

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

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<b>D.B., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 23-0543</b>
	)	<b>Issued: October 26, 2023</b>
<b>U.S. POSTAL SERVICE, MASSENA POST OFFICE, Massena, NY, Employer</b>	)	
	)	

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

**ORDER REMANDING CASE**

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

On March 12, 2023 appellant, through counsel, filed a timely appeal from a September 13, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0543.

On March 6, 2019 appellant, then a 44-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained left shoulder/bicep tendinitis due to factors of his federal employment.<sup>2</sup> He noted that he first became aware of his condition and of its relationship to his federal employment on January 11, 2019.

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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> Appellant has previously accepted traumatic injury claims under OWCP File Nos. xxxxxx676 and xxxxxx340 for a left shoulder contusion and a left shoulder injury respectively. OWCP has administratively combined these claims with the current claim, OWCP File No. xxxxxx631. OWCP File No. xxxxxx340 serves as the master file.

By decision dated June 17, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed left shoulder condition causally related to the accepted factors of his federal employment.

On March 19, 2020 appellant requested reconsideration.

By decision dated June 9, 2020, OWCP denied modification of its June 17, 2019 decision.

On June 8, 2021 appellant requested reconsideration.

By decision dated September 1, 2021, OWCP denied modification of its June 9, 2020 decision.

OWCP subsequently received a report dated March 16, 2022 from Dr. Joseph Thomas, Board-certified in occupational medicine. Dr. Thomas noted that appellant was seen for a follow-up evaluation of his work-related injuries. He further noted that appellant had an occupational disease claim for his left shoulder and had reinjured and reexacerbated his left shoulder several times while continuing to work. Appellant related increasing left shoulder pain and weakness, which Dr. Thomas advised were a consequence of his accepted work-related injuries.

OWCP also received a March 16, 2022 duty status report (Form CA-17) by Dr. Thomas, who diagnosed left shoulder impingement due to injury. He advised that appellant could return to work with restrictions.

On September 1, 2022 appellant, through counsel, requested reconsideration. Counsel referenced medical reports dated January 6, 2020, and April 9 and July 7, 2021 from Dr. Nimesh Desai, a Board-certified internist, and contended that appellant's claim should be accepted for left shoulder impingement syndrome and combined with his prior claims, and noted that appellant should receive medical treatment based on Dr. Desai's reports.

By decision dated September 13, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a), finding that it neither raised substantive legal questions, nor included relevant new evidence. It noted that the evidence on reconsideration included the September 1, 2022 request for reconsideration, which "cites medical evidence that is not in the case file (Dr. Desai['s] January 6, 2020 report)." OWCP indicated that "no new medical evidence has been submitted in support of your reconsideration request."

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

In the case of *William A. Couch*,<sup>3</sup> the Board held that, when adjudicating a claim, OWCP is obligated to review all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

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<sup>3</sup> 41 ECAB 548 (1990).

While OWCP is not required to list every piece of evidence submitted, the record is clear that OWCP denied reconsideration without reviewing the evidence submitted after the September 1, 2021 merit decision, including the reports dated March 16, 2022 of Dr. Thomas. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.<sup>4</sup> As OWCP did not consider and address all of the evidence received following the September 1, 2021 decision, the Board cannot review such evidence for the first time on appeal.<sup>5</sup>

For this reason, the case will be remanded to OWCP to properly consider and address all of the evidence of record. Following this and other such further development as deemed necessary, OWCP shall issue an appropriate decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the September 13, 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 26, 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

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<sup>4</sup> See *id.*; *Order Remanding Case, J.H.*, Docket No. 23-0082 (issued January 19, 2023); *Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *id.*

<sup>5</sup> 20 C.F.R. § 501.2(c). See also *J.H., id.*; *Order Remanding Case, G.M.*, Docket No. 16-1766 (issued February 16, 2017).