

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

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E.N., Appellant)	
)	
and)	Docket No. 23-0869
)	Issued: December 28, 2023
U.S. POSTAL SERVICE, DOMINICK V.)	
DANIELS PROCESSING & DISTRIBUTION)	
CENTER, Kearny, NJ, Employer)	
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Appearances:

Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REVERSING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On June 12, 2023 appellant, through counsel, filed a timely appeal from a January 30, 2023 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0869.

This case has previously been before the Board.² The facts and circumstances set forth in the Board's prior decision and order are incorporated herein by reference. The relevant facts are as follows.

On June 2, 2017 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her knees, neck, and back when she tripped and fell while in the performance of duty. She stopped work on June 2, 2017. OWCP accepted the claim for lumbar sprain, a sprain of the right wrist with a triangular fibrocartilage complex tear, a

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 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.

² Docket No. 20-1171 (issued April 20, 2022).

partial tear of the supraspinatus tendon of the right shoulder, and right lumbar radiculopathy. It paid appellant wage-loss compensation on the supplemental rolls retroactive to July 18, 2017 and on the periodic rolls beginning April 1, 2018.

On June 7, 2018 OWCP expanded its acceptance of the claim to include right knee sprain, right elbow sprain, and cervical sprain. By decision of even date, it denied expansion of appellant's claim to include right shoulder impingement syndrome, right elbow lateral epicondylitis, right knee medial and lateral meniscus tear, lumbar disc displacement, cervical radiculopathy, and bilateral carpal tunnel syndrome causally related to her accepted June 2, 2017 employment injury.

On June 14, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated January 22, 2019, OWCP's hearing representative affirmed the June 7, 2018 decision, finding that appellant had not demonstrated that the acceptance of her claim should be expanded to include right shoulder impingement syndrome, right elbow lateral epicondylitis, lumbar disc displacement, cervical radiculopathy, and bilateral carpal tunnel syndrome. He found, however, that OWCP should expand its acceptance of her claim to include right elbow medial humeral epicondylitis and a right knee lateral meniscus tear.

On June 26, 2019 appellant, through counsel, requested reconsideration.

On December 18, 2019 OWCP expanded acceptance of appellant's claim to include right elbow medial humeral epicondylitis and a right knee lateral meniscus tear.

By decision dated December 18, 2019, OWCP denied modification of its January 22, 2019 decision. It found that the medical evidence was insufficient to show that appellant's claim should be expanded to include right shoulder impingement syndrome, a right knee medial meniscus tear, lumbar disc displacement, cervical radiculopathy, and bilateral carpal tunnel syndrome.

Appellant appealed to the Board. By decision dated April 20, 2022, the Board set aside the December 18, 2019 decision.³ The Board instructed OWCP, on remand, to prepare an updated statement of accepted facts and request a supplemental report from the impartial medical examiner addressing whether it should expand the acceptance of the claim to include right shoulder impingement syndrome, a medial meniscus tear of the right knee, lumbar disc displacement, cervical radiculopathy, and bilateral carpal tunnel syndrome causally related to the June 2, 2017 employment injury. The Board directed OWCP, following further development, to issue a *de novo* decision on the merits of appellant's claim.

By decision dated January 30, 2023, OWCP denied modification of its January 22, 2019 decision. The appeal rights attached to the decision noted that appellant could request either reconsideration before OWCP or review by the Board.

On February 7, 2023 counsel requested that OWCP issue a *de novo* decision, pursuant to the Board's instructions, instead of a reconsideration decision. He informed OWCP that the appeal rights attached to the January 30, 2023 decision included a request for reconsideration before OWCP or an appeal to the Board, but did not include the right to an oral hearing before a

³ *Id.*

representative of OWCP’s Branch of Hearings and Review. Counsel requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review regarding the January 30, 2023 decision.

On appeal counsel contends that OWCP failed to issue a “*de novo*” decision as instructed by the Board on remand, but instead issued a reconsideration decision which did not grant appeal rights to a hearing before a representative of OWCP’s Branch of Hearings and Review.

The Board finds that appellant is entitled to a hearing, before a representative of OWCP’s Branch of Hearings and Review, pursuant to her February 7, 2023 request for a hearing.

Appellant, through counsel, timely filed a hearing request on February 7, 2023, which was less than 30 days after OWCP’s January 30, 2023 decision. Therefore, as she filed a valid, timely hearing request, the case must be remanded to OWCP to hold a hearing before a representative of OWCP’s Branch of Hearings and Review, to be followed by the issuance of a *de novo* merit decision.⁴

IT IS HEREBY ORDERED THAT the January 30, 2023 decision of the Office of Workers’ Compensation Programs is reversed.

Issued: December 28, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees’ Compensation Appeals Board

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

⁴ *Id.*, see also *Order Reversing Case, P.B.*, Docket No. 21-0723 (issued April 13, 2022).