

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

_____)	
T.E., Appellant)	
)	
and)	Docket No. 21-0843
)	Issued: December 6, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. COAST GUARD, Coos Bay, OR, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
*Lonnie Lynn Boylan, for the appellant*¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 13, 2021 appellant, through his representative, filed a timely appeal from a January 26, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0843.

On September 23, 2015 appellant, then a 54-year-old information technologist, filed a traumatic injury claim (Form CA-1), alleging that on June 16, 2014 he injured his neck when he was involved in a motor vehicle while in the performance of duty. He did not stop work. OWCP accepted the claim for cervical sprain.

On March 25, 2016 appellant filed a claim for compensation (Form CA-7) requesting wage-loss compensation for intermittent disability from September 24, 2015 through January 25, 2016. By decision dated March 29, 2017, OWCP denied this claim.

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 an 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.

On March 15, 2017 appellant filed a Form CA-7 claiming disability for the period September 24, 2015 through February 3, 2017. By decision dated June 13, 2018, OWCP denied his claimed period of disability from January 26, 2016 through February 3, 2017.

On June 13, 2019 appellant requested reconsideration.² By decision dated July 2, 2019, OWCP denied modification of its prior decision.

On June 16, 2020 appellant, through his representative, requested reconsideration and submitted additional medical evidence. By decision dated August 24, 2020, OWCP denied modification of its prior decisions.

On November 19, 2020 appellant, through his representative, requested reconsideration. He provided additional medical evidence dated November 3, 2020 from Dr. Gregory Phillips, Board-certified in sports medicine, physical medicine and rehabilitation, and interventional pain management, addressing appellant's claimed disability from work.

By decision dated January 26, 2021, OWCP denied appellant's reconsideration request, finding that: "[b]ecause your letter neither raised substantive legal questions nor included new and relevant evidence, it is insufficient to warrant a review of our prior decision at this time."

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

OWCP did not make findings regarding the additional medical evidence submitted in support of the reconsideration request.³ It summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁴ 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.⁵ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁶ As well, 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.⁷

² By the July 2, 2019 decision, OWCP rescinded a June 21, 2019 decision, which denied appellant's request for reconsideration as untimely filed and failing to demonstrate clear evidence of error.

³ See *R.C.*, *Order Remanding Case*, Docket No. 20-1671 (issued May 6, 2021); *J.K.*, *Order Remanding Case*, Docket No. 20-0556 (issued August 13, 2020); *C.D.*, *Order Remanding Case*, Docket No. 20-0450 (issued August 13, 2020); *T.B.*, *Order Remanding Case*, Docket No. 20-0426 (issued July 27, 2020).

⁴ See *C.G.*, Docket No. 20-0051 (issued June 29, 2020); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also 20 C.F.R. § 10.607(b).

⁵ 5 U.S.C. § 8124(a).

⁶ 20 C.F.R. § 10.126.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

In denying appellant's November 19, 2020 reconsideration request, OWCP failed to reference or analyze the additional medical evidence submitted from Dr. Phillips. The January 26, 2021 decision simply noted: "[b]ecause your letter neither raised substantive legal questions nor included new and relevant evidence, it is insufficient to warrant a review of our prior decision at this time."

The Board will therefore set aside OWCP's January 26, 2021 decision and remand the case for an appropriate decision on appellant's reconsideration request, which describes the evidence submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.⁸ Accordingly,

ORDER

IT IS HEREBY ORDERED THAT the January 26, 2021 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: December 6, 2021
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

⁸ 5 U.S.C. § 8124(a). 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. *Id.* at Chapter 2.1401.5(b)(2) (November 2012).