

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

T.S., Appellant)

and)

DEPARTMENT OF EDUCATION, FEDERAL)
STUDENT AID, Washington, DC, Employer)

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Docket No. 23-1147
Issued: February 6, 2024

Appearances:
Stephanie N. Leet, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 7, 2023 appellant, through counsel, filed a timely appeal from a July 18, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1147.

On December 8, 2016 appellant, then a 34-year-old contract specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 29, 2016 she was electrocuted when using a toaster oven in the employing establishment's kitchenette while in the performance of duty. She stopped work from November 29 through December 25, 2016, and worked intermittently from December 29, 2016 through May 23, 2018. Appellant stopped work completely on May 24, 2018, and did not return.

By decision dated October 24, 2018, OWCP accepted appellant's claim for electrocution.

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.

On November 7, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work for the period July 25, 2018 through August 9, 2019. She continued to file CA-7 forms for additional periods of disability thereafter through June 1, 2021.

By decision dated February 16, 2021, OWCP initially denied appellant's claim for disability from work.

Appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated May 4, 2021, OWCP's hearing representative, following a preliminary review, set aside the February 16, 2021 decision and remanded the case for further development of the medical evidence.

On May 13, 2021 OWCP referred appellant, along with the case record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Michael S. Sellman, a Board-certified neurologist, for a second opinion evaluation and opinion regarding the extent of any work-related condition and/or disability.

In reports dated June 2, 2021 and February 23, 2022, Dr. Sellman opined that appellant was not disabled from work for the claimed period causally related to the accepted November 29, 2016 employment injury.

By decision dated June 24, 2021, OWCP denied appellant's claim for compensation for disability.

Appellant requested an oral hearing on July 19, 2021. A hearing was held on November 12, 2021. By decision dated January 27, 2022, OWCP's hearing representative set aside the June 24, 2021 decision, and remanded the case for further development.

By decision dated March 3, 2022, OWCP denied appellant's claim for disability from work, finding that the medical evidence of record was insufficient to establish disability from work for the claimed period causally related to her accepted November 29, 2016 employment injury.²

On March 31, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In support of her claim, appellant submitted May 18, 2022 medical reports from Dr. John Ellis, a Board-certified orthopedic surgeon, requesting to expand the acceptance of her claim to include additional work-related medical conditions. Dr. Ellis opined that due to appellant's electrocution injury and sequelae, which had continued since the accepted November 29, 2016 employment injury, she continued to remain temporarily totally disabled as a direct result of the employment-related injury.

² By decision dated February 16, 2021, OWCP initially denied appellant's claim for compensation for disability for the period July 25, 2018 and continuing. By decision dated May 4, 2021, a representative of OWCP's Branch of Hearings and Review set aside the February 16, 2021 decision, and remanded the case for further development of the medical evidence. By decision dated June 24, 2021, OWCP denied appellant's claim for compensation for disability for the period July 25, 2018 and continuing. By decision dated January 27, 2022, an OWCP hearing representative set aside the June 24, 2021 decision, and remanded the case for further development.

By decision dated September 20, 2022, OWCP's hearing representative affirmed OWCP's March 3, 2022 decision in part, denying appellant's claim for compensation for the period June 2, 2021 to the present, and vacated OWCP's March 3, 2022 decision in part, remanding the case for further development with regard to disability for the period of July 25, 2018 through June 1, 2021. On remand, the hearing representative instructed OWCP to request an addendum report from second opinion physician Dr. Sellman, regarding that claimed period of disability.³

On September 26, 2022 appellant submitted a September 22, 2022 medical report from Dr. Ellis, who opined that she continued to remain disabled from work.

On October 18, 2022 OWCP referred appellant, along with the medical record, an updated SOAF, and a series of questions, to Dr. Sellman for a second opinion evaluation and addendum report regarding the extent of any work-related condition and disability for the period July 25, 2018 through June 1, 2021 causally related to the November 29, 2016 employment injury.

In a November 5, 2022 supplemental report, Dr. Sellman reevaluated appellant for the purpose of the second opinion evaluation. In his report, he opined that there were no objective findings to support that appellant was disabled from work from July 25, 2018 through June 1, 2021 involving a neurological issue causally related to the November 29, 2016 employment injury.

By decision dated November 15, 2022, OWCP denied appellant's claim for compensation for disability from work for the period July 25, 2018 through June 1, 2021, finding that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period causally related to her accepted November 29, 2016 employment injury.

On December 9, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In support of her claim, appellant submitted a November 28, 2022 report from Dr. Ellis, providing a detailed history of injury, medical treatment, and review of diagnostic studies. Dr. Ellis opined that the electrocution that occurred as a result of the accepted November 29, 2016 employment injury caused a significant change in appellant's nervous system. He explained that she was unable to return to work in any capacity due to residual impairments, which caused a change in her overall cognition and mental acuity, as well as her memory and ability to follow and recall directions. Dr. Ellis reported that appellant was temporarily totally disabled from work as of May 24, 2018 when she stopped work completely due to the accepted November 29, 2016 employment injury. He further noted review of accompanying time analysis forms (Form CA-7a) for the period November 29, 2016 through October 26, 2019, submitted with his report, attesting to appellant's treatment, evaluations, and disability on the dates documented on the forms as a result of the accepted November 26, 2019 employment injury.

In a March 7, 2023 medical report, Dr. Ellis requested expansion of the acceptance of appellant's claim to include the additional medical conditions of electric shock injury induced small fiber neuropathy and atypical trigeminal neuralgia facial pain causally related to the accepted

³ On March 9, 2023 appellant, through counsel, sought an appeal before the Board of the September 20, 2022 decision concerning the period of disability from June 2, 2021 and continuing. That appeal will proceed under Docket No. 23-0534.

November 29, 2016 employment injury. He discussed objective examination findings and diagnostic studies as support for the additional medical conditions claimed.

By decision dated July 18, 2023, OWCP's hearing representative affirmed the November 15, 2022 decision without addressing the newly-submitted evidence.

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

In the case of *William A. Couch*,⁴ 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. In its July 18, 2023 decision, OWCP failed to consider Dr. Ellis' November 28, 2022 and March 7, 2023 medical reports, which addressed appellant's employment-related disability for the period claimed and ongoing residuals of her accepted November 29, 2016 employment injury. As such, it failed to follow its procedures by properly reviewing and discussing all of the evidence of record.⁵

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.⁶ On remand OWCP shall review all evidence properly submitted by appellant prior to the issuance of the July 18, 2023 decision. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

⁴ *William A. Couch*, 41 ECAB 548, 553 (1990); *see also Order Remanding Case, A.B.*, Docket No. 22-0179 (issued June 28, 2022); *Order Remanding Case, S.H.*, Docket No. 19-1582 issued May 26, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁵ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative values should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012).

⁶ *See A.B.*, *supra* note 4; *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 4.

IT IS HEREBY ORDERED THAT the July 18, 2023 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: February 6, 2024
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