

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

_____)	
T.L., Appellant)	
)	
and)	Docket No. 22-0708
)	Issued: June 21, 2023
SOCIAL SECURITY ADMINISTRATION,)	
Glendale, AZ, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

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

On April 8, 2022 appellant, through counsel, filed a timely appeal from a March 2, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0708.

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

On February 13, 2001 appellant, then a 39-year-old social insurance specialist claims representative, filed an occupational disease claim (Form CA-2) alleging that she sustained

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. 21-0239 (issued December 1, 2021); Docket No. 17-1854 (issued March 20, 2018); Docket No. 11-0527 (issued April 9, 2012).

tendinitis of the bilateral upper extremities when performing repetitive motions of keypunching, typing, and writing while in the performance of duty. OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral lateral epicondylitis. It subsequently expanded the acceptance of appellant's claim to include right wrist tenosynovitis and bilateral median nerve neuritis.³

On March 27, 2013 Dr. Timothy Cavanaugh, an attending Board-certified ophthalmologist, performed phacoemulsification with posterior chamber intraocular lens implantation in the right eye and subsequently in the left eye on April 10, 2013.⁴

In a report dated August 15, 2013, Dr. Cynthia Burlingame, an attending optometrist, opined that appellant's right cataract was most likely caused by intra-articular injections.

On August 21, 2013 Dr. Cavanaugh performed an yttrium aluminum garnet (YAG) laser capsulotomy for the left eye.⁵

On December 18, 2014 OWCP expanded the acceptance of appellant's claim to include a right ocular cataract and a right shoulder condition.

On March 20, 2015 appellant filed a claim for compensation (Form CA-7) for a schedule award. In support of her claim, she submitted an August 8, 2015 report from Dr. Neal Eylar, an attending optometrist, who found seven percent permanent impairment of the right eye due to a posterior subcapsular polar cataract according to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁶

By decision dated December 28, 2016, OWCP granted appellant a schedule award for seven percent permanent impairment of the right eye. The period of the award ran for 11.2 weeks from October 28, 2013 through January 14, 2014.

On January 6, 2017 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, held on June 22, 2017.

By decision dated August 1, 2017, the OWCP hearing representative affirmed the December 28, 2016 decision.

³ OWCP assigned the present claim OWCP File No. xxxxxx960. Appellant has other claims alleging injuries to her neck and bilateral upper extremities under OWCP File Nos. xxxxxx087, xxxxxx567, xxxxxx473, xxxxxx188, and xxxxxx396. OWCP administratively combined appellant's claims effective March 23, 2012, with OWCP File No. xxxxxx960 designated as the master file.

⁴ On October 5, 2018 OWCP retroactively authorized the March 27, 2013 surgery and lens implant.

⁵ On July 3, 2018 OWCP retroactively authorized the August 21, 2013 laser surgery.

⁶ A.M.A., *Guides* (6th ed. 2009).

Appellant, through counsel, appealed to the Board.

By decision dated March 20, 2018,⁷ the Board affirmed the August 1, 2017 decision.

Thereafter, OWCP received a May 17, 2018 report by Dr. Burlingame recounting appellant's bilateral cataract surgeries. On examination of the right eye, Dr. Burlingame observed unaided distant visual acuity (DVA) of 20/30 and unaided near visual acuity (NVA) of 20/200. On the left, he observed 20/25 unaided DVA and 20/200 unaided NVA, with bilateral acuities of 20/20 unaided DVA and 20/100 unaided NVA. Dr. Burlingame diagnosed ocular allergy, bilateral dry eye syndrome, hyperopia, and presbyopia.

On January 18, 2019 appellant, through counsel, requested reconsideration.

By decision dated March 2, 2022, OWCP denied modification.

The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP for further development. In the case of *William A. Couch*,⁸ the Board held that when adjudicating a claim, OWCP is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, appellant submitted evidence from Dr. Burlingame. In her report, dated May 17, 2018, Dr. Burlingame addressed appellant's history of bilateral cataract removal and provided visual acuity measurements with and without corrective lenses. However, the record does not indicate that OWCP reviewed this additional evidence in its March 2, 2022 decision. It, thus, failed to follow its procedures by not considering and addressing the relevant evidence of record.⁹

As the Board's decisions are final as to the subject matter appealed, it is crucial that OWCP address all evidence received prior to the issuance of its decision.¹⁰ For this reason, the case will be remanded to OWCP to address the above-noted evidence submitted at the time of the March 2, 2022 decision. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision regarding appellant's schedule award claim. Accordingly,

⁷ *Supra* note 2.

⁸ 41 ECAB 548 (1990); *see also Order Remanding Case, T.F.*, Docket No. 22-0015 (issued May 16, 2022); *Order Remanding Case, F.A.*, Docket No. 20-1324 (issued March 1, 2021); *T.G.*, Docket No. 19-1930 (issued January 8, 2021).

⁹ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should 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).

¹⁰ *See T.F., id.*; *Order Remanding Case, G.A.*, Docket No. 19-1080 (issued January 2, 2020); *Order Remanding Case, T.J.*, Docket No. 14-1854 (issued February 3, 2015); *Order Remanding Case, J.J.*, Docket No. 12-1062 (issued December 12, 2012); *Willard McKennon*, 51 ECAB 145 (1999); *Linda Johnson*, 45 ECAB 439 (1994). *See also Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch, id.*

IT IS HEREBY ORDERED THAT the March 2, 2022 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: June 21, 2023
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