

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

_____)	
L.J., Appellant)	
)	
and)	Docket No. 24-0308
)	Issued: May 2, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
ALEXANDRIA VA MEDICAL CENTER,)	
Pineville, LA, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On February 5, 2024 appellant, through counsel, filed a timely appeal from a September 27, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0308.

On August 27, 2013 appellant, then a 35-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2013 she felt pain in her lower back when she helped a patient while in the performance of duty. OWCP accepted the claim for lumbar sprain and thoracic or lumbosacral neuritis or radiculitis.

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 an 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.

On June 18, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

On March 10, 2022 OWCP expanded its acceptance of appellant's claim to include acute embolism and thrombosis of unspecified deep veins of the left lower extremity.

By decision dated January 6, 2023, OWCP denied appellant's schedule award claim as he failed to establish a permanent impairment of a scheduled member or function of the body.

On January 20, 2023 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on July 11, 2023.

OWCP received a lumbar computerized tomography (CT) scan dated August 15, 2023, and an electromyogram and nerve conduction velocity (EMG/NCV) study of the lower extremities dated August 30, 2023.

By decision dated September 6, 2023, OWCP's hearing representative affirmed the January 6, 2023 decision.

In a September 14, 2023 report, Dr. Erich W. Wolf, II, a Board-certified neurosurgeon, reviewed a history of injury and treatment, noted findings on examination, and reviewed diagnostic studies. He diagnosed lumbar radiculopathy, lumbar spondylosis, lumbar spondylolisthesis, sacroiliitis, and thoracic pain. Dr. Wolf noted that an August 30, 2023 EMG/NCV study was suggestive of chronic bilateral L4-5 and L5-S1 radiculopathy without lower extremity neuropathy. He recommended bilateral L4-5 intra-articular injections.

On September 26, 2023 appellant, through counsel, requested reconsideration. Counsel resubmitted copies of the August 15, 2023 thoracic CT scan, August 30, 2023 EMG/NCV study, and submitted Dr. Wolf's September 14, 2023 report.

By decision dated September 27, 2023, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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

In the case of *William A. Couch*,² the Board held that, when adjudicating a claim, OWCP is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, OWCP received a new September 14, 2023 report by Dr. Wolf noting findings indicative of chronic bilateral L4-5 and L5-S1 radiculopathy. OWCP, however, did not review this evidence in its September 27, 2023 merit decision. It, thus, failed to follow its procedures.

² 41 ECAB 548 (1990). See also *Order Remanding Case, J.C.*, Docket No. 23-0429 (issued January 4, 2024); *Order Remanding Case, K.B.*, Docket No. 20-1320 (issued February 8, 2021).

As Board decisions are final as 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.³ On remand, it shall consider and address all evidence submitted by appellant. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the September 27, 2023 decision of the Office of Workers' Compensation is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 2, 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 See *Order Remanding Case, D.B.*, Docket No. 23-0543 (issued October 26, 2023); *Order Remanding Case, J.C., id.*; *Order Remanding Case, T.M.*, Docket No. 23-0265 (issued August 7, 2023); *Order Remanding Case, E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch, id.*