

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

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<b>E.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0458</b>
	)	<b>Issued: November 28, 2023</b>
<b>DEPARTMENT OF AGRICULTURE, U.S.</b>	)	
<b>FOREST SERVICE, Corona, CA, Employer</b>	)	
_____	)	

*Appearances:* *Case Submitted on the Record*  
*Stephanie N. Leet, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**ORDER DISMISSING APPEAL**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

On February 14, 2023 appellant, through counsel, sought an appeal from a February 13, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 23-0458.

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

On August 12, 2019 appellant, then a 31-year-old firefighter technician, filed a traumatic injury claim (Form CA-1) alleging that on August 10, 2019 he experienced sharp, unbearable chest pain which radiated into his left arm and back, followed by dizziness, after he had hiked to his

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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> Docket No. 21-0587 (issued July 6, 2022); Docket No. 23-0049 (issued November 21, 2023)

assigned location and began working with a smoldering piece of duff while in the performance of duty. He stopped work on August 10, 2019.

By decision dated November 21, 2019, OWCP accepted that the August 10, 2019 employment incident occurred as alleged, but denied the claim finding that the medical evidence of record did not contain a medical diagnosis in connection with the accepted employment incident. Consequently, it found that the requirements had not been met to establish an injury as defined by FECA.

On December 3, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated February 4, 2020, OWCP's hearing representative affirmed the November 21, 2019 decision.

On January 11, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence.

By decision dated February 12, 2021, OWCP denied modification of its February 4, 2020 decision.

On March 5, 2021 appellant, through counsel, appealed to the Board. By decision dated July 6, 2022,<sup>3</sup> the Board found that the case was not in posture for decision. The Board found that appellant had established a diagnosed medical condition. Accordingly, the Board set aside OWCP's February 13, 2021 decision and remanded the case to OWCP to review the medical evidence of record with regard to causal relationship and, following any further development deemed necessary, issue a *de novo* decision.

By decision dated August 18, 2022, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish causal relationship between appellant's diagnosed medical condition and the accepted August 10, 2019 employment injury.

On September 14, 2022 appellant, through counsel, requested review of the written record.

By decision dated September 28, 2022, OWCP denied appellant's request for a review of the written record by a representative of OWCP's Branch of Hearings and Review. It exercised its discretion and performed a limited review of the evidence submitted following reconsideration, and denied the request as the issue in the case would be addressed equally well by submitting new, relevant evidence or argument accompanying a valid request for reconsideration.

On October 17, 2022 appellant, through counsel, appealed the September 28, 2022 decision to the Board. The Clerk of the Appellate Boards assigned that appeal Docket No. 23-0049. By decision dated November 21, 2023,<sup>4</sup> the Board found that OWCP improperly denied appellant's request for review of the written record. Accordingly, the Board set aside OWCP's

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<sup>3</sup> Docket No. 21-0587 (issued July 6, 2022).

<sup>4</sup> Docket No. 23-0049 (issued November 21, 2023).

September 28, 2022 decision and remanded the case to OWCP to proceed with a review of the written record by a representative of OWCP's Branch of Hearings and Review, as requested.

Also on October 17, 2022, appellant, through counsel, requested reconsideration of OWCP's August 18, 2022 decision.

During the pendency of the appeal in Docket No. 23-0049, by decision dated February 13, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), finding that his request for reconsideration neither raised substantial legal questions, nor included new or relevant evidence.

The Board finds that this appeal must be dismissed as the February 13, 2023 decision, which is the subject of this appeal, became null and void upon issuance of the Board's November 21, 2023 decision in Docket No. 23-0049, which remanded the case to OWCP to proceed with a review of the written record by a representative of OWCP's Branch of Hearings and Review.<sup>5</sup>

Pursuant to 5 U.S.C. § 8149 and 20 C.F.R. §§ 501.2(c) and 501.3(a), the Board's jurisdiction is limited to the review of final adverse decisions of OWCP issued under the Federal Employees' Compensation Act (FECA). As the February 13, 2023 decision of OWCP is null and void, the appeal assigned Docket No. 23-0458 does not contain a final adverse decision over which the Board may properly take jurisdiction. Therefore, the Board finds that the appeal docketed as No. 23-0458 is dismissed.<sup>6</sup> Accordingly,

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<sup>5</sup> Additionally, the Board notes that during the pendency of this appeal, OWCP issued a November 9, 2023 nonmerit decision denying appellant's August 15, 2023 request for reconsideration on the same issue currently before the Board. OWCP's November 9, 2023 decision is, therefore, null and void as the Board and OWCP may not simultaneously exercise jurisdiction over the same underlying issue in a case on appeal. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see e.g.*, *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Lawrence Sherman*, 55 ECAB 359, 360 n.4 (2004); *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>6</sup> The Board's decisions and orders are final upon the expiration of 30 days from the date of their issuance. 20 C.F.R. § 501.6(d).

**IT IS HEREBY ORDERED THAT** the appeal docketed as No. 23-0458 is dismissed.

Issued: November 28, 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