

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

_____)
A.D., Appellant)

and)

U.S. DEFENSE AGENCIES, DEFENSE)
COMMISSARY AGENCY SOUTHWEST)
REGION, Fort Lee, VA, Employer)
_____)

Docket No. 22-0519
Issued: January 11, 2023

Appearances:

Jane E. Engelman, Esq., 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
JAMES D. MCGINLEY, Alternate Judge

On February 14, 2022 appellant, through counsel, filed a timely appeal from an October 27, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0519.

On June 5, 2019 appellant, then a 56-year-old store worker, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2019 she sustained strains to her lower back and groin when she slipped on a green bean and fell into a splits position while in the performance of duty. She stopped work on May 11, 2019. Appellant returned to work intermittently, then stopped work again on May 26, 2019 and subsequently returned to work on June 4, 2019. OWCP accepted the claim for the conditions of right hip strain, lower back strain, and neck strain. It found, however, that other diagnosed conditions of hip arthritis and osteoarthritis of lumbar spine were denied as there was no well-rationalized medical evidence as to how the accepted May 11, 2019 incident caused those diagnosed conditions.

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.

In a May 14, 2019 report, Dr. Colleen Buono, Board-certified in emergency medicine, diagnosed neck injury and right hip injury which she indicated were consistent with a fall. She indicated that appellant was temporarily totally disabled and was limited to modified work since May 11, 2019. Dr. Buono listed appellant's restrictions as no driving of commercial vehicles, no working near moving machinery, no prolonged sitting, standing, or walking, no repetitive climbing, bending or twisting, sedentary work only, no overhead lifting or reaching with the right upper extremity, no overhead work, avoid prolonged neck flexion, and no forceful pushing or pulling.

Medical reports dated May 14, May 17, May 20, May 28, June 3 and June 7, 2019 were received from Dr. Oluseyi Awodele, an occupational medicine specialist. In his May 14, 2019 report, Dr. Awodele diagnosed right hip strain, lumbar strain and neck sprain, which he opined was consistent with appellant's account of injury. He related she could return to modified work on May 14, 2019. On May 17 and 20, 2019 Dr. Awodele reported that appellant could return to modified work on May 17, 2019 with restrictions of no climbing, bending and stooping limited to 4 hours cumulative per 8-hour shift, no pushing/pulling more than 15 pounds, 5-minute stretch breaks every 50 minutes. In his report dated May 28, 2019, Dr. Awodele reiterated appellant's restrictions and noted that if the employing establishment was unable to accommodate his restrictions, appellant must be placed off work. On June 3 and 7, 2019 he noted diagnoses of neck, hip and lumbar strain, as well as hip arthritis and osteoarthritis of the lumbar spine with myelopathy. Dr. Awodele related appellant's restrictions no driving a company vehicle, the use of a cane, 100 percent partial weight bearing, 60 percent sitting, no climbing stairs or ladders, or walking on uneven terrain, no lifting or pulling, 10-minute stretch breaks every 60 minutes.

OWCP also received reports from Dr. Harbinder S. Chadha, a Board-certified orthopedic surgeon. In an April 29, 2021 note, Dr. Chadha diagnosed right C6 radiculopathy and weakness and right L5 radiculopathy. In a June 30, 2021 Form CA-5c, he related that appellant would remain totally disabled through August 11, 2021. In a June 30, 2021 narrative report, Dr. Chadha provided assessments of right hip arthritis, lumbar spondylitis, cervical spondylitis, acute cervical radiculopathy and acute left lumbar radiculopathy.

By decision dated October 27, 2021, OWCP denied appellant's claim for wage-loss compensation for disability for the period commencing May 11, 2019. It indicated that it did not receive any evidence to support her claim prior to its August 5, 2021 developmental letter.

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,² the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its October 27, 2021 decision, OWCP failed to consider the evidence received prior to its August 5, 2021 development letter which addressed appellant's disability status. This included a May 14, 2019 report from Dr. Buono, a series of reports from Dr. Awodele dated from May 14 to June 7, 2019, and reports from Dr. Chadha dated April 29, and June 30, 2021 which found appellant temporarily totally disabled. As such, it failed to follow its procedures by properly

² 41 ECAB 548 (1990); see also *A.B.*, Docket No. 22-0179 (issued June 28, 2022); *S.H.*, Docket No. 19-1582 (issued May 26, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

discussing all of the evidence of record.³ It is crucial that OWCP address all evidence relevant to the subject matter properly submitted prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.⁴

The Board thus finds that this case is not in posture for decision, as OWCP did not address the evidence submitted by appellant in support of her claim for compensation.⁵ On remand, OWCP shall review all evidence of record and, following any further development it deems necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the October 27, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 11, 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

³ "All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁴ See *A.B.*, *supra* note 2; *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 2.

⁵ See *A.B.*, *id.*; *S.H.*, *supra* note 2; *V.C.*, Docket No. 16-0694 (issued August 19, 2016).