

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

D.O., Appellant)	
)	
and)	Docket No. 25-0050
)	Issued: December 20, 2024
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, METROPOLITAN)	
CORRECTIONAL CENTER NEW YORK,)	
New York, NY, Employer)	

Appearances: *Case Submitted on the Record*
Thomas S. Harkins, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 21, 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. 25-0050.

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 Procedure* 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.*

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

On December 7, 2020 appellant, then a 36-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2020 he sustained injuries to his back, neck, ankle and elbows when he was on board an elevator that malfunctioned by jerking sharply downward, upward, and then dropping him to the floor while in the performance of duty. He stopped work on that date. OWCP accepted the claim for bilateral elbow sprains and left ankle sprain.⁴ It has not paid disability benefits.

In a November 8, 2023 report, Dr. Mohammad Ghorbanhoseini, a Board-certified anesthesiologist specializing in pain management, related appellant's history of injury on December 3, 2020 and diagnosed lumbar intervertebral disc displacement, myalgia, lumbar radiculopathy, cervical disc displacement, cervical radiculopathy, lumbar spondylosis, bilateral elbow conditions, and bilateral ulnar nerve conditions. He opined that there was a direct causal relationship between the accepted employment injury and his current diagnoses. Dr. Ghorbanhoseini requested authorization for a repeated lumbar epidural steroid injection to elucidate the pain generator and provide therapeutic benefits in terms of analgesia and functional improvement. He also requested authorization for lumbar trigger point injections to differentiate between possible lumbar radiculopathy or a peripheral or entrapment neuropathy.

In a November 16, 2023 development letter, OWCP informed appellant that it was unable to authorize his request for lumbar injections because intervertebral disc displacement was not an accepted condition and the evidence of record was insufficient to establish that the proposed procedures were medically necessary for his accepted employment conditions. It advised him of the type of medical evidence needed to authorize the request and afforded 30 days for a response.

Dr. Ghorbanhoseini completed a note dated December 13, 2023 recommending additional lumbar epidural steroid and trigger point injections. He also requested additional electrodiagnostic testing. Dr. Ghorbanhoseini repeated his diagnoses and opinion that there was causal relationship between these diagnoses and the accepted employment injury.

In a December 14, 2023 note, Dr. Boleslav Kosharsky, a Board-certified anesthesiologist specializing in pain medicine, requested authorization for lumbar trigger point injections and electrodiagnostic studies. He described the December 3, 2020 employment incident and diagnosed lumbar intervertebral disc displacement, myalgia, lumbar radiculopathy, cervical disc displacement, cervical radiculopathy, lumbar spondylosis, bilateral elbow conditions, and bilateral ulnar nerve conditions. Dr. Kosharsky opined that there was a direct causal relationship between the incident described and appellant's current injuries.

In reports dated January 17 through March 29, 2024, Dr. Kosharsky repeated appellant's history of injury and his prior diagnoses. He noted that he underwent a repeated lumbar epidural

³ Docket No. 23-0658 (issued September 6, 2024).

⁴ OWCP further found, however, that the medical evidence of record was insufficient to establish a diagnosed medical condition for the neck or back in connection to the accepted December 3, 2020 employment injury.

steroid injection on December 13, 2023 with mild pain relief for less than 12 hours. Dr. Kosharsky performed magnetic peripheral nerve stimulation therapy and repeated that there was a direct causal relationship between the accident described and his current injuries as his symptoms and clinical findings were consistent with musculoskeletal injuries to the described areas. He requested electrodiagnostic studies and recommended endoscopic lumbar discectomy.

Dr. Ghorbanhoseini completed January 19 through March 13, 2024 treatment notes and related that appellant underwent additional magnetic peripheral nerve stimulation therapy. He repeated his previous history of injury, diagnoses, and finding of causal relationship.

By decision dated April 30, 2024, OWCP denied appellant's request for authorization for lumbar injections, finding that he had not submitted "any additional evidence in response to the development letter dated November 16, 2023."

The Board finds that the case is not in posture for decision.

In the case of *William A. Couch*,⁵ 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.

In its April 30, 2024 decision, OWCP found that appellant submitted no "additional evidence in response to the development letter dated November 16, 2023." However, it did not consider and address the additional medical evidence from Drs. Ghorbanhoseini and Kosharsky dated December 13, 2023 through March 29, 2024. As such, OWCP failed to follow its procedures by properly reviewing and discussing all of the evidence of record.⁶ It is crucial that it 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.⁷

The Board thus finds that this case is not in posture for a decision as OWCP did not consider and address evidence submitted by appellant in support of his claim for medical treatment.⁸ On remand, OWCP shall review all evidence of record and, following any further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

⁵ 41 ECAB 548 (1990); *see also Order Remanding Case, P.B.*, Docket No. 24-0368 (issued May 22, 2024); *Order Remanding Case, A.D.*, Docket No. 22-0519 (issued January 11, 2023); *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).

⁶ 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).

⁷ *See Order Remanding Case, A.B.*, *supra* note 5; *Order Remanding Case, A.D.*, *supra* note 5; *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 5.

⁸ *See P.B.*, *supra* note 5; *A.B.*, *supra* note 5; *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

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: December 20, 2024
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