

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

L.G., Appellant

and

**DEPARTMENT OF THE INTERIOR,
FISH & WILDLIFE SERVICE, Ashland, WI,
Employer**

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) **Docket No. 24-0342**
) **Issued: May 9, 2024**
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Appearances:
Stephanie Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

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

On February 14, 2024 appellant, through counsel, filed a timely appeal from a December 12, 2023 merit decision and January 24, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 24-0342.

This case has previously been before the Board.² The facts and circumstances of the case as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On July 27, 2010 appellant, then a 27-year-old biological technician, filed a traumatic injury claim (Form CA-1) alleging that on July 15, 2010 she experienced persistent severe neck pain when carrying a five-gallon bucket filled with water/fish and bending and walking with other

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 Docket No. 21-0034 (issued December 7, 2021); Docket No. 23-0637 (issued September 15, 2023).

field equipment eight hours while in the performance of duty. OWCP initially accepted the claim for cervicalgia. It subsequently expanded the acceptance of the claim to include displacement of cervical intervertebral disc without myelopathy.

On September 26, 2019 appellant filed a claim for compensation (Form CA-7) for disability from work commencing June 9, 2014. Also, on September 26, 2019, she filed a notice of recurrence (Form CA-2a) claiming disability from work, commencing June 13, 2014. Appellant noted that following her original July 15, 2010 employment injury, she returned to work. She claimed that her employment injury never improved and had worsened over time.³

By decision dated November 4, 2019, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work commencing June 9, 2014 due to the July 15, 2010 employment injury.

On November 11, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on April 9, 2020.

On May 26, 2020 OWCP expanded the acceptance of appellant's claim to include other cervical disc displacement at the C6 level without myelopathy.

By decision dated May 29, 2020, OWCP's hearing representative affirmed the November 4, 2019 decision.

On October 8, 2020 appellant appealed to the Board. By decision dated December 7, 2021, the Board affirmed OWCP's May 29, 2020 decision.⁴ The Board found that appellant had not met her burden of proof to establish disability from work commencing June 9, 2014, as the medical evidence of record was insufficient to establish causal relationship between her claimed disability and the accepted July 15, 2010 employment injury.

On November 22, 2022 appellant, through counsel, requested reconsideration. By decision dated February 17, 2023, OWCP denied modification.

On March 27, 2023 appellant, through counsel, appealed to the Board. By order dated September 15, 2023, the Board set aside the February 17, 2023 decision, finding that OWCP had not properly considered all the evidence submitted at the time of the February 17, 2023 decision.⁵ The Board remanded the case to OWCP for proper consideration of the evidence followed by issuance of a *de novo* decision.

OWCP continued to receive medical evidence.

By decision dated December 12, 2023, again denied modification, finding that the medical evidence of record was insufficient to establish disability from work commencing June 9, 2014 causally related to the accepted July 15, 2010 employment injury. The appeal rights attached to

³ The record indicates that appellant's employment was terminated, effective August 27, 2011.

⁴ Docket No. 21-0034 (issued December 7, 2021).

⁵ Docket No. 23-0637 (issued September 15, 2023).

the decision noted that appellant could request either reconsideration before OWCP or review by the Board.

On January 11, 2024 appellant, through counsel, requested that OWCP issue a *de novo* decision, pursuant to the Board's instructions, instead of a reconsideration decision. Counsel informed OWCP that the appeal rights attached to the December 12, 2023 decision included a request for reconsideration before OWCP or an appeal to the Board, but did not include the right to an oral hearing or a review of the written record. She requested a review of the written record by a representative of OWCP's Branch of Hearings and Review regarding the December 12, 2023 decision.

By decision dated January 24, 2024, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record. It found that she was not entitled to a review of the written record as a matter of right as she had previously requested reconsideration by OWCP on December 12, 2023. OWCP exercised its discretion and performed a limited review of the evidence submitted following reconsideration, and further denied the request as the issue in the case would be addressed equally well by appellant submitting new, relevant evidence or argument with a valid request for reconsideration.

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

By decision dated September 15, 2023, the Board set aside OWCP's February 17, 2023 decision and remanded the case for OWCP to consider all the evidence submitted at the time of the February 17, 2023 decision, followed by a *de novo* decision. As such, the December 12, 2023 decision should have included full appeal rights, including the right to an oral hearing or review of the written record.⁶ The December 12, 2023 decision denied modification of the February 17, 2023 decision, but the appeal rights attached provided only that appellant could request reconsideration or file an appeal with the Board. OWCP, therefore, did not issue an appropriate *de novo* decision as so instructed by the Board.

The Board has final authority to determine questions of law and fact. The Board's decisions are binding upon OWCP and must, of necessity, be so accepted and acted upon by OWCP.⁷ As OWCP failed to issue a *de novo* decision, it did not follow the Board's instructions in its September 15, 2023 decision and deprived appellant of her full appeal rights. The case is,

⁶ See *R.E.*, Docket No. 22-0643 (issued July 17, 2023); *P.B.*, Docket No. 21-0723 (issued April 13, 2022); *J.I.*, Docket No. 13-1414 (issued April 24, 2014).

⁷ See *R.E.*, *id.*; *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84 (1949). See also *J.S.*, Docket No. 12-622 (issued September 12, 2012); *L.C.*, Docket No. 09-1816 (issued March 17, 2010) (OWCP did not follow the Board's instructions in ascertaining the information necessary to determine pay rate); *Frank W. White*, 42 ECAB 693 (1991) (the Board's order in a prior appeal imposed an obligation on the Director to take particular actions as directed).

therefore, again remanded for OWCP to, following any further development deemed necessary, issue a *de novo* decision with full appeal rights.⁸

IT IS HEREBY ORDERED THAT the December 12, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The January 24, 2024 decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: May 9, 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

⁸ In light of the Board's disposition regarding the merit issue, the nonmerit issue regarding the denial of hearing is rendered moot.