

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

P.H., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
JOHN J. PERSHING VA MEDICAL CENTER,
Poplar Bluff, MO, Employer**

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) **Docket No. 24-0942**
) **Issued: February 3, 2025**
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Appearances:

*Scotty L. White, for the appellant*¹

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

JANICE B. ASKIN, Judge

On September 26, 2024 appellant, through her representative, filed a timely appeal from a September 16, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).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 Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.2(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board in exercising its discretion, denies appellant's request for oral argument because this matter pertains to an evaluation of the weight of the medical evidence presented. As such, the Board finds that the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. For these reasons, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

Pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

On June 21, 2023 appellant, then a 61-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on June 20, 2023 she developed wrist pain during a basic life support skills lab while completing compressions in the performance of duty. She stopped work on June 21, 2023 and returned to full-time work on July 3, 2023. On December 6, 2023, OWCP accepted the claim for carpal tunnel syndrome (CTS), right upper limb.

Appellant filed claims for compensation (Forms CA-7) for disability from work for the period December 26, 2023 through March 9, 2024.

OWCP subsequently received additional evidence, including a copy of a February 7, 2024 hospital report, reflecting that appellant underwent right carpal tunnel release with flexor carpi radius (FCR) tendon release.

By decision dated March 26, 2024, OWCP denied appellant's disability claim, finding that the evidence of record was insufficient to establish that the claimed disability causally related to the accepted June 20, 2023 work injury.

On April 16, 2024, OWCP authorized appellant's February 7, 2024 carpal tunnel release surgery.

On April 11, 2024, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 3, 2024.

By decision dated September 16, 2024, OWCP's hearing representative affirmed the March 26, 2024 decision.

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

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation.⁵ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of facts and a statement of reasons.⁶ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that following the September 16, 2024 decision appellant submitted 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.*

⁵ 5 U.S.C. § 8124(a).

⁶ 20 C.F.R. § 10.126; *see also* D.W., Docket No. 18-0483 (issued March 7, 2019).

should be clear enough for the reader to understand the precise defect of the claim, and the kind of evidence that would overcome it.⁷

OWCP's hearing representative, in the September 16, 2024 decision, did not discharge their responsibility to set forth findings of fact and a clear statement of reasons explaining the disposition, so that appellant could understand the basis for the decision as well as the precise defect and the evidence needed to overcome it.⁸ The hearing representative did not make findings regarding whether or not appellant was entitled to disability due to her OWCP-approved surgery.⁹ The hearing representative denied appellant's claim without complying with the review requirements of FECA and its implementing regulations.

The case shall therefore be remanded to OWCP for a proper decision, to include findings of fact and a clear statement of reasons as to whether appellant is entitled to disability on or around the February 7, 2024 OWCP authorized surgery. Following this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the September 16, 2024 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 3, 2025
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

⁸ See *R.M.*, Docket No. 20-0163 (issued July 17, 2019); *M.J.*, Docket No. 18-0605 (issued April 12, 2019); *K.J.*, Docket No. 14-1874 (issued February 26, 2015). See also *J.J.*, Docket No. 11-1958 (issued June 27, 2012).

⁹ *Id.*