

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

_____)	
J.M., Appellant)	
)	
and)	Docket No. 23-0612
)	Issued: December 4, 2023
U.S. POSTAL SERVICE, ROSWELL POST OFFICE, Roswell, GA, Employer)	
_____)	

Appearances:
Emma Cull, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

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

On March 22, 2023 appellant, through his representative, filed a timely appeal from a January 11, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards has assigned the appeal Docket No. 23-0612.

On August 26, 2021 appellant, then a 34-year-old clerk typist, filed an occupational disease claim (Form CA-2) alleging that he developed knee, shoulder, and foot conditions due to factors of his federal employment, including standing for long periods of time, repetitively transitioning from a seated position to a standing position, and walking up steep driveways. He noted that he first became aware of his conditions on November 20, 2016, and first realized their relation to his federal employment on March 25, 2020. Appellant did not immediately stop work.

Appellant submitted medical reports in support of his claim, including August 26 and October 25, 2021 reports wherein Dr. Jinan Ghali, a Board-certified internist, opined that appellant

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.

sustained multiple back, lower extremity, and upper extremity conditions as a direct result of her federal work duties.

In an October 24, 2021 statement, appellant indicated that his job required him to engage in repetitive lifting/handling of mail, sorting/scanning mail, and extensive walking and standing.

By decision dated December 7, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence submitted was insufficient to establish a diagnosed medical condition causally related to the accepted factors of his federal employment.

Appellant submitted reports of his treatment for bilateral knee and lumbar conditions from May 4 through December 14, 2022 by chiropractors, Dr. S. Ken Smith and Dr. Latoya Ridley.

On January 6, 2023 appellant requested reconsideration of the December 7, 2021 decision.

On January 6, 2023 OWCP received a June 8, 2022 report wherein Dr. Victor Osisanya, a Board-certified physiatrist, reported physical examination findings and diagnosed right and left shoulder rotator cuff strains; strain of the muscle, fascia and tendon of the lower back; lumbar radiculopathy, sprain of the right and left knees; other tear of the lateral meniscus of the right knee; strain of the left quadriceps muscle, fascia, and tendon; posterior tibial tendinitis of the right and left legs; and consequential bilateral flatfoot. In the comments/conclusion portion of the report, he opined to a reasonable degree of medical certainty that appellant's injuries were a direct result of the repetitive nature of his job including prolonged standing and walking. Dr. Osisanya noted that these activities resulted in inflammation in the muscle, tendons, ligaments and soft tissues leading to a quadriceps partial-thickness tendon tear in the left knee, right knee lateral meniscal tear, bilateral posterior tibial tendinitis, and flatfoot. He asserted that the acromioclavicular (AC) joints, rotator muscles, ligaments and biceps tendon were stretched beyond normal muscle length as a result of repetitive abduction/adduction, overhead reaching, and lifting packages at work, thereby causing a strain of the rotator cuff muscles in both shoulders. Dr. Osisanya indicated that the flexion, extension, and torsion forces required in walking and standing long hours increased loading forces on the lumbar spine, thereby causing an inflammatory reaction in these structures, which led to lumbar radiculopathy. He opined that appellant's constant weight bearing at work, as well as prolonged walking and standing, contributed to his bilateral knee injuries. Appellant also submitted a January 2, 2023 report in which Dr. Osisanya provided language similar to that contained in the comments/conclusion portion of his June 8, 2022 report.

OWCP also received x-rays of the knees dated October 25, 2019, x-rays of the feet dated March 25, 2021, x-rays of the knees dated March 25, 2021, and magnetic resonance imaging (MRI) scans of the knees dated April 15, 2021.

By decision dated January 11, 2023, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that this case is not in posture for decision.

OWCP denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.² Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.³ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁴ As well, OWCP's procedures provide that the reasoning behind its evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁵

In support of his request for reconsideration, appellant submitted medical reports from Dr. Osisanya dated June 8, 2022 and January 2, 2023. In denying his reconsideration request, OWCP failed to analyze whether this evidence was sufficient to demonstrate clear evidence of error. The January 11, 2023 decision simply noted:

“In support of your reconsideration request you submitted new medical evidence from Dr. Victor Osinsaya as well [sic] medical and factual evidence. You did not submit any reason to justify your delay in exercising your appeal rights nor to show that our Office erred when it issued the 12/07/2021 denial. Thus, your request is untimely and there is no evidence of error on the part of our Office.”

Appellant also submitted reports of his treatment for bilateral knee and lumbar conditions from May 4 through December 14, 2022 by attending chiropractors, including Dr. Smith and Dr. Ridley. He resubmitted x-rays of the knees dated October 25, 2019, x-rays of the feet dated March 25, 2021, x-rays of the knees dated March 25, 2021, and MRI scans of the knees dated April 15, 2021. However, OWCP also failed to evaluate this evidence in accordance with the review requirements of FECA and its implementing regulations.

The Board finds that OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, whether he had demonstrated clear evidence that OWCP's last merit decision, dated December 7, 2021, was incorrect.⁶ The Board will, therefore, set aside OWCP's January 11, 2023 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision regarding his reconsideration request.⁷ Accordingly,

² *D.R.*, Docket No. 21-1229 (issued July 6, 2022); *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

³ 5 U.S.C. § 8124(a).

⁴ 20 C.F.R. § 10.126.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁶ OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimant's request demonstrates clear evidence of error on the part of OWCP. *Supra* note 5 at Chapter 2.1602.5a (September 2020).

⁷ *See Order Remanding Case, D.R., supra* note 2; *T.P., supra* note 2; *see also id.* at § 10.607.

IT IS HEREBY ORDERED THAT the January 11, 2023 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: December 4, 2023
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