

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

J.M., Appellant)

and)

U.S. POSTAL SERVICE, NEW ORLEANS)
POST OFFICE, New Orleans, LA, Employer)
_____)

**Docket No. 24-0643
Issued: August 22, 2024**

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 May 29, 2024 appellant, through counsel, filed a timely appeal from an April 30, 2024 merit decision of the Office of Workers’ Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0643.

On February 11, 2022 appellant, then a 31-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left shoulder injury that day when pushing a truck of mail while in the performance of duty. He stopped work on February 12, 2022.

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 30, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board’s *Rules of Procedures* provides: “The Board’s review of a case is limited to the evidence in the case record 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.*

By decision dated March 15, 2022, OWCP accepted appellant's claim for impingement syndrome of left shoulder.

In an April 21, 2022 report, Dr. Joseph F. Sejud, Board-certified in family medicine, evaluated appellant due to complaints of left shoulder pain, reporting that appellant sustained a February 11, 2022 work injury when he was pushing a large heavy mail cart and felt a pop and sudden pain in his left shoulder. He noted that appellant had stopped work for a period of time and attempted to return but experienced a worsening of his symptoms. Dr. Sejud diagnosed left shoulder impingement syndrome and recommended a magnetic resonance imaging (MRI) scan for further evaluation. He provided part-time light-duty recommendations with restrictions of no working for more than four hours per day pending his magnetic resonance imaging (MRI) evaluation.

In an April 21, 2022 duty status report (Form CA-17), Dr. Sejud diagnosed left shoulder impingement and restricted appellant to working four hours per day with no pushing or pulling.

In a July 9, 2022 report, Dr. Sejud diagnosed left shoulder impingement syndrome and restricted appellant to working four hours per day.

In a July 9, 2022 Form CA-17, Dr. Sejud diagnosed left shoulder impingement and restricted appellant to working four hours per day with no pushing or pulling.

In an August 17, 2022 report, Dr. Sejud noted appellant's ongoing left shoulder pain and limited range of motion. He diagnosed left shoulder impingement syndrome and opined that based on appellant's clinical history, physical examination findings, and MRI scan results, the acceptance of his claim should be expanded to include rotator cuff tendinopathy and superior labrum anterior to posterior (SLAP) lesion of the left shoulder. Dr. Sejud recommended appellant continue with physical therapy and his work restrictions.

In a September 14, 2022 report, Dr. Robert D. Bostick, III, a Board-certified orthopedic surgeon, evaluated appellant for a February 11, 2022 employment injury when he was pushing a heavy cart of mail and felt a sudden pop in his left shoulder. He diagnosed left shoulder pain, left shoulder strain, left shoulder labral tear, and left shoulder rotator cuff strain, which he opined was causally related to the accepted February 11, 2022 employment injury. Dr. Bostick further provided light-duty work restrictions of no lifting greater than 10 pounds and no overhead reaching or lifting.

On November 25, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period March 29 through November 18, 2022.

In a development letter dated November 30, 2022, OWCP informed appellant of the deficiencies of his claim for wage-loss compensation for the period March 29 through November 18, 2022. It advised him of the type of medical evidence needed and afforded him 30 days to respond. No response was received.

By decision dated January 31, 2023, OWCP denied appellant's claim for disability from work during the period March 29 through November 18, 2022, finding that the medical evidence of record was insufficient to establish causal relationship.

On March 2, 2023 OWCP authorized payment of wage-loss compensation for the period October 24 through December 9, 2022.

On March 13, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated March 21, 2023, OWCP denied appellant's request for a review of the written record, finding that his request was not made within 30 days of its January 31, 2023 decision. It further exercised its discretion and determined that the issue in this case could equally well be addressed by requesting reconsideration before OWCP, along with the submission of new evidence.

On March 22, 2023 appellant requested reconsideration of the January 21, 2023 decision.

In support of his claim, appellant resubmitted Dr. Bostick's September 14, 2022 initial evaluation report.

By decision dated June 20, 2023, OWCP denied modification of the January 31, 2023 decision.

By decision dated March 13, 2024, OWCP expanded the acceptance of appellant's claim to include the additional conditions of superior glenoid labrum lesion of left shoulder and strain of muscle(s) and tendon(s) of the rotator cuff of left shoulder.

On April 22, 2024 appellant, through counsel, requested reconsideration of the June 20, 2023 decision.

By decision dated April 30, 2024, OWCP denied modification of the June 20, 2023 decision.

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

In the case of *William A. Couch*,³ 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. However, the Board notes that the case record contains Dr. Sejud's medical reports and CA-17 forms beginning in April 21, 2022, which addressed appellant's employment-related disability for the period claimed and ongoing residuals of his accepted February 11, 2022 employment injury. OWCP, however, did not review this evidence in its

³ *William A. Couch*, 41 ECAB 548, 553 (1990); *see also Order Remanding Case, A.B.*, Docket No. 22-0179 (issued June 28, 2022); *Order Remanding Case, S.H.*, Docket No. 19-1582 issued May 26, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

April 30, 2024 merit decision. As such, it failed to follow its procedures by properly reviewing and discussing all of the evidence of record.⁴

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.⁵ On remand, OWCP shall review all evidence properly submitted by appellant. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the April 30, 2024 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 22, 2024
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 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).

⁵ See *A.B.*, *supra* note 3; *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 3.