

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

C.M., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
TRANSPORTATION SECURITY)
ADMINISTRATION, NEW YORK STEWART)
INTERNATIONAL AIRPORT, New Windsor, NY,)
Employer)

Docket No. 24-0080
Issued: February 29, 2024

Appearances:
Paul Kalker, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 18, 2023 appellant, through counsel, filed a timely appeal from a June 7, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0080.²

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 The Board notes that, following the June 7, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

This case has previously been before the Board.³ The facts and circumstances set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On March 23, 2015 appellant, then a 45-year-old lead transportation security officer, filed an occupational disease claim (Form CA-2) alleging that she sustained depression, anxiety, panic, and post-traumatic stress disorder causally related to factors of her federal employment. She stopped work on September 4, 2014.

By decision dated October 16, 2015, OWCP denied appellant's emotional condition claim. It found that she had failed to establish a compensable employment factor.

On May 24, 2016 appellant requested reconsideration. By decision dated March 23, 2017, OWCP denied modification of its October 16, 2015 decision.

On April 17, 2017 appellant, through counsel, appealed to the Board. By decision dated November 14, 2018, the Board found that appellant had established a compensable employment factor and remanded the case to OWCP for further development.⁴

On December 10, 2019 OWCP accepted appellant's claim for major depressive disorder, single episode, severe without psychotic features.

On February 4, 2021 appellant filed a notice of recurrence (Form CA-2a) claiming disability from work commencing September 1, 2014 due to a change or worsening of her accepted employment-related conditions. She alleged that her emotional condition affected her ability to perform her employment duties and that she experienced difficult relations with her supervisors. Appellant indicated that she had returned to work at a different job on February 1, 2016.

By decision dated July 1, 2021, OWCP found that appellant had not established a recurrence of disability beginning September 4, 2014 causally related to her accepted employment injury.

Appellant appealed to the Board. By decision dated March 29, 2023, the Board set aside the July 1, 2021 decision.⁵ The Board found that appellant had submitted medical evidence supporting disability during the claimed period which OWCP had failed to sufficiently discuss or analyze in denying her claim for a recurrence of disability. The Board remanded the case for OWCP to issue a *de novo* decision with adequate findings of fact and conclusions of law on the issue of whether appellant had met her burden of proof to establish a recurrence of disability commencing September 4, 2014 causally related to her accepted May 5, 2014 employment injury.

On June 7, 2023 OWCP advised appellant that it had accepted her claim for a recurrence of medical care. It identified the correspondence as a "*de novo*" decision but failed to provide appeal rights. OWCP did not address the issue of whether appellant had established a recurrence of disability beginning September 4, 2014, as instructed by the Board.

³ Docket No. 17-1076 (issued November 14, 2018); Docket No. 22-0229 (issued March 29, 2023).

⁴ *Id.*

⁵ *Id.*

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

The Board has final authority to determine questions of fact and law. The Board's determinations are binding upon OWCP and must, of necessity, be so accepted and acted upon by the Director of OWCP.⁶ A decision of the Board is final upon the expiration of 30 days following the date of its order and, in the absence of new review by the Director, the subject matter is *res judicata* and not subject to further consideration by the Board.⁷

As indicated above, in the prior appeal, the Board found that the case was not in posture for decision with regard to whether appellant had met her burden of proof to establish a recurrence of disability beginning September 4, 2014 and remanded the case for OWCP to properly consider the evidence submitted supporting disability. However, on remand, OWCP failed to adjudicate appellant's claim for a recurrence of disability beginning September 4, 2014, as instructed by the Board in its March 29, 2023 decision. Instead, it summarily found that she had sustained a recurrence of a medical condition. The Board finds that OWCP failed to address the specific deficiencies the Board ordered it to address on remand.⁸

Thus, the case must be remanded for OWCP to consider whether appellant sustained an employment-related recurrence of disability commencing September 4, 2014.⁹ Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

⁶ *K.B.*, Docket No. 17-0969 (issued March 13, 2018); see *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84 (1949). See also *Frank W. White*, 42 ECAB 693 (1991) (the Board's order in a prior appeal imposed an obligation on the Director to take actions as directed); *L.C.*, Docket No. 09-1816 (issued March 17, 2010) (OWCP did not follow the Board's instructions); *T.S.*, Docket No. 13-2135 (issued April 3, 2014).

⁷ See *K.B.*, *id.*; 20 C.F.R. § 501.6(d); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). There is no indication that a petition for reconsideration was filed within 30 days of the issuance of the Board's March 29, 2023 decision and the decision became final after 30 days had elapsed. 20 C.F.R. § 501.6(d).

⁸ *Order Remanding Case, A.H.*, Docket No. 19-1336 (issued April 16, 2020); *T.D.*, Docket No. 16-1883 (issued December 27, 2017).

⁹ *Order Remanding Case, K.N.*, Docket No. 17-0771 (issued August 9, 2018).

IT IS HEREBY ORDERED THAT the June 7, 2023 decision of the Office of Workers' Compensation Programs is set aside in part and the case is remanded for further proceedings consistent with this order of the Board.

Issued: February 29, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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