

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

C.S., Appellant)

and)

DEPARTMENT OF THE ARMY, U.S. ARMY)
MEDICAL COMMAND, McDONALD ARMY)
HEALTH CENTER, Fort Eustis, VA, Employer)

**Docket No. 23-0732
Issued: August 24, 2023**

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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On April 27, 2023 appellant, through counsel, filed a timely appeal from an April 18, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as Docket No. 23-0732.

On January 26, 2021 appellant, then a 55-year-old medical records technician, filed a traumatic injury claim (Form CA-1) alleging that on January 4, 2021 she sustained left elbow, bilateral knee, bilateral ankle, and low back injuries as she exited her vehicle in the employing

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 The Board notes that following the April 18, 2023 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the caserecord that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

establishment parking lot on her way to work in the performance of duty. She explained that her left foot got caught in a sink hole and she fell. OWCP accepted the claim for a left foot strain. Appellant stopped work on March 14, 2021 and returned to full-time modified duty in May 2022. She has not resumed unrestricted work.

Appellant filed claims for wage-loss compensation (Form CA-7) for disability from work during the periods October 10, 2021 through January 15, 2022.³

By decision dated February 9, 2022, OWCP denied appellant's claim for wage-loss compensation for the period October 10, 2021 through January 15, 2022 as the medical evidence of file did not establish that she was disabled from work as a result of her accepted work-related medical condition. It noted that she had been receiving treatment for conditions which had not been accepted (degenerative disc disease at L5-S1, disc bulging at L4-5, peroneus brevis tendon split tear, and posterior tarsometatarsal joint osteoarthritis) and her physician had not provided an explanation on whether and how those conditions were caused, aggravated, accelerated, or precipitated by the January 4, 2021 employment injury.

On January 20, 2023 appellant, through counsel, requested reconsideration and submitted additional medical evidence.

On February 14, 2023 OWCP undertook further development of the medical evidence and referred appellant, along with a February 10, 2023 statement of accepted facts (SOAF), the medical record, and a list of questions, to Dr. James R. Schwartz, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether the accepted condition had resolved and whether the additional conditions for which appellant was treated were causally related to the January 4, 2021 employment injury. As appellant was unable to attend the scheduled February 25, 2023 appointment with Dr. Schwartz, on March 20, 2023, OWCP rescheduled the second opinion appointment with Dr. Schwartz for April 29, 2023.

By decision dated April 18, 2023, OWCP denied modification of its February 9, 2022 decision.

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

The second opinion evaluation with Dr. Schwartz was scheduled for April 29, 2023. However, prior to that scheduled evaluation, OWCP issued its decision on April 18, 2023. It should have obtained Dr. Schwartz' second opinion report prior to the issuance of the April 18,

³ By decision dated January 7, 2022, OWCP denied appellant's claim for disability from work during the period August 1 through October 9, 2021. The Board is without jurisdiction to review that decision. 20 C.F.R. § 501.3(e)-(f). The Board further notes that counsel has not appealed OWCP's February 2, 2023 decision denying appellant's claim for disability from work during the period February 18 through July 17, 2021. 20 C.F.R. § 501.3. Thus, that issue will not be addressed on appeal.

2023 decision. Once OWCP undertakes develop of the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.⁴

Accordingly, the Board finds that the April 18, 2023 decision must be set aside. OWCP shall review the report obtained from Dr. Schwartz, its second opinion physician. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding appellant's wage-loss compensation claim. Accordingly,

IT IS HEREBY ORDERED THAT the April 18, 2023 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 24, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

⁴ See *M.B.*, Docket No. 21-0060 (issued March 17, 2022); *D.S.*, Docket No. 19-0292 (issued June 21, 2019), *C.R.*, Docket No. 17-0964 (issued September 9, 2019).