

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

L.R., Appellant	)	
	)	
and	)	<b>Docket No. 23-1082</b>
	)	<b>Issued: January 8, 2024</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>U.S. CITIZENSHIP AND IMMIGRATION</b>	)	
<b>SERVICES, Tampa, FL, Employer</b>	)	
	)	

*Appearances:*  
*Capp Taylor, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On August 5, 2023 appellant, through counsel, filed a timely appeal from a July 12, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1082.

On August 11, 2017 appellant, then a 55-year-old immigration services assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 9, 2017 he experienced pain and other symptoms in his mid and low back and both legs, after lifting boxes while in the performance of duty. He stopped work on August 10, 2017 and returned to work on August 11, 2017. By decision dated October 12, 2017, OWCP accepted appellant's claim for strain of muscle, fascia, and tendon of lower back.

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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 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 June 2, 2021 appellant, through counsel, requested expansion of the acceptance of his claim to include aggravation of cervical and lumbar disc disease with stenosis and thoracic radiculopathy as causally related to the accepted August 9, 2017 employment injury.

By decision dated August 11, 2021, OWCP denied expansion of the acceptance of the claim to include additional conditions as causally related to the accepted August 9, 2017 employment injury.

On August 18, 2021 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review. By decision dated November 18, 2021, OWCP's hearing representative affirmed the August 11, 2021 decision.

On November 13, 2022 appellant, through counsel, requested reconsideration. By decision dated February 7, 2023, OWCP denied modification of the November 18, 2021 decision.

On May 8, 2023 appellant, through counsel, requested reconsideration.

In support thereof, appellant submitted additional evidence, including diagnostic reports dated May 3, 2009 and January 31, 2017.

In an April 6, 2023 report, Dr. Robert R. Reppy, an osteopath specializing in family medicine, related that appellant was seen for a follow up regarding neck and low back pain. He diagnosed status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5, and thoracic radiculopathy.

In an April 25, 2023 report, Dr. Reppy reviewed appellant's history of injury and treatment. He diagnosed lumbar stenosis at L4-5, aggravation of cervical fusion at C6-7, and thoracic radiculopathy. Dr. Reppy described the mechanism of injury and opined that appellant's accepted August 9, 2017 employment injury caused his cervical and lumbar stenosis. He further opined that symptoms stemming from the cervical fusion surgery were consequential to the employment injury and indicated that appellant was unable to work.

In a June 8, 2023 report, Dr. Reppy described appellant's worsening symptoms and diagnosed status post cervical spinal fusion, bulging discs at L3-4, L4-5, and L5-S1, stenosis at L4-5, and thoracic radiculopathy.

By decision dated July 12, 2023, OWCP denied modification of the February 7, 2023 decision. It did not reference the June 8, 2023 report from Dr. Reppy.

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

In the case of *William A. Couch*,<sup>2</sup> 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. While OWCP is not required to list every piece of

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<sup>2</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

evidence submitted to the record, the record is clear that the June 8, 2023 report from Dr. Reppy was not reviewed by OWCP in its July 12, 2023 decision.<sup>3</sup>

As the Board's decisions are final with regard to the subject matter appealed, it is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision.<sup>4</sup> For this reason, the case must therefore be remanded for OWCP to consider and address the above-noted evidence in its July 12, 2023 decision.<sup>5</sup> Following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the July 12, 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: January 8, 2024  
Washington, DC

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

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

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

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<sup>3</sup> See *J.N.*, Docket No. 21-0086 (issued May 17, 2021); *C.D.*, Docket No. 20-0168 (issued March 5, 2020).

<sup>4</sup> 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 2.

<sup>5</sup> See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).