

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

C.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sharonville, OH, Employer**

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**Docket No. 20-0428
Issued: August 25, 2020**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

JANICE B. ASKIN, Judge

PATRICIA H. FITZGERALD, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On December 16, 2019 appellant, through counsel, filed a timely appeal from an October 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 20-0428.

On December 11, 2018 appellant, then a 48-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed swelling in his knee due to factors of his federal employment, including working long hours during the holiday season because of an increased volume of packages. He noted that he first became aware of his condition and first realized that it was caused or aggravated by his federal employment on December 6, 2018. On the reverse side of the claim form, the employing establishment indicated that there was no record or knowledge that appellant's condition developed while he was at work. It related that appellant stopped work on December 12, 2018.

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.

In a development letter dated December 18, 2018, OWCP advised appellant of the factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to submit the requested evidence. No response was received.

By decision dated January 29, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish the alleged employment factors. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On July 15, 2019 appellant, through counsel, requested reconsideration.

By decision dated October 3, 2019, OWCP found that the submitted medical reports did not support that appellant's injury occurred as appellant alleged, but that the evidence of record was sufficient to modify its January 29, 2019 decision "from a denial based on one of the five basic elements for FECA coverage to a denial based on another basic element, but the case remains denied for insufficient evidence to meet all five basic elements for FECA coverage."

Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.² Section 10.126 of Title 20 of the Code of Federal Regulations provides that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.³ OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁴ These requirements are supported by Board precedent.⁵

In its October 3, 2019 decision, OWCP indicated that it did not modify its January 29, 2019 decision. However, it also noted that it did modify its January 29, 2019 decision, changing it from a denial based on one of the five basic FECA elements to a denial based on a different FECA element. This statement is contradictory and does not provide a clear reason for denying appellant's claim. While OWCP had initially denied the claim as appellant had not established the factual component of fact of injury, the October 3, 2019 decision is unclear as to whether the factual component is now accepted. As such, the Board finds that OWCP did not discharge its responsibility to provide reasoning clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it. Appellant was not clearly advised as to whether additional factual or medical evidence was necessary to establish her claim.

The Board will therefore set aside OWCP's October 9, 2019 decision for OWCP to make findings of fact and provide reasons for its decision, pursuant to the standards set forth in section

² 5 U.S.C. § 8124(a).

³ 20 C.F.R. § 10.126.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁵ *J.W.*, Docket No. 19-0199, *Order Remanding Case* (issued January 6, 2020); *R.P.*, Docket No. 18-1128 (issued December 17, 2018); *R.B.*, Docket No. 16-1696 (issued September 7, 2017); *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

5 U.S.C. § 8128(a) and 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the October 3, 2019 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: August 25, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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