

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

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<b>B.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0825</b>
	)	<b>Issued: October 24, 2022</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>IMMIGRATION &amp; CUSTOMS</b>	)	
<b>ENFORCEMENT, Washington, DC, Employer</b>	)	
_____	)	

*Appearances:*  
*Stephen C. Larkin, for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER DISMISSING APPEAL**

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

On May 1, 2022 appellant, through counsel, filed a timely appeal from a March 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0825.

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 and psychological distress due to discriminatory acts and retaliation as a result of his whistleblower activities 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.

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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.

By decision dated November 20, 2019, OWCP denied appellant's emotional condition claim, finding that he had not established a compensable factor of employment.

On December 4, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 6, 2020.

In a June 11, 2020 decision, OWCP's hearing representative affirmed the November 20, 2019 decision, as modified finding 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 appellant's employment.

On September 10, 2020 appellant, through counsel, appealed the June 11, 2020 decision to the Board. The Clerk of the Appellate Boards assigned that appeal Docket No. 20-1613.

During the pendency of the appeal in Docket No. 20-1613, on March 14, 2022 OWCP issued a merit decision, again denying appellant's emotional condition claim because he had not established a compensable employment factor.

The Board finds that this appeal must be dismissed as the March 14, 2022 decision, which is the subject of this appeal, is null and void.

The Board's *Rules of Procedure*, at section 501.2(c)(3), provides:

"The Board and OWCP may not exercise simultaneous jurisdiction over the same issue in a case on appeal. Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue on appeal until after the Board relinquishes jurisdiction."<sup>2</sup>

Similarly, section 10.626 of OWCP's regulations provides in pertinent part:

"While a case is on appeal to the [the Board], OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. [It] continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case."<sup>3</sup>

The Board, having duly considered the matter, notes that once appellant, through counsel, filed the Board appeal on September 10, 2020 of OWCP's June 11, 2020 merit decision, OWCP

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<sup>2</sup> 20 C.F.R. § 501.2(c)(3). See also *Order Dismissing Appeal, B.M.*, Docket No. 22-0506 (issued July 21, 2022); *T.T.*, Docket No. 20-0864 (issued December 17, 2020); *M.S.*, Docket Nos. 19-1090 & 20-0408 (issued April 20, 2020); *J.W.*, Docket No. 19-1688 (issued March 18, 2020); *George Simpson*, Docket No. 93-0452 (issued February 18, 1994); *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>3</sup> 20 C.F.R. § 10.626.

had no jurisdiction to issue its March 14, 2022 decision.<sup>4</sup> Consequently, the March 14, 2022 decision is null and void.<sup>5</sup>

Pursuant to 5 U.S.C. § 8149 and 20 C.F.R. §§ 501.2(c) and 501.3(a), the Board's jurisdiction is limited to the review of final adverse decisions of OWCP issued under the Federal Employees' Compensation Act. As the March 14, 2022 OWCP decision is null and void, the appeal assigned Docket No. 22-0825 does not contain a final adverse decision over which the Board may properly take jurisdiction. Therefore, the Board finds that the appeal docketed as No. 22-0825 is dismissed. Accordingly,

**IT IS HEREBY ORDERED THAT** the appeal docketed as No. 22-0825 is dismissed.

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

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<sup>4</sup> *Douglas E. Billings*, *supra* note 2; *see also D.F.*, Docket No. 19-1257 (issued July 14, 2020).

<sup>5</sup> *Id.* *See also G.W.*, Docket No. 19-0260 (issued July 10, 2020); *Cathy B. Millin*, 51 ECAB 331 (2000).