

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

L.G., Appellant

and

**DEPARTMENT OF THE INTERIOR, FISH &
WILDLIFE SERVICE, Ashland, WI, Employer**

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Docket No. 23-0637

Issued: September 15, 2023

Appearances:

Stephanie N. Leet, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On March 27, 2023 appellant, through counsel, filed a timely appeal from a February 17, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0637.

This case has been previously before the Board.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On July 27, 2010 appellant, then a 27-year-old biological technician, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2010 she experienced persistent severe neck pain as a result of carrying a five-gallon bucket filled with water/fish and bending and walking

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 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 Docket No. 21-0034 (issued December 7, 2021).

with other field equipment eight hours while in the performance of duty. OWCP initially accepted the claim for cervicalgia. It subsequently expanded the acceptance of the claim to include displacement of cervical intervertebral disc without myelopathy.

On September 26, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work, commencing June 9, 2014. Also, on September 26, 2019, she filed a notice of recurrence (Form CA-2a) claiming disability from work, commencing June 13, 2014. Appellant noted that following her original July 15, 2010 employment injury, she returned to work. She maintained that her employment injury never improved and had worsened over time. On the reverse side of the claim form the employing establishment noted that on July 27, 2010 appellant was released to immediately return to work with restrictions. Upon her return to full-time work, on August 2, 2010, the employing establishment accommodated her work restrictions. It noted that appellant worked full time until she returned to college on August 29, 2010 when she worked part time, three-to-five hours per week, through April 2011. On May 22, 2011 the school year ended and she returned to full-time work, four 10-hour days per week, and performed her duties without issue.

By decision dated November 4, 2019, OWCP denied appellant's claim for disability. It found that the medical evidence of record was insufficient to establish disability from work commencing June 9, 2014 due to the July 15, 2010 employment injury.

On November 11, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 9, 2020.

OWCP thereafter received a Notice of Personnel Action (Standard Form (SF)50-B), which indicated that appellant's employment was terminated, effective August 27, 2011, due to the end of appointment of its student program. In a note on the Form SF 50-B, appellant disagreed with the reason provided for her employment termination.

On May 26, 2020 OWCP expanded the acceptance of appellant's claim to include other cervical disc displacement at the C6 level without myelopathy.

By decision dated May 29, 2020, OWCP's hearing representative affirmed the November 4, 2019 decision regarding the disability claim.

On October 8, 2020 appellant appealed to the Board. By decision dated December 7, 2021,³ the Board affirmed OWCP's May 29, 2020 decision. The Board noted that since appellant was a temporary employee, she was not entitled to disability compensation at the time her appointment ended, irrespective of whether she was performing modified-duty work. The Board found that she had not met her burden of proof to establish disability from work commencing June 9, 2014, as there was insufficient medical evidence supporting causal relationship between her claimed disability and the July 15, 2010 employment injury.

³ *Id.*

OWCP subsequently received additional medical evidence.

In a January 5, 2022 report, Dr. Heidi Robertson, a Board-certified anesthesiologist, provided assessments of cervical disc disease, cervical stenosis of spinal canal, and lumbar disc disease with radiculopathy. In a February 9, 2022 report, Dr. Robertson concluded that appellant's progressive and continuous disability resulted from her July 15, 2010 employment injury.

In progress notes dated January 7, February 7, May 18, and November 4, 2022, Dr. Devon S. Dannen, a family practitioner, discussed examination findings. She provided assessments including chronic neck pain, and herniated disc.

A February 14, 2022 emergency department provider note signed by Bria H. Schurke, a physician assistant, provided an assessment of neck pain.

In a February 14, 2022 note, Dr. Brenda Brueske, a chiropractor, provide an assessment of cervicothoracic strain, subluxation, and muscle spasm.

Reports and progress notes dated March 29, April 11, and May 2, 10, and 11, 2022 were signed by physical therapists.

A September 10, 2013 report from Dr. Naveen S. Murthy, a Board-certified diagnostic radiologist, indicated that a cervical spine x-ray revealed mild loss of the normal cervical lordosis; mild scattered degenerative disc disease and facet arthropathy; and minimal anterolisthesis of C4 on C5 with forward flexion that reduced with extension.

On November 21, 2022 appellant, through counsel requested reconsideration.

By decision dated February 17, 2023, OWCP denied modification of its denial of appellant's disability claim for the period commencing June 9, 2014.

The Board finds that the case is not in posture for decision.

Following OWCP's May 29, 2020 decision appellant submitted additional medical evidence. In the case of *William A. Couch*,⁴ the Board held that, when adjudicating a claim, OWCP is obligated to consider 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, the Board notes that the January 5, and February 9, 2022 reports from Dr. Robertson, February 7 and May 18, 2022 progress notes from Dr. Dannen, and a February 14, 2022 report from Dr. Brueske, were not considered and addressed by OWCP in its February 17, 2023 decision.⁵

⁴ 41 ECAB 548 (1990); *see J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁵ *See C.D.*, Docket No. 20-0168 (issued March 5, 2020).

It is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision, as Board 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 February 17, 2023 decision.⁷ On remand, OWCP shall review all of the evidence submitted on reconsideration. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the February 17, 2023 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this order of the Board.

Issued: September 15, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁶ See *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 5.

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