

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

M.G., Appellant)	
)	
and)	Docket No. 24-0173
)	Issued: June 27, 2024
U.S. POSTAL SERVICE, SOUTH JERSEY)	
PROCESSING & DISTRIBUTION CENTER,)	
Bellmawr, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 7, 2023 appellant, through counsel, filed a timely appeal from a July 24, 2023 merit decision and an August 11, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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 5 U.S.C. § 8101 *et seq.*

ISSUES

The issues are: (1) whether OWCP properly denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b); and (2) whether appellant has met her burden of proof to establish a medical condition causally related to the accepted February 25, 2017 employment incident.

FACTUAL HISTORY

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

On March 3, 2017 appellant, then a 54-year-old mail handler in a modified-duty status, filed a traumatic injury claim alleging that on February 25, 2017 she was working on a tray sorter machine to containerize trays when she felt chest pain and tingling in her right wrist, while in the performance of duty.⁴ She explained that she experienced symptoms from carpal tunnel syndrome on a daily basis. Initially appellant had some tingling in her right wrist, but by the following day her left hand was causing problems, including pain and swelling in her ring finger. On the reverse side of the claim form, the employing establishment noted that following her original injury, she was on limited duty until returning to full-duty work. Appellant stopped work on February 25, 2017.

In a report dated April 6, 2017, Dr. Scott M. Fried, an osteopath Board-certified in orthopedic surgery, diagnosed bilateral median and radial neuropathy, left brachial plexopathy/cervical radiculopathy with long thoracic neuritis and scapular winging, carpal tunnel median neuropathy of the left upper extremity with brachial plexus involvement secondary to work activities, overuse syndrome of bilateral upper extremities, right and left flexor tenosynovitis, pectoralis minor strain with brachial plexus involvement left secondary to work injury, and left shoulder rotator cuff strain and sprain. He opined that there was "no doubt" appellant sustained a significant acute injury secondary to her work duties on February 25, 2017 when she was reaching, grasping, pulling, pushing, and lifting. Dr. Fried explained that the lifting of trays and placing them on all-purpose containers (APC), reaching, grasping, and awkward posturing resulted in a significant acute pectoral strain, paracervical strain, and brachial plexus injury. He concluded that this was an acute injury separate from and additive to her previous bilateral carpal tunnel syndrome injuries. In a disability certificate dated April 6, 2017, Dr. Fried opined that appellant was disabled from work.

³ Docket No. 19-1860 (issued March 15, 2021).

⁴ On December 13, 2007 appellant, then a 44-year-old mail handler, filed an occupational disease claim (Fom CA-2) alleging that she developed bilateral carpal tunnel syndrome as a result of repetitive lifting, bending, pushing and pulling tubs of flat mail. On April 7, 2008 OWCP accepted her claim for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx484. On March 21, 2017 it notified appellant that it administratively converted the recurrence claim under OWCP File No. xxxxxx484 to a new traumatic injury claim occurring on February 25, 2017 under OWCP File No. xxxxxx880.

By decision dated May 4, 2017, OWCP denied the claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the accepted February 25, 2017 employment incident.

On May 17, 2017 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On May 25, 2017 OWCP received a May 18, 2017 report, wherein Dr. Fried repeated appellant's diagnoses. Dr. Fried reiterated his opinion that there was "no doubt" she sustained a significant acute injury secondary to her work duties on February 25, 2017 when reaching, grasping, pulling, pushing, and lifting. He explained that the lifting of trays and placing them on APC's, reaching, and grasping with awkward posturing resulted in a significant acute pectoral strain, paracervical strain, and brachial plexus injury.

By decision dated July 18, 2017, OWCP's hearing representative vacated the May 4, 2017 decision and remanded the case for further medical development. The hearing representative further instructed OWCP to administratively combine OWCP File Nos. xxxxxx880 and xxxxxx484 as correct adjudication depended on cross-referencing these files.

On February 16, 2018 OWCP referred appellant for a second opinion evaluation with Dr. Stanley Askin, a Board-certified orthopedic surgeon, to determine whether she sustained a diagnosed medical condition causally related to the accepted February 25, 2017 employment incident.

In a March 2, 2018 report, Dr. Askin noted that appellant's medical history included bilateral carpal tunnel syndrome, reported physical examination findings, and diagnosed bilateral carpal tunnel syndrome. He found no disabling residuals of any condition associated with appellant's current claim, rather he opined that her difficulty persisted from the earlier accepted carpal tunnel syndrome. Dr. Askin noted that there were no objective findings that she suffered an aggravation or had current disability. He indicated that there was no work-related reason referable to OWCP File No. xxxxxx880 that precluded appellant from returning to work full duty with lifting limited to 100 pounds occasionally.

By decision dated May 16, 2018, OWCP denied appellant's claim, finding the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical conditions and the accepted February 25, 2017 employment incident. It found that the weight of the medical opinion evidence rested with Dr. Askin's March 2, 2018 report. OWCP mailed the decision to appellant and counsel at their last known addresses of record.

On December 17, 2018 appellant, through counsel, requested reconsideration. Counsel asserted that, neither he nor the employing establishment received the May 16, 2018 decision and, thus, it did not issue to the interested parties. He requested that the decision be reissued with full appeal rights.

By decision dated March 18, 2019, OWCP denied modification of the May 16, 2018 decision.

