

S.N., Appellant

**U.S. POSTAL SERVICE, MIDDLE GROVE
POST OFFICE, Middle Grove, NY, Employer**

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 February 9, 2026 appellant, through counsel, filed a timely appeal from an August 21, 2025 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 26-0302.

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 died during the pendency of this appeal. As such, a substitute appellant is required to carry the appeal forward as the Board's jurisdiction was invoked during his lifetime. See *S.H.*, Docket No. 21-1380, n.2 (issued September 22, 2023); *M.H.*, Docket No. 21-1250, n.2 (issued February 17, 2023); *J.V.*, Docket No. 20-0952 (issued February 2, 2022); *D.V.*, Docket No. 20-1291 (issued September 14, 2021); *N.D.*, Docket No. 14-1757 (issued June 2, 2015); *Albert F. Kimbrell*, 4 ECAB 662, 666 (1952). Accordingly, appellant's counsel is recognized by the Board as the substitute appellant for the purposes of carrying the appeal forward.

This case has previously been before the Board on a different issue.³ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On January 3, 2023 appellant, then a 38-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that he sustained chronic back pain due to factors of his federal employment, including lifting and riding in a delivery vehicle. He noted that he first became aware of his condition on November 18, 2022 and realized its relation to factors of his federal employment on December 29, 2022. Following a period of light duty, appellant stopped work on December 27, 2022 and did not return.

By decision dated February 6, 2024, OWCP accepted the claim for lumbar sprain.

Commencing March 1, 2024, appellant submitted a series of claims for compensation (Form CA-7) for total disability from work commencing December 28, 2022. In support thereof, he submitted reports dated March 11 and 21, 2024, wherein Dr. Tory B. Speert, an osteopath Board-certified in physiatry, diagnosed acute back pain and indicated appellant was 50 percent temporarily disabled, and a May 1, 2024 report wherein he returned appellant to limited-duty work, effective that date.

By decision dated May 21, 2024, OWCP denied appellant's claim for compensation for disability from work commencing December 28, 2022, finding that the medical evidence of record was insufficient to establish disability from work for the claimed period causally related to his accepted employment condition.

OWCP subsequently received a March 29, 2024 lumbar magnetic resonance imaging (MRI) scan, which demonstrated an impression of L4-5 and L5-S1 degenerative disc disease, canal stenosis, and neural foraminal narrowing with superimposed annular fissures.

OWCP also received an April 3, 2024 treatment summary and May 1, 2024 report by Dr. Speert.

In a June 11, 2024 statement, the employing establishment indicated that it had not identified available work within appellant's medical restrictions for the claimed period of disability.

Appellant, through counsel, appealed to the Board.

During the pendency of the appeal, OWCP received an August 2, 2024 work slip wherein Dr. Speert returned appellant to limited-duty work that day.

³ Docket No. 24-0742 (issued August 21, 2024); *Order Denying Petition for Reconsideration* (issued April 29, 2025).

By decision dated August 21, 2024,⁴ the Board affirmed OWCP's May 21, 2024 decision, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted employment injury.

OWCP subsequently received a copy of Dr. Speert's May 1, 2024 report previously of record, and new reports by Dr. Speert dated August 2, November 14 and 18, 2024, and May 22, 2025.⁵

In e-mails dated December 9 to 13, 2024, the employing establishment indicated that there was no work available within appellant's work restrictions.

On August 6, 2025 appellant, through counsel, requested reconsideration. Accompanying the request, OWCP received duplicate copies of Dr. Ross' December 29, 2022 report and Dr. Speert's November 3, 2023, August 2, 2024, and May 22, 2025 reports, and a new February 20, 2025 report by Dr. Speert.

By decision dated August 21, 2025, OWCP denied reconsideration of the merits of appellant's claim pursuant to 5 U.S.C. § 8128(a).⁶ It listed only counsel's August 6, 2025 request and the accompanying medical reports as the evidence considered on reconsideration.

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

In the case of *William A. Couch*,⁷ 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. While OWCP is not required to list every piece of evidence submitted, it failed to consider and address the evidence of record submitted following the May 21, 2024 decision.⁸

Following the May 21, 2024 decision, OWCP received employing establishment statements dated June 11 and December 9 to 13, 2024, a March 29, 2024 lumbar MRI scan report, Dr. Speert's April 3, 2024 treatment summary, and his reports dated May 1, August 2, and November 14 and 18, 2024, and February 20 and May 22, 2025. OWCP also received duplicate copies of Dr. Ross' December 29, 2022 report and Dr. Speert's November 3, 2023 report.

⁴ *Id.*

⁵ OWCP also received an incomplete March 29, 2024 report of a lumbar diagnostic study.

⁶ On its face, OWCP's August 21, 2025 decision denied reconsideration of the Board's August 21, 2024 decision. However, OWCP is not authorized to review Board decisions. The decisions and orders of the Board are final as to the subject matter appealed, and such decisions and orders are not subject to review, except by the Board. 20 C.F.R. § 501.6(d). Although the August 21, 2024 Board decision was the most recent merit decision, OWCP's May 21, 2024 merit decision is the appropriate subject of possible modification by OWCP.

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

⁸ *See Order Remanding Case, D.P.*, Docket No. 25-0295 (issued March 3, 2025); *Order Remanding Case, C.D.*, Docket No. 20-0168 (issued March 5, 2021).

However, in its August 21, 2025 decision, OWCP only reviewed the evidence counsel provided with the August 6, 2025 request for reconsideration. It did not consider and address the evidence submitted to the record following OWCP's May 21, 2024 decision.⁹ As such, OWCP failed to follow its procedures by properly reviewing and discussing all the evidence of record.¹⁰ It is crucial that OWCP consider and address all evidence relevant to the subject matter properly submitted prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.¹¹

The Board thus finds that this case is not in posture for decision as OWCP did not consider and address evidence submitted by appellant in support of his claim for disability compensation.¹² On remand, OWCP shall review all of the evidence of record and, following any further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

⁹ The Board notes that it is unnecessary consider the evidence appellant submitted prior to the issuance of OWCP's May 21, 2024 merit decision because the Board considered that evidence in its August 21, 2024 decision. Findings made in prior Board decisions are *res judicata* absent further review by OWCP under section 8128 of FECA. *C.D.*, Docket No. 19-1973 (issued May 21, 2020); *M.D.*, Docket No. 20-0007 (issued May 13, 2020).

¹⁰ 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).

¹¹ See *Order Remanding Case, C.B.*, Docket No. 26-0180 (issued April 17, 2026); *Order Remanding Case, D.O.*, Docket No. 25-0050 (issued December 20, 2024); *Order Remanding Case, P.B.*, Docket No. 24-0368 (issued May 22, 2024); *Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 7.

¹² See *supra* note 8; *Order Remanding Case, A.B.*, Docket No. 22-0179 (issued June 28, 2022).

IT IS HEREBY ORDERED THAT the August 21, 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: June 11, 2026
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