

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

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<b>T.K., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 22-1363</b>
	)	<b>Issued: March 16, 2023</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Rockwood, TN, Employer</b>	)	
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*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On September 28, 2022 appellant, through counsel, filed a timely appeal from a September 14, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1363.

On October 28, 2021 appellant then a 48-year-old rural carrier filed a traumatic injury claim (Form CA-1) alleging that on August 30, 2021, she injured her right shoulder when she lifted a heavy package off the floor and placed it into the buggy while in the performance of duty.

In a report dated October 26, 2021, Dr. W. David Hovis, a Board-certified orthopedic surgeon, diagnosed rotator cuff tear, right shoulder; AC arthropathy, right shoulder; cervical degenerative disc disease; biceps tendinopathy right shoulder, and a history of tracheal resection three years prior.

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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 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.

By decision dated December 17, 2021, OWCP accepted that the August 30, 2021 employment incident occurred as alleged but found that the medical evidence did not establish causal relationship between the accepted August 30, 2021 employment incident and appellant's diagnosed medical conditions.

On May 25, 2022 appellant requested reconsideration of the December 17, 2021 decision. On May 31, 2022 counsel for appellant filed an appeal before the Board of the December 17, 2021 decision. By letter dated June 2, 2022, OWCP notified appellant that it had removed the reconsideration request, as she had filed an appeal with the Board, which was assigned Docket No. 22-0920. On August 19, 2022 counsel for appellant requested that the appeal for Docket No. 22-0920 be dismissed.

On August 19, 2022, counsel for appellant renewed his request for reconsideration of the December 17, 2021 OWCP decision and submitted additional evidence.

A January 3, 2022 report by Dr. Hovis, noted that he found no evidence of swelling, ecchymosis, or deformity of appellant's right shoulder. He diagnosed: rotator cuff tear, right shoulder, complete involving supraspinatus tendon with interstitial tearing in the infraspinatus; AC arthropathy, right shoulder; cervical degenerative disc disease; biceps tendinopathy, right shoulder; and a history of tracheal resection, three years prior, and he recommended arthroscopic rotator cuff repair.

A January 31, 2022 operative report revealed that appellant underwent an arthroscopy of the right shoulder, for right shoulder rotator cuff tear, acromial joint arthritis, and right shoulder biceps tendinopathy, performed by Dr. Hovis.

March 24, 2022 notes from Dr. Hovis indicated that appellant was seen for left shoulder pain, which was similar to the right shoulder pain she had experienced prior to her surgery. X-rays of the left shoulder reflected normal findings. Dr. Hovis also noted that x-rays of appellant's left hand revealed subluxation and degenerative changes with narrowing of the joint spaces in the first carpometacarpal (CMC) joint predominantly. He diagnosed left shoulder rotator cuff tendinopathy and left hand first CMC joint arthritis of the thumb. April 26, 2022 notes from Dr. Hovis repeated these diagnoses. OWCP continued to receive reports from Dr. Hovis related to appellant's left shoulder and hand complaints.

April 28, 2022 treatment notes from Dr. Patrick J. Mastin, Board-certified in rheumatology, indicated that appellant reported neck pain/low back pain and that he advised appellant that "this has nothing to do with her RA [rheumatoid arthritis] as RA spares the spine. This does not mean she does not have other etiology as she has been told there were issues in the past."

A May 18, 2022 MRI scan of the lumbar spine read by Dr. Samuel Maynard, Board-certified in diagnostic radiology, demonstrated a broad-based protrusion without spinal stenosis at L5-S1. A May 18, 2022 MRI scan of the cervical spine, read by Dr. Maynard, demonstrated mild narrowing of the right foramen due to small protrusion and no spinal stenosis at C5-6; and small protrusions without spinal stenosis or foraminal stenosis at C3-4, C4-5, and C6-7. OWCP received June 28, 2022 laboratory results, including electrodiagnostic reports.

A return-to-work certificate dated July 26, 2022, included appellant's restrictions for use of the right arm.

By decision dated August 26, 2022, OWCP denied appellant's August 19, 2022 request for reconsideration of the merits of the December 17, 2021 decision, pursuant to 5 U.S.C. § 8128(a).

On September 6, 2022 the Board granted counsel's request to dismiss the appeal of the December 17, 2021 decision under Docket No. 22-0920.<sup>2</sup>

In a letter dated September 7, 2022, counsel for appellant requested that OWCP process the request for reconsideration filed on August 19, 2022.<sup>3</sup>

By decision dated September 14, 2022, OWCP denied appellant's request for reconsideration, pursuant to 5 U.S.C. § 8128(a). It found that her reconsideration request did not raise a substantive legal question nor include new and relevant evidence and, therefore, was insufficient to warrant a review of the prior decision. OWCP noted evidence received from medical providers, however, Dr. Mastin's April 28, 2022 report was not considered and addressed.

The Board has duly considered the matter and finds that the case is not in posture for decision.

In the case of *William A. Couch*,<sup>4</sup> 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, in this case it is clear that OWCP did not consider Dr. Mastin's April 28, 2022 report. The Board also notes that OWCP summarily reviewed the other medical reports of record. 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.<sup>5</sup>

Accordingly, the Board will set aside the September 14, 2022 decision and remand the case for OWCP to consider and address the evidence and argument in support of appellant's reconsideration request, make findings of fact, and provide a statement of reasons for its decision, pursuant to the standards set forth in section 5 U.S.C. § 8124(a) and 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it shall issue a *de novo* decision. Accordingly,

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<sup>2</sup> Docket No. 22-0920 (issued September 6, 2022).

<sup>3</sup> On September 8, 2022 appellant, through counsel, filed an appeal to the Board of the August 26, 2022 OWCP decision. The Board assigned the appeal Docket No. 22-1326. As the appeal in Docket No. 22-0920 of the December 17, 2021 decision was pending on August 26, 2022, OWCP's decision dated August 26, 2022 is *null and void*. *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>4</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>5</sup> *See C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch, id.*

**IT IS HEREBY ORDERED THAT** the September 14, 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: March 16, 2023  
Washington, DC

Alec J. Koromilas, 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