Appellant appealed to the Board. By decision dated March 15, 2021, the Board set aside the March 18, 2019 decision.⁵ The Board found a conflict in the medical opinion evidence between Dr. Fried, appellant's treating physician, and Dr. Askin, OWCP's second opinion physician, regarding whether she sustained an injury in the performance of duty on February 25, 2017. The Board instructed OWCP, on remand, to request a report from an impartial medical examiner regarding whether appellant has met her burden of proof to establish that she sustained an injury due to the accepted employment injury. The Board directed OWCP to, following further development, issue a *de novo* decision on the merits of her claim.

On March 28, 2023 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, to Dr. Robert Grob, a Board-certified orthopedic surgeon, serving as an impartial medical examiner (IME) to resolve the conflict in the medical opinion evidence between Dr. Fried and Dr. Askin regarding whether she sustained a chest injury due to the accepted February 25, 2017 employment incident.

In a June 2, 2023 report, Dr. Grob noted his review of the medical evidence of record, and SOAF. On examination, he found no evidence of median neuropathy, sensation was intact along the median nerve distribution, no atrophy was present, and he noted evidence of symptom magnification. Dr. Grob found no evidence of ongoing neuropathy or carpal tunnel syndrome and noted that there were no positive objective findings to substantiate any further disability and concluded that the condition was resolved. He opined that carpal tunnel syndrome was not related to the February 25, 2017 employment incident but related to a degenerative condition. Dr. Grob advised that appellant could return to work in full-duty capacity without restrictions. With regard to appellant's allegation that she sustained an injury to her chest wall on February 25, 2017, he noted that the records reflect that appellant had symptoms at least one month prior to the accepted February 25, 2017 employment incident. Dr. Grob noted that appellant had no complaints of pain along her chest wall, shoulder region, or neck. He opined that that were no positive objective findings and therefore it was reasonable to conclude that appellant was fully recovered from an alleged injury to her chest wall, there was no evidence of any aggravation or exacerbation of any preexisting disease and medical treatment could be discontinued.

By decision dated July 24, 2023, OWCP denied modification of its March 18, 2019 merit decision. It accorded the special weight of the medical evidence to the IME. The appeal rights attached to the decision noted that appellant could request either reconsideration before OWCP or an appeal to the Board.

By decision dated August 11, 2023, OWCP denied appellant's request for an oral hearing, pursuant to 5 U.S.C. § 8124(b), finding that she was not entitled to a hearing as a matter of right because she had previously requested reconsideration. It exercised its discretion and further determined that the issue in the case could equally well be addressed by requesting reconsideration from OWCP and submitting evidence not previously considered, which establishes that she sustained an injury causally related to her federal employment.

⁵ *Supra* note 3.

LEGAL PRECEDENT -- ISSUE 1

A claimant dissatisfied with an OWCP decision shall be afforded an opportunity for either an oral hearing or a review of the written record.⁶ Section 8124(b) of FECA, concerning a claimant's entitlement to a hearing, states that: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his or her claim before a representative of the Secretary."⁷ OWCP's regulations further explain that the claimant must have not previously submitted a reconsideration request (whether or not it was granted) on the same decision.⁸ Although a claimant who has previously sought reconsideration is not, as a matter of right, entitled to a hearing or review of the written record, the Branch of Hearings and Review may exercise its discretion to either grant or deny a hearing following reconsideration.⁹

ANALYSIS -- ISSUE 1

The Board finds that OWCP improperly denied appellant's request for an oral hearing.

OWCP denied appellant's August 3, 2023 request for an oral hearing, finding that she was not entitled to an oral hearing as a matter of right because she had previously requested reconsideration on the same issue. While it is true that OWCP issued a decision on March 18, 2019, the decision pertained to OWCP's May 16, 2018 decision.¹⁰ By decision dated March 15, 2021, the Board remanded the case for a *de novo* decision. OWCP, on July 24, 2023, issued a *de novo* decision with respect to appellant's February 25, 2017 traumatic injury claim. It failed to specify in the accompanying appeal rights that she could request a hearing. However, as OWCP had issued a *de novo* decision, appellant could in fact request a hearing as a matter of right pursuant to Section 8124(b) of FECA, so long as her request was made within 30 days after the date of issuance of the decision.¹¹

Appellant's request for an oral hearing was received by OWCP on August 3, 2023, which was within 30 days of the July 24, 2023 decision.¹² The Board, therefore, finds that OWCP improperly denied appellant's August 3, 2023 request for an oral hearing.¹³ Upon return of the

⁶ 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.615.

⁷ *Id.* at § 8124(b)(1).

⁸ *Id.*

⁹ See *H.T.*, Docket No. 20-1318 (issued April 27, 2021); *E.S.*, Docket No. 19-1144 (issued August 3, 2020); *J.C.*, Docket No. 19-1293 (issued December 16, 2019); *T.M.*, Docket No. 18-1418 (issued February 7, 2019); *M.W.*, Docket No. 16-1560 (issued May 8, 2017); *D.E.*, 59 ECAB 438 (2008); *Hubert Jones, Jr.*, 57 ECAB 467 (2006).

¹⁰ Docket No. 21-0587 (issued July 6, 2022).

¹¹ *Id.* at § 8124(b)(1).

¹² *Id.*

¹³ *Order Reversing Case, P.B.*, Docket No. 21-0723 (issued April 13, 2022); *Order Reversing Case, L.A.*, Docket No. 21-0048 (issued July 19, 2021).

case record, OWCP shall proceed with an oral hearing before a representative of OWCP's Branch of Hearings and Review.¹⁴

CONCLUSION

The Board finds that OWCP improperly denied appellant's request for an oral hearing.

ORDER

IT IS HEREBY ORDERED THAT the August 11, 2023 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board. The July 24, 2023 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: June 27, 2024
Washington, DC

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

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

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

¹⁴ In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.