

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

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C.W., Appellant)	
)	
and)	Docket No. 26-0174
)	Issued: April 7, 2026
DEPARTMENT OF VETERANS AFFAIRS,)	
PALO ALTO VA MEDICAL CENTER-)	
LIVERMORE, Livermore, CA, Employer)	
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Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REVERSING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On December 11, 2025 appellant, through counsel, filed a timely appeal from an October 2, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 26-0174.

On August 17, 2012 appellant, then a 50-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 15, 2012 she sustained injuries to her left arm, right shoulder/arm, neck, right hip, and knee when the chair she was sitting in rolled out from under her and she hit the desk and floor while in the performance of duty. OWCP accepted the claim for fractured dental restorative material with loss of crown (#18); fractured tooth (#19); temporomandibular joint disorder, unspecified, bilateral; right shoulder sprain; right rotator cuff tear; right shoulder disorder of bursae and tendons; lumbar strain; gastritis/duodenitis; and internal derangement of right knee lateral meniscus. It paid appellant wage-loss compensation on the

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.

supplemental rolls effective October 22, 2012, and on the periodic rolls effective May 5, 2013.² OWCP again paid appellant intermittent compensation on the supplemental rolls as of September 22, 2013.

By decision dated March 10, 2017, OWCP terminated appellant's wage-loss compensation and medical benefits, effective that date. It accorded the weight of the medical evidence to the May 9, 2015 report of Dr. Clarence Boyd, Jr., a Board-certified orthopedic surgeon and impartial medical examiner (IME), who opined that the residuals related to appellant's accepted work-related medical conditions had ceased and she was no longer disabled from work as a result of the accepted employment-related conditions.

On March 21, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on September 13, 2017. She submitted additional evidence, including a June 21, 2017 narrative medical report from Dr. Fulton Chen, a Board-certified physiatrist.

By decision dated November 28, 2017, OWCP's hearing representative affirmed the March 10, 2017 termination decision. She, however, remanded the case for OWCP to undertake additional medical development regarding the issue of continuing disability and/or residuals on or after March 10, 2017 causally related to the accepted August 15, 2012 employment injury. The hearing representative found that as OWCP had properly terminated appellant's compensation benefits, it was not required to reinstate compensation benefits because appellant had submitted new evidence which required further inquiry.

On December 19, 2017 OWCP referred the case record and an updated statement of accepted facts (SOAF) dated October 26, 2017 to Dr. Boyd, the IME, to review Dr. Chen's June 21, 2017 medical report and to provide a supplemental opinion regarding residuals and the need for medical treatment for the accepted right knee and right shoulder conditions related to the August 15, 2012 employment injury.

In a May 14, 2018 report, Dr. Boyd reviewed Dr. Chen's June 21, 2017 report and opined that Dr. Chen's findings and opinion did not change his original opinion expressed in his May 9, 2016 report that appellant no longer had continuing disability or residuals causally related to her August 15, 2012 employment injury.

By *de novo* decision dated August 3, 2018, OWCP denied appellant's claim for continuing disability and/or residuals on or after March 10, 2017 causally related to the accepted August 15, 2012 employment injury. It accorded the weight of the medical evidence to Dr. Boyd's May 14, 2018 supplemental report.

On September 11, 2025 appellant, through counsel, filed a motion to expand the claim and notice of consequential conditions. In a June 20, 2025 report, Dr. Alan Hsu, a physician Board-certified in family and preventive medicine, stated that appellant would benefit from a right total

² By decision dated December 18, 2017, OWCP granted appellant a schedule award for 9 percent permanent impairment of the right upper extremity and 26 percent permanent impairment of the right lower extremity. The schedule award ran for 102.96 weeks for the period July 21, 2017 through July 11, 2019.

knee arthroplasty. He opined that appellant's fall at work on August 15, 2012 ultimately aggravated her preexisting right knee degenerative joint disease.

By letter dated September 12, 2025, OWCP denied expansion of the acceptance of appellant's claim, finding that her wage-loss compensation and medical benefits were previously terminated. A copy of OWCP's August 3, 2018 decision was attached.

On September 22, 2025 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review with regard to OWCP's September 12, 2025 decision.

By decision dated October 2, 2025, OWCP denied appellant's request for a review of the written record, finding that the request was not made within 30 days of the August 3, 2018 decision and, therefore, was untimely filed. It further exercised its discretion and determined that, if all available evidence had been submitted, the case could be appealed to the Board.

The Board, having duly considered the matter, finds that OWCP improperly denied appellant's request for a review of the written record.

While the September 12, 2025 letter was not accompanied by appeal rights, it effectively denied appellant's September 11, 2025 request for expansion of the acceptance of her claim. The Board finds that, while OWCP's September 12, 2025 letter was not accompanied by appeal rights, it constitutes a final adverse decision issued by OWCP.³ Thus, it was subject to review under 20 C.F.R. §§ 501.2(c) and 501.3(a).

As appellant's September 22, 2025 request for review of the written record was filed within 30 days of the September 12, 2025 decision, it was timely filed. The case shall therefore be remanded to OWCP's Branch of Hearings and Review for a review of the written record.

³ *K.K.*, Docket No. 19-0652 (issued September 19, 2019); see *Henry F. Dyer*, Docket No. 05-452 (issued May 13, 2005).

IT IS HEREBY ORDERED THAT the October 2, 2025 decision is reversed and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 7, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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