

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

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**S.G., Appellant** )

**and** )

**DEPARTMENT OF THE ARMY, U.S. ARMY** )  
**CORPS OF ENGINEERS, BUFFALO** )  
**DISTRICT, Buffalo, NY, Employer** )  
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**Docket No. 22-1172**  
**Issued: October 6, 2023**

*Appearances:*

*Thomas Harkins, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**ORDER GRANTING REMAND**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 5, 2022 appellant, through counsel, filed a timely appeal from an April 6, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1172.

On November 19, 2019 appellant, then a 50-year-old project management specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 15, 2019 at 7:45 a.m. she fractured her right ankle when she slipped and fell on an icy sidewalk while in the performance of duty. On the reverse side of the claim form, appellant's supervisor noted that her scheduled tour of duty began at 8:00 a.m. and acknowledged that she was in the performance of duty at the time of the injury. Appellant stopped work on the date of the claimed injury.

An undated and unsigned witness statement indicated that on November 15, 2019 appellant was observed sitting on the ground approximately 30 feet from the Rich Marine Sales (RMS) parking lot. The witness related that two individuals were observed assisting her, but they were

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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.

not employing establishment employees. The witness then pulled into the parking lot to offer additional assistance before appellant was helped up and seated into the witness' vehicle. Thereafter, an ambulance arrived and transported appellant to the hospital.

Appellant provided an October 13, 2020 statement asserting that the employing establishment leased a parking lot from RMS for the use of its employees, that she was required to park in that lot, but was not required to pay for parking, that there was only one sidewalk on the street that she fell on which connected this parking lot to the employing establishment, and that the public almost never used the sidewalk on this street as the street ended at the employing establishment. She further noted that there was a guard at the employing establishment entrance and only employees and their guests were allowed to enter.

By decision dated January 27, 2020, OWCP accepted that the November 15, 2019 incident occurred as alleged and that a medical condition had been diagnosed in connection with that event, but it denied the claim as the alleged injury did not occur in the performance of duty. It found that the sidewalk where appellant slipped and fell was not owned, controlled, managed, or maintained by the employing establishment, but was a public sidewalk used by any pedestrian.

OWCP received a copy of a commercial lease agreement between RMS and the employing establishment, executed on January 5, 2019, under which the employing establishment leased the parking lot near where appellant fell. Section 6 of the lease was entitled "Exclusive Use."

Appellant subsequently submitted multiple requests for reconsideration. By decisions dated March 22, 2021 and April 6, 2022, OWCP denied modification of its prior decision.

Following the filing of this appeal, on January 5, 2023, the Director of OWCP filed a motion to remand with the Clerk of the Appellate Boards. The Director requested that the Board remand the case to OWCP, noting that it had erred as the case record established that the employing establishment leased the RMS parking lot where appellant parked her vehicle for its exclusive use. The Director indicated that OWCP will develop the case to determine whether the public sidewalk where appellant fell was the necessary path to the employing establishment from the RMS parking lot such that she would be entitled to benefits.

The Board, having duly considered this matter, grants the Director's motion. On remand, OWCP shall further develop the evidence to include issuing a development letter to the employing establishment and requesting information regarding whether the sidewalk on the street on which appellant fell was the necessary path to the employing establishment from the RMS parking lot. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the April 6, 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: October 6, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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