

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

_____)	
B.O., Appellant)	
)	
and)	Docket No. 22-0870
)	Issued: March 2, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Indianapolis, IN, Employer)	
_____)	

Appearances:
Stephanie N. Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On May 18, 2022 appellant, through counsel, filed a timely appeal from an April 26, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned Docket No. 22-0870.

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 an 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 The Board notes that, following the April 26, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

This case has previously been before the Board on a different issue.³ The facts and circumstances as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 10, 2004 appellant, then a 43-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that he injured his back due to repetitive heavy lifting on May 13, 2004. He stopped work on May 13, 2004. On June 5, 2009 OWCP accepted the claim for aggravation of cervical radiculopathy and aggravation of cervical degenerative disc disease.⁴

By decision dated September 6, 2012, OWCP terminated appellant's wage-loss compensation, effective September 6, 2012, finding that appellant's treating physician, Dr. Brian Foley, a physiatrist, had determined that appellant no longer had disability from work due to the accepted conditions. The record reflects that OWCP paid appellant wage-loss compensation from May 14, 2004 through September 6, 2012.

On May 15, 2019 OWCP accepted appellant's claim for recurrence of disability effective May 20, 2016. It noted that the accepted conditions also included the new condition of chronic cervical radiculopathy. OWCP requested appellant to file a completed claim for compensation (Form CA-7) through the employing establishment if he lost time from work due to his recurrence.

On July 5, 2019 appellant filed a Form CA-7 for the period September 7, 2012 through July 5, 2019. No evidence was submitted in support of the claim. The record reflects that OWCP paid appellant wage-loss compensation commencing December 1, 2016 on its supplemental compensation rolls.

In a July 22, 2019 development letter, OWCP advised appellant of the deficiencies in his claim, noting that he must submit medical evidence from a physician which included a history of his injury and a thorough explanation with objective findings, as to how his condition has worsened such that he was no longer able to perform the duties of his position when he stopped work. By separate letter of even date, it requested additional evidence from the employing establishment. OWCP afforded each party 30 days to respond.

OWCP subsequently received a February 3, 2009 report and an undated work capacity evaluation (Form OWCP-5c) from Dr. Ronald L. Young, a Board-certified neurosurgeon. In both documents he explained that appellant's continued lifting activities at work permanently aggravated his degenerative disc disease and cervical radiculopathy and disabled appellant from his mail processing clerk position. Dr. Young related that appellant needed surgery.

³ Docket No. 07-2427 (issued April 16, 2008); Docket No. 18-0387 (issued April 4, 2019).

⁴ OWCP assigned the present claim OWCP File No. xxxxxx499. Appellant has a prior claim under OWCP File No. xxxxxx200, accepted for lumbar and cervical strains due to a December 12, 2003 work-related injury. The current case file, OWCP File No. xxxxxx499 and OWCP File xxxxxx200, as well as a denied claim for a January 29, 2004 traumatic injury under OWCP File No. xxxxxx704 have been administratively combined by OWCP, with OWCP File No. xxxxxx499 serving as the master file.

By decision dated March 18, 2021, OWCP denied appellant's claim for disability from work during the period September 7, 2012 through December 1, 2016, finding that no evidence was received in support of the claim.

On January 26, 2022 appellant, through counsel, requested reconsideration and submitted additional evidence in support of wage-loss compensation for the period September 7, 2012 through December 1, 2016.

By decision dated April 26, 2022, OWCP denied modification of its March 18, 2021 decision. It found that the evidence submitted on reconsideration was either duplicative of previous evidence of record or did not address appellant's work capacity to "indicate a continuation of disability or a recurrence" during the period September 7, 2012 through November 30, 2016 due to the accepted work injury.

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

In the case of *William A. Couch*,⁵ 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.

While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that the medical report from Dr. Young was not considered and addressed by OWCP. It is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.⁶ The Board finds that this case is not in posture for decision as OWCP did not consider and address the above-noted evidence in its April 26, 2022 decision.⁷ On remand, OWCP shall consider and address all evidence of record and, following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

⁵ 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁶ *See Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch, id.*

⁷ *See Order Remanding Case, V.C.*, Docket No. 16-0694 (issued August 19, 2016).

IT IS HEREBY ORDERED THAT the decision dated April 26, 2022 is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 2, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

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