

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

E.E., Appellant)	
)	
and)	Docket No. 23-0677
)	Issued: February 27, 2024
U.S. POSTAL SERVICE, LA CROSSE POST OFFICE, La Crosse, WI, Employer)	
)	

Appearances:
Allen R. Webb, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On April 11, 2023 appellant, through counsel, filed a timely appeal from a March 13, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0677.

On August 8, 2019 appellant, then a 47-year-old bulk mail tech, filed an occupational disease claim (Form CA-2) alleging that he developed low back pain, degenerative disc disease of the lumbar spine, and subluxations from L4-S1 due to factors of his federal employment. He explained that he performed constant bending and twisting when working with tubs and trays of mail while standing on concrete floors. Appellant noted that he first became aware of his condition

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 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.

on March 26, 2010 and realized its relation to his federal employment on March 29, 2018. OWCP accepted the claim on November 14, 2019 for lumbar ligament sprain.

Appellant, thereafter, filed claims for wage-loss compensation (Form CA-7) for disability from work commencing March 17, 2018. In support of his claims, he submitted medical evidence from his treating physicians, opining that he was disabled from work due to his accepted employment injury.

By decision dated April 20, 2020, OWCP denied appellant's claim for wage-loss compensation based on an April 17, 2020 opinion of Dr. Kenechukwu Ugokwe, a Board-certified neurological surgeon serving as a district medical adviser. Dr. Ugokwe disagreed with appellant's treating physicians, opining that appellant had only subjective pain without any objective findings supporting disability.

On June 24, 2021 appellant, through counsel, requested reconsideration. By decision dated July 27, 2021, OWCP denied modification.

On June 22, 2022 appellant, through counsel, requested reconsideration. By decision dated August 23, 2022, OWCP denied modification.

On August 31, 2022 appellant, through counsel, requested reconsideration. By decision dated September 12, 2022, OWCP denied appellant's request for reconsideration, pursuant to 5 U.S.C. § 8128(a).

Appellant subsequently submitted additional medical evidence, including a March 20, 2022 report from Dr. Paul T. Wicklund, a Board-certified orthopedic surgeon.

On September 30, 2022 appellant, through counsel, again requested reconsideration.

By decision dated October 21, 2022, OWCP expanded the acceptance of appellant's claim to include L4-5 and L5-S1 intervertebral disc degeneration without radiculopathy, L3-4 annular tear, and L3-4 disc protrusion.²

By decision dated March 13, 2023, OWCP denied modification of the August 23, 2022 decision. It did not address all of the evidence received following OWCP's September 12, 2022 decision.

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

² OWCP also informed appellant by letter dated October 21, 2022 that it had administratively combined OWCP Files No. xxxxxx566, xxxxxx999, and xxxxxx724, with File No. xxxxxx566 designated as the master file.

In the case of *William A. Couch*³ 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.

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.⁴ OWCP, in its March 13, 2023 decision denying appellant's claim for disability compensation, did not consider and address all of the evidence received following OWCP's September 12, 2022 decision, including the March 20, 2022 report from Dr. Wicklund.⁵

On remand OWCP shall review all evidence of record. Following any further development of the evidence as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the March 13, 2023 decision of OWCP is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: February 27, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

³ 41 ECAB 548 (1990); *see Order Remanding Case, D.Q.*, Docket No. 22-0528 (issued March 21, 2023); *J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁴ *See Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch, id.*

⁵ *See Order Remanding Case, B.O.*, Docket No. 22-0870 (issued March 2, 2023); *Order Remanding Case, V.C.*, Docket No. 16-0694 (issued August 19, 2016).