

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

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<b>C.W., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 20-0737</b>
	)	<b>Issued: March 20, 2023</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Douglasville, GA, Employer</b>	)	
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*Appearances:*

*Wayne Johnson, Esq.*, for the appellant<sup>1</sup>  
*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 February 17, 2020 appellant, through counsel, filed a timely appeal from an August 19, 2019 merit decision.<sup>2</sup> The Clerk of the Appellate Boards assigned Docket No. 20-0737.

On December 17, 2015 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that day, she heard her left ankle pop when she took a step towards her vehicle while in the performance of duty. She stopped work on December 17, 2015.

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<sup>1</sup> 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.

<sup>2</sup> Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's August 19, 2019 decision was Saturday, February 15, 2020. Because the last day of the 180-day filing period fell on a Saturday, the filing period is extended until the close of the next business day, which was Monday, February 17, 2020. Accordingly, the appeal is timely filed pursuant to 20 C.F.R. § 501.3(f)(2).

On February 1, 2016 OWCP accepted the claim for left ankle fracture (distal fracture of lateral malleolus of left fibula, closed). On March 7, 2016 appellant returned to work full time.

Appellant received medical treatment by Dr. Michael M. Tucker, a Board-certified orthopedic surgeon. On September 28, 2016 Dr. Tucker recommended permanent light-duty restrictions, including walking and standing each limited to 2 and ½ hours each day, based on a September 7, 2016 functional capacity evaluation. In a June 6, 2018 report, he diagnosed ankle instability and closed fracture of lateral malleolus, left foot.

On July 23, 2018 OWCP received an undated letter from appellant in which she indicated that she had been experiencing right hip pain for approximately a year. Appellant noted that her physicians believed that it was related to her altered gait since her injury in December 2015. She requested that OWCP expand acceptance of her claim to include this new condition.

In an August 22, 2018 development letter, OWCP notified appellant of the deficiencies in her claim for an alleged consequential injury to her right hip. It advised her of the type of factual and medical evidence needed and afforded her 30 days to respond.

In an August 28, 2018 decision, OWCP denied modification of an April 27, 2017 schedule award decision.

In a November 7, 2018 report, Dr. James E. McGrory, an orthopedic surgeon, opined that it was “more likely than not, [appellant’s] hip pain is caused from her abnormal gait relative to her ankle.” By decision dated January 22, 2019, OWCP denied the claim for a consequential right hip condition, finding that the medical evidence was insufficient to establish a right hip condition causally related to or that it developed as a consequence of the accepted December 17, 2015 left ankle injury.

On February 21, 2019 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review, which was held on June 7, 2019.

By decision dated August 19, 2019, an OWCP hearing representative affirmed the January 22, 2019 decision, finding that the medical evidence was insufficient to establish that appellant’s right hip condition was causally related/consequential to the accepted left ankle injury.

On August 21, 2019 appellant, through counsel, requested reconsideration of OWCP’s August 21, 2018 decision denying modification of a schedule award.

By decision dated October 30, 2019, OWCP denied reconsideration of the merits of the August 19, 2019 expansion decision.

The Board, having duly considered this matter, finds that the case is not in posture for decision. A request for reconsideration must be received by OWCP within one year of the date of OWCP’s decision for which review is sought.<sup>3</sup> On August 21, 2019 appellant requested reconsideration of OWCP’s August 21, 2018 decision. As her request for reconsideration was

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<sup>3</sup> *T.L.*, Docket No. 19-1110 (issued August 11, 2020).

received on August 21, 2019 within one year of the August 21, 2018 decision, the Board finds that appellant's request for reconsideration was timely filed. However, the Board notes that OWCP did not review the decision of August 21, 2018 denying modification of the schedule award as requested, but instead reviewed the merits of the August 18, 2019 expansion decision. As such, the Board finds that OWCP erred by not reviewing the reconsideration requested by appellant.

This case will therefore be remanded for review of the August 21, 2018 decision. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the August 19, 2019 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: March 20, 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