United States Department of Labor Employees' Compensation Appeals Board

M.S., Appellant)
and) Docket No. 23-1130) Issued: July 16, 202
U.S. POSTAL SERVICE, FLUSHING POST OFFICE, Flushing, NY, Employer)
Appearances: Stephen C. Larkin, for the appellant ¹ Office of Solicitor, for the Director	Case Submitted on the Reco

ORDER DISMISSING APPEAL

Before:

ALEC J. KOROMILAS, Chief Judge VALERIE D. EVANS-HARRELL, Alternate Judge JAMES D. McGINLEY, Alternate Judge

On September 3, 2023 appellant, through his representative, filed a timely appeal from a June 21, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1136.

The Board notes that the June 21, 2023 merit decision denied modification of appellant's March 18, 2022 decision, which had denied his emotional condition claim. However, by nonmerit decision dated September 22, 2022, OWCP had denied his request for reconsideration, pursuant to 5 U.S.C. § 8128(a), of its March 18, 2022 merit decision. On March 19, 2023 appellant had filed his appeal to the Board of OWCP's September 22, 2022 decision. It is well established that OWCP and the Board may not simultaneously have jurisdiction over the same issue. Following the docketing of an appeal on the same issue with the Board, OWCP does not have jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its

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 S.B., Docket No. 18-1686 (issued August 15, 2019); Cathy B. Millin, 51 ECAB 331 (2000); Noe L. Flores, 49 ECAB 344 (1998); Douglas E. Billings, 41 ECAB 880 (1990).

jurisdiction.³ Any decisions rendered by OWCP on the same issues for which an appeal is filed are null and void.⁴

The Board notes that commencing March 19, 2023, the Board had jurisdiction over appellant's claim for a work-related emotional condition. While the Board retained its jurisdiction, OWCP had no jurisdiction to issue a decision, which dealt with this same matter. Therefore, OWCP's June 21, 2023 decision, which addresses the same issue, is rendered null and void.⁵

For these reasons, the record does not contain any additional final adverse decision of OWCP over which the Board may take jurisdiction.⁶ Consequently, the Board lacks jurisdiction under the appeal docketed as No. 23-1136, and the appeal must be dismissed. Accordingly,

IT IS HEREBY ORDERED THAT that the appeal docketed as No. 23-1136 is dismissed.

Issued: July 16, 2024 Washington, DC

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

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

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

³ A.C., Docket No. 18-1730 (issued July 23, 2019); Terry L. Smith, 51 ECAB 182 (1999).

⁴ B.T., Docket No. 16-0866 (issued August 18, 2016).

⁵ See supra notes 2 through 4.

⁶ The Board will consider appellant's appeal of OWCP's September 22, 2022 decision under the appeal docketed as Docket No. 23-0589.