

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

M.B., Appellant)	
)	
and)	Docket No. 22-1026
)	Issued: January 25, 2023
U.S. POSTAL SERVICE, POST OFFICE, St. Louis, MO, Employer)	
)	

Appearances:
Appellant, pro se
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 June 29, 2022 appellant filed a timely appeal from a March 17, 2022 merit decision and a June 23, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-1026.

On October 9, 2010 appellant, then a 34-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on that date he sprained his right knee when walking up steps and felt his knee pop while in the performance of duty. He did not stop work.

No further documentation was received after November 2010 until February 2022.

On February 8, 2022 appellant filed an occupational disease claim (Form CA-2) alleging that he encountered the same symptoms to date due to factors of his federal employment. He noted that he first became aware of his condition and its relation to his federal employment on October 9, 2010. In an attached statement, appellant requested that his claim under OWCP File No. xxxxxx342 be reopened because he still experienced residual pain from the accepted October 9, 2010 employment incident. He also indicated that the employing establishment had informed him that his claim was accepted, but he never received notification from the Department of Labor (DOL) that his injury was accepted.

Appellant submitted a progress note dated February 3, 2022 and an undated letter by Dr. Shivam Desi, an orthopedic surgeon, regarding the treatment he sought for his bilateral knee pain.

By decision dated February 11, 2022, OWCP accepted appellant's October 9, 2010 claim for right knee sprain. It noted that the case was closed, effective February 11, 2022, because the accepted condition should have resolved within 6 to 8 weeks of the injury and there was no medical evidence received for over 10 years from the date of injury.

By decision dated March 17, 2022, OWCP denied appellant's recurrence claim for medical treatment finding that the evidence of record was insufficient to establish a worsening of the accepted work-related conditions requiring further medical treatment.

On March 17, 2022 appellant requested reconsideration. He contended that he was not seeking a recurrence of his claim because he had the same symptoms that he had experienced since the October 9, 2010 injury. Appellant requested reconsideration based on the fact that his condition was not initially accepted.

By decision dated June 23, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. §8128(a).

The Board, having duly considered this matter, finds that this case is not in posture for decision.

OWCP's implementing regulations define a recurrence of medical condition as a need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage.¹ It further notes that continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.²

In its March 17, 2022 decision, OWCP indicated that appellant filed a Form CA-2a, notice of recurrence, for additional medical care and subsequently denied the claim finding that the medical evidence of record did not establish additional medical treatment due to a worsening of his accepted work conditions. The evidence of record establishes, however, that appellant filed a Form CA-2, claim for occupational disease, not a Form CA-2a. Moreover, at the time that appellant filed his Form CA-2 on February 8, 2022, OWCP had not yet accepted appellant's October 9, 2010 traumatic injury claim. Accordingly, the Board finds that, given that appellant's initial October 9, 2010 traumatic injury claim was not accepted until February 11, 2022, OWCP should not have developed his February 8, 2022 occupational disease claim as a claim for recurrence for medical treatment.

Section 8124(a) of FECA provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation.³ OWCP's regulations at 20 C.F.R.

¹ 20 C.F.R. § 10.5(y).

² *Id.*

³ 5 U.S.C. § 8124(a).

§ 10.126 further provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁴ As well, its procedures provide that the reasoning behind OWCP's decision 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 its March 17, 2022 decision, OWCP did not address appellant's February 8, 2022 occupational disease claim nor adequately explain why it developed his occupational disease claim as a recurrence claim.⁶ This lack of explanation would prevent appellant from understanding the reason for the disallowance of the claim and the evidence necessary to overcome the defeat of the claim.⁷ Accordingly, the case must be remanded for OWCP to make findings of fact and provide reasons for its decision regarding appellant's occupational disease claim pursuant to the standards set forth in 20 C.F.R. §§ 10.500(a) and 10.126.

IT IS HEREBY ORDERED THAT the March 17 and June 23, 2022 decisions are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: January 25, 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 20 C.F.R. § 10.126.

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

⁶ See *M.C., Order Remanding Case*, Docket No. 21-1153 (issued February 14, 2022); *C.W., Order Remanding Case*, Docket Nos. 18-1764 and 19-0709 (issued August 27, 2020).

⁷ See *P.G., Order Remanding Case*, Docket No. 17-1461 (issued February 7, 2019).