

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

B.H., Appellant)	
)	
and)	Docket No. 24-0297
)	Issued: September 26, 2024
DEPARTMENT OF JUSTICE, EXECUTIVE)	
OFFICE OF IMMIGRATION REVIEW,)	
Falls Church, VA, Employer)	
)	

Appearances: *Case Submitted on the Record*
*Stephanie N. Leet, Esq., for the appellant*¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 31, 2024 appellant, through counsel, filed a timely appeal from a December 13, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0297.

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

On October 30, 2019 appellant, then a 51-year-old legal assistant, filed a traumatic injury claim (Form CA-1) alleging that on October 18, 2019 he experienced pain in his knee and back

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.

² Docket No. 21-0183 (issued December 7, 2021).

and numbness in his back and legs when his left knee gave out and he fell on stairs while in the performance of duty.

In a report dated December 16, 2019, Dr. Aravind Athiviraham, a Board-certified orthopedic surgeon, related that appellant described an October 18, 2019 injury when “his knees gave out on the stairs while at work.” He advised that a magnetic resonance imaging (MRI) scan of the right knee showed a complex but mainly horizontal tear of the posterior horn and body of the medial meniscus. Dr. Athiviraham diagnosed a complex tear of the medial meniscus. He noted that appellant had injured his knee at work when he fell down the stairs and subsequently had right knee and neck pain. He opined that, regarding the right knee, he should perform only sedentary duty for two months. An after-visit summary indicated that appellant received treatment from Dr. Athiviraham on December 16, 2019.

On June 27, 2023 OWCP accepted appellant’s claim for a tear of the medial meniscus of the right knee.

On July 24, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work during the period October 19, 2019 to August 10, 2020.

In a development letter dated August 3, 2023, OWCP advised appellant of the deficiencies in his claim for disability and requested that he submit a reasoned opinion from a physician supporting disability from work due to the accepted employment injury. It afforded him 30 days to submit the requested information.

By decision dated September 22, 2023, OWCP denied appellant’s claim for wage-loss compensation from October 19, 2019 through August 10, 2020 as he had not established disability from work due to his accepted employment injury.

On October 17, 2023 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review.

By decision dated December 13, 2023, OWCP’s hearing representative affirmed in part and set aside in part the September 22, 2023 decision. The hearing representative noted that the first medical evidence regarding appellant’s right knee was a December 16, 2019 report from Dr. Athiviraham. The hearing representative found that only the first two pages of the report were contained in the case record, and that these pages consisted only of a history with no examination, diagnosis, opinion on work capacity, or signature. The hearing representative concluded that there was no evidence supporting disability from employment for the period October 19, 2019 to March 3, 2020. The hearing representative found, however, that further development was needed to determine whether appellant had established disability from employment from March 4 through August 10, 2020, and remanded the case for OWCP to obtain the operative report from his March 4, 2020 right knee surgery and to further develop the evidence regarding whether the surgery was necessary due to the accepted employment injury.

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

In the case of *William A. Couch*,³ the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. OWCP's hearing representative found that the December 16, 2019 report from Dr. Athiviraham was missing pages; however, the record contains a complete report from Dr. Athiviraham dated December 16, 2019, which was received by OWCP on December 7, 2022.

As Board decisions are final with regard to the subject matter appealed,⁴ it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision. The case must therefore be remanded to OWCP to review all the evidence of record.⁵ Following this and other such further development deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 13, 2023 is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 26, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

³ 41 ECAB 548 (1990); *see J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁴ 20 C.F.R. § 501.6(d).

⁵ All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012). *See also E.D.*, Docket No. 20-0620 (issued November 18, 2020); *William A. Couch*, 41 ECAB 548, 553 (1990).