

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

E.M., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
DENVER VA REGIONAL BENEFIT OFFICE,
Lakewood, CO, Employer**

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**Docket No. 25-0830
Issued: December 18, 2025**

Appearances:
Sally F. LaMacchia, 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 August 28, 2025, appellant, through counsel, filed a timely appeal from a May 30, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 25-0830.

On September 15, 2003, appellant, then a 40-year-old realty loan specialist, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral wrist and forearm pain causally related to factors of his federal employment, including repetitive computer

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 May 30 2025 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.*

keyboarding.³ He noted that he first became aware of his condition and realized its relation to his federal employment on June 11, 2003. OWCP accepted the claim for bilateral radial tunnel syndrome and bilateral flexor tendinitis. He continued to receive medical treatment. OWCP paid appellant wage-loss compensation on the supplemental and periodic rolls for total disability commencing March 7, 2005, and for partial disability commencing December 7, 2008.⁴

In an April 20, 2014 report, Dr. Steven Dworetsky, a Board-certified psychiatrist, recounted the history of appellant's bilateral upper extremity conditions and medical treatment. Appellant related increased anxiety when the employing establishment terminated his employment and reduced his income, due to being placed in leave without pay (LWOP) status in 2005 as there was no work available within his medical restrictions. Dr. Dworetsky opined that appellant developed generalized anxiety disorder and major depressive disorder consequential to the accepted bilateral radial tunnel entrapment syndrome, chronic pain, and personal losses.

On December 10, 2014, OWCP expanded its acceptance of the claim to include acquired trigger finger, bilateral enthesopathy of the elbow region, and chronic pain syndrome. Appellant remained under medical treatment.

In an August 7, 2023 report, Dr. Dworetsky related that he had continued to treat appellant since 2015 for the psychiatric sequelae of his work-related injury. He noted that appellant continued to experience chronic pain all these years later even though he had not returned work and had downsized his life to minimize activities that worsened his pain. Dr. Dworetsky diagnosed continued major depressive disorder and generalized anxiety disorder secondary to the accepted chronic pain condition. He explained that chronic pain was not often measurable by objective tests, but that did not mean that it was present. Appellant's pain continued to cause anxiety, depression, and problems with sleep.

On March 18, 2024, OWCP forwarded appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Jadon Webb, a Board-certified psychiatrist, for a second-opinion examination regarding whether OWCP should expand acceptance of the claim to include major depressive disorder and generalized anxiety disorder.

In an April 9, 2024 report, Dr. Webb diagnosed depression and anxiety, but recommended further psychological testing. He opined that he could not "verify the causal relationship to the work injury beyond" the date of Dr. Dworetsky's 2014 assessment as there were no more recent reports of record. Dr. Webb also related that appellant's work-related condition had not resolved as indicated by persisting depressive and anxiety symptoms during his evaluation. Given the 10-year gap in available records, there was no independent information that could override the 2014 assessment.

On May 14, 2024, OWCP expanded the acceptance of the claim to include major depressive disorder, recurrent, moderate.

³ Previously, under OWCP File No. 122004588, OWCP accepted a left wrist sprain. It has not administratively combined the claims.

⁴ Appellant was separated from federal employment effective January 31, 2006.

In a statement dated June 10, 2024, the employing establishment contended that OWCP erroneously accepted major depressive disorder as Dr. Dworetsky's April 20, 2014 report was based on appellant's "hearsay" and Dr. Webb could not verify causal relationship.

On June 13, 2024, OWCP requested that Dr. Webb provide a supplemental report to clarify whether workplace events caused or contributed to a work-related condition.

In a June 18, 2024 supplemental report, Dr. Webb reiterated that he could not determine causal relationship without psychological testing and additional treatment records.

In an October 11, 2024 development letter, OWCP requested that appellant submit additional medical evidence concerning his stress and anxiety, and a factual statement identifying what caused or aggravated those conditions. It afforded him 30 days to submit the additional evidence.

In an October 31, 2024 statement, appellant asserted that he felt hopeless and worried after he was removed from federal employment in 2006. In 2014, his attending physician referred him to Dr. Dworetsky.

In a November 8, 2024 report, Dr. Tony L. Robucci, a Board-certified psychiatrist, noted that appellant came under his care in April 25, 2024 after the retirement of Dr. Dworetsky. He recounted appellant's continuing symptoms and diagnosed major depressive disorder, single episode, moderate, generalized anxiety disorder, bilateral radial nerve lesions, bilateral-acquired trigger finger, bilateral enthesopathy of elbow region, and chronic pain syndrome. Dr. Robucci related that he concurred that appellant's "psychiatric conditions are a result of the chronic pain resulting from his nerve injury and the ensuing losses of career, income, self-esteem, and functional impairment outside of work as well." He concluded that the causal relationship was temporal, with appellant's depression and anxiety diagnoses developing after his work-related injury.

In a letter dated December 4, 2024, OWCP advised appellant that it proposed to rescind its prior acceptance of his claim for generalized anxiety disorder and moderate major depressive disorder. It afforded him 30 days to present evidence and argument challenging the proposed rescission action.

Thereafter, OWCP received a December 20, 2024 occupational therapy treatment note.

By decision dated January 10, 2025, OWCP finalized the proposed rescission of the acceptance of appellant's claim for generalized anxiety disorder and moderate major depressive disorder, effective that date. It accorded the weight of the medical evidence to Dr. Webb.

Following the January 10, 2025 decision, OWCP received a January 20, 2025 report by Dr. J. Scott Bainbridge, a Board-certified psychiatrist, and occupational therapy treatment notes for the period January 17 through May 15, 2025.

On February 4, 2025, appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In a March 6, 2025 statement, counsel asserted that OWCP failed to meet its burden of proof to rescind its acceptance of emotional conditions, as it had not considered Dr. Dworetsky's August 7, 2023 report and Dr. Robucci's November 8, 2024 report.

By decision issued May 30, 2025, OWCP's hearing representative affirmed OWCP's January 10, 2025 rescission decision. The hearing representative neither considered nor addressed Dr. Dworetsky's August 7, 2023, or Dr. Robucci's November 8, 2024 reports.

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

In the case of *William A. Couch*,⁵ 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. The May 30, 2025 decision, however, only mentions Dr. Dworetsky's April 20, 2014 report, but not his August 7, 2023 report, or Dr. Robucci's November 8, 2024 report. The Board notes that OWCP's January 10, 2025 rescission decision also did not mention Dr. Dworetsky's August 7, 2023 report or Dr. Robucci's November 8, 2024 report. As such, OWCP failed to follow its procedures by properly reviewing and discussing all of the evidence of record.⁶

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.⁷ On remand, OWCP shall review all evidence properly submitted by appellant. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

⁵ *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).

⁶ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value 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).

⁷ *See A.P.*, Docket No. 25-0719 (issued November 17, 2025); *A.B.*, *supra* note 5; *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.

IT IS HEREBY ORDERED THAT the May 30, 2025 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: December 18, 2025
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