

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

M.S., Appellant)	
)	
and)	Docket No. 25-0136
)	Issued: December 26, 2024
U.S. POSTAL SERVICE, FLUSHING POST OFFICE, Flushing, NY, Employer)	
)	

Appearances: *Case Submitted on the Record*
*Stephen C. Larkin, for the appellant*¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On November 24, 2024 appellant, through a representative, filed a timely appeal from a September 30, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0136.

On July 29, 2021 appellant, then a 63-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on July 21, 2020 he developed an emotional condition in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx932.² On the reverse

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 Appellant has a prior occupational disease (Form CA-2) under OWCP File No. xxxxxx781, which was accepted for cervical spondylosis without myelopathy. He requested to expand acceptance of this claim to include emotional conditions. OWCP informed appellant that it would not address the merits of his emotional condition claim under OWCP File No. xxxxxx781 and advised him to pursue his claim for emotional conditions under OWCP File No. xxxxxx932.

side of the claim form, E.C., an employing establishment customer service manager, noted that appellant last worked on July 11, 2017, and was not on duty on July 21, 2020.³

By decision dated September 9, 2021, OWCP denied appellant's emotional condition claim, finding that he had not established that the specific incident(s) occurred, as alleged. Therefore, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

On September 17, 2021 appellant, through his representative, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on January 11, 2022.

By decision dated March 18, 2022, OWCP's hearing representative modified the September 9, 2021 decision to find that the specific incident(s) occurred, as alleged. However, the claim remained denied as the evidence of record was insufficient to establish a compensable work factor.

On September 6, 2022 appellant, through his representative, requested reconsideration. His representative outlined the procedural history of appellant's multiple claims and requested that OWCP further develop appellant's case and issue a *de novo* decision.

By decision dated September 22, 2022, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

On March 14, 2023 appellant, through his representative, again requested reconsideration of the March 18, 2022 decision.

On March 19, 2023 appellant filed a timely appeal from the September 22, 2022 nonmerit decision of OWCP.

By decision dated June 21, 2023, OWCP denied modification, finding the evidence insufficient to vacate the March 18, 2022 decision.

On September 3, 2023 appellant, through his representative, filed a timely appeal from the June 21, 2023 decision. By decision dated July 16, 2024, the Board affirmed OWCP's September 22, 2022 nonmerit decision.⁴ In an order of even date, the Board dismissed appellant's appeal of the June 21, 2023 decision, noting that on March 19, 2023 appellant filed an appeal with the Board of OWCP's September 22, 2022 nonmerit decision.⁵ The Board found the June 21,

³ Appellant also filed previous traumatic injury claims. Under OWCP File No. xxxxxx352, he filed a Form CA-1 on August 28, 2014 alleging that on October 24, 2013 he experienced severe right shoulder and neck pain while in the performance of duty. By decision dated November 7, 2014, OWCP denied this claim. Under OWCP File No. xxxxxx782, appellant filed a Form CA-1 on January 9, 2020 alleging that on January 19, 2017 he developed gastric cancer as a result of stress from work and discrimination. OWCP has administratively combined OWCP File Nos. xxxxxx352, xxxxxx782, xxxxxx932, and xxxxxx781, with the latter serving as the master file.

⁴ Docket No. 23-0589 (issued July 17, 2024).

⁵ *Order Dismissing Appeal*, Docket No. 23-1136 (issued July 16, 2024).

2023 decision to be null and void because the OWCP and the Board may not simultaneously have jurisdiction over the same issue.

On September 21, 2024 appellant, through his representative, requested reconsideration of the March 18, 2022 decision, asserting that evidence provided by the employing establishment was inaccurate. He asserted the evidence established two compensable factors of employment when he was yelled at by a coworker on June 18, 2016 and was yelled at by a customer on August 4, 2016, with the employing establishment doing nothing to correct these incidents. In support of his request, appellant submitted a June 17, 2023 witness statement from V.J., a coworker, a timesheet covering the period of July 30 through August 5, 2016, and an April 17, 2015 modified job offer.

By decision dated September 30, 2024, OWCP summarily denied appellant's September 21, 2024 reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁶ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation.⁷ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of facts and a statement of reasons.⁸ 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 that would overcome it.⁹

In its September 30, 2024 decision, OWCP did not discharge its responsibility to set forth findings of fact and a clear statement of reasons, explaining the disposition, so that appellant could understand the basis for its decision that appellant's request for reconsideration was untimely filed. The evidence submitted did not demonstrate clear evidence of error in the March 18, 2022 decision.¹⁰ This case must, therefore, be remanded to OWCP for an appropriate decision regarding the request for reconsideration received after March 18, 2022 that describes the evidence

⁶ See *Order Remanding Case, J.B.*, Docket No. 24-0760 (issued August 28, 2024); *Order Remanding Case, J.D.*, Docket No. 24-0044 (issued April 22, 2024); *Order Remanding Case, R.G.*, Docket No. 23-0011 (issued June 14, 2023); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020); see also 20 C.F.R. § 10.607(b).

⁷ 5 U.S.C. § 8124(a).

⁸ 20 C.F.R. § 10.126.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013) (all decisions should contain findings of fact sufficient to identify the benefit being denied and the reason for the disallowance).

¹⁰ See *D.M.*, Docket 23-1154 (issued February 29, 2024).

submitted, and provides detailed reasons for accepting or rejecting the request for reconsideration pursuant to the relevant standards.¹¹

The Board shall therefore set aside OWCP's September 30, 2024 decision, and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision on appellant's reconsideration request.¹² Accordingly,

IT IS HEREBY ORDERED THAT the September 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 26, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹¹ *Id.*; see also *R.T.*, Docket No. 19-0604 (issued September 13, 2019).

¹² See *Order Remanding Case, D.R.*, Docket No. 21-1229 (issued July 6, 2022).