing representative, dated March 2, 2022, regarding the September 16, 2021 decision.

By decision dated April 4, 2022, OWCP denied appellant's second request for an oral hearing before an OWCP hearing representative, received on March 15, 2022. It explained that as appellant had received a decision from the Branch of Hearings and Review regarding this issue on March 14, 2022, she was not entitled to another hearing as a matter of right. OWCP also considered whether to grant a discretionary hearing and found that the issue could be addressed by requesting reconsideration and submitting evidence not previously considered.

## LEGAL PRECEDENT

A claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.<sup>3</sup> Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states that: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."<sup>4</sup> The Board has held that OWCP has the discretion to grant or deny a hearing request on a claim when the request is made after the 30-day period for requesting a hearing,<sup>5</sup> when the request is for a second hearing on the same issue,<sup>6</sup> and when the request is made after a reconsideration request was previously submitted.<sup>7</sup>

## ANALYSIS

The Board finds that OWCP did not abuse its discretion in denying appellant's request for a second hearing, pursuant to 5 U.S.C. § 8124(b).

OWCP denied appellant's request to expand her claim to include the conditions left trigger finger and left shoulder incomplete rotator cuff tear or rupture in a decision dated September 16, 2021, finding that the medical record was insufficient to establish causal relationship. On September 22, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated March 14, 2022, an OWCP hearing representative affirmed the September 16, 2021 decision denying appellant's request for expansion of the acceptance of her claim.

On March 15, 2022 OWCP received appellant's request for an oral hearing before OWCP's Branch of Hearings and Review regarding the issue of whether the acceptance of her claim should be expanded to include additional conditions. As a hearing had previously been held on the same issue, the Board finds that appellant was not entitled to an oral hearing as a matter of right under section 8124(b)(1).<sup>8</sup> OWCP properly exercised its discretion and determined that the issue in the case could be resolved equally well through a request for reconsideration and the submission of

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<sup>3</sup> 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

<sup>4</sup> *Id.* at § 8124(b)(1).

<sup>5</sup> *D.R.*, Docket No. 21-0691 (issued December 15, 2021); *E.R.*, Docket No. 20-1110 (issued December 23, 2020); *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>6</sup> *D.R.*, *id.*; *D.M.*, Docket No. 19-0686 (issued November 13, 2019); *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>7</sup> *D.R.*, *id.*; *R.H.*, Docket No. 07-1658 (issued December 17, 2007); *S.J.*, Docket No. 07-1037 (issued September 12, 2007).

<sup>8</sup> *Supra* note 6.

new evidence.<sup>9</sup> Therefore, the Board finds that OWCP, in its April 4, 2022 decision, did not abuse its discretion in denying appellant's request for an oral hearing.

**CONCLUSION**

The Board finds that OWCP did not abuse its discretion in denying appellant's request for a second hearing, pursuant to 5 U.S.C. § 8124(b).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 4, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 20, 2022  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>9</sup> *Id.*