

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

A.H., Appellant

and

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

)
)
)
) **Docket No. 25-0169**
) **Issued: January 2, 2025**
)
)
)

Appearances:
*Scotty 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

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On December 9, 2024 appellant, through his representative, filed a timely appeal from an August 22, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0169.

On August 9, 2023 appellant, then a 37-year-old pharmacist, filed an occupational disease claim (Form CA-2) alleging that he developed psychological distress, anxiety, and depression due to factors of his federal employment. He indicated that a colleague made false claims of sexual harassment against him. Appellant noted that he first became aware of his claimed condition on June 20, 2023, and its relationship to his federal employment on July 18, 2023. He did not stop work.

In a letter to the employing establishment dated July 26, 2023, appellant outlined several interactions with C.B., a pharmacy technician, between June 20 and July 18, 2023.

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.

By decision dated October 16, 2023, OWCP denied appellant's claim, finding that he had not factually established that the implicated employment factors had occurred, as alleged. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On November 14, 2023 appellant, through his representative, requested a hearing before a representative of OWCP's Branch of Hearings of Hearings and Review.

Following a preliminary review, by decision dated December 19, 2023, OWCP's hearing representative set aside the October 16, 2023 decision and remanded the case to OWCP for further development of the factual aspects of appellant's claim.

OWCP thereafter received notice of proposed reprimand dated November 7, 2023, wherein the employing establishment outlined charges of inappropriate conduct, failure to follow policy, and failure to follow instructions against C.B.

In a November 27, 2023 letter, J.T., the employing establishment chief of pharmacy service, advised C.B. that a decision was made to sustain each charge listed in the November 7, 2023 notice and that a reprimand would be placed in her official personnel folder.

By decision dated March 7, 2024, OWCP found that appellant had established compensable factors of employment with respect to his interactions with C.B. from June 20 through July 27, 2023, as alleged. However, it denied his claim, finding that he had not submitted medical evidence to establish a diagnosis in connection with the compensable factors of employment.

On March 29, 2024 appellant, through his representative, requested an oral hearing before a representative of OWCP's Branch and Hearing Review, which was conducted on July 9, 2024.

OWCP initially received a December 12, 2023 report by Camellia Vermillion, a nurse practitioner, who diagnosed generalized anxiety disorder and attention deficit hyperactivity disorder.

On July 12, 2024 OWCP received another copy of Ms. Vermillion's December 12, 2023 report, which had been cosigned by Dr. Naveed J. Mirza, Board-certified in consultation-liaison psychiatry, psychiatry, and psychosomatic medicine, on February 25, 2024.

By decision dated August 22, 2024, OWCP's hearing representative affirmed the March 7, 2024 decision, noting the evidence was insufficient to establish a medical diagnosis in connection with the accepted compensable factors of employment. The hearing representative indicated that the December 12, 2023 report by Ms. Vermillion was not countersigned by a physician.

The Board finds that the case is not in posture for decision.

In the case of *William A. Couch*,² 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

² 41 ECAB 548 (1990); see *J.R.*, Docket No. 21-1421 (issued April 20, 2022); see also *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

evidence submitted, the Board notes that the December 12, 2023 report of Ms. Vermillion countersigned by Dr. Mirza on February 25, 2024 and received by OWCP on July 12, 2024 was not considered and addressed by the hearing representative in the August 22, 2024 decision.³

It is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision, as Board decisions are final with regard to the subject matter appealed.⁴ The Board finds that this case is not in posture for decision as OWCP did not consider and address the above-noted evidence in the August 22, 2024 decision.⁵ On remand, OWCP shall review all of the evidence submitted on reconsideration. Following this, and other such further development as deemed necessary, it shall issue an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the August 22, 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: January 2, 2025
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

³ See *C.D.*, Docket No. 20-0168 (issued March 5, 2020).

⁴ 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.

⁵ See *Order Remanding Case, L.G.*, Docket No. 23-0637 (issued September 15, 2023).