

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

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G.E., Appellant)	
)	
and)	
)	Docket No. 24-0856
)	Issued: September 27, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
WASHINGTON VA MEDICAL CENTER,)	
Washington, DC, Employer)	
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Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On August 20, 2024 appellant, through counsel, filed a timely appeal from an August 2, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0856.

On June 20, 2021 appellant, then a 47-year-old registered nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained bilateral carpal tunnel syndrome, bilateral cubital tunnel syndrome, bilateral tendinitis/tendinosis, and epicondylitis of the left hand due to factors of her federal employment, including repetitive keyboarding and using a telephone. OWCP assigned OWCP File No. xxxxxx181 and accepted the claim for bilateral carpal tunnel syndrome,

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.

medial epicondylitis at the elbows, ulnar nerve lesion of an unspecified limb, and ulnar nerve lesion of the right upper limb.²

On October 12, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work during the period September 26 through October 9, 2021.

Appellant submitted medical evidence in support of his claim. By decision dated January 27, 2022, OWCP denied appellant's claim for disability from work during the period September 26 through November 29, 2021, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period causally related to the accepted employment injury.

On March 11, 2022 OWCP received a March 10, 2022 report, wherein Dr. Ernest Africano, a Board-certified internist, opined that appellant was temporarily totally disabled from work commencing September 13, 2021 "due to the physical deficit in her hands, wrists, arms, and neck from repetitive movements that she sustained at work."

Thereafter, OWCP received reports dated September 20 through October 18, 2021, wherein Dr. Africano provided or affirmed work restrictions. In a November 16, 2021 report, he noted that appellant had been off work commencing September 10, 2021.

In a May 7, 2024 letter, appellant contended that she had timely requested reconsideration of the January 27, 2022 decision on March 11, 2022.

In a June 11, 2024 letter, OWCP responded that it had not previously received a request for reconsideration of the January 27, 2022 decision.

On July 25, 2024 appellant requested reconsideration of OWCP's January 27, 2022 decision.

By decision dated August 2, 2024, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error. It explained that while it received Dr. Africano's March 10, 2022 report on March 11, 2022, the March 10, 2022 appeal rights form on which she requested reconsideration was not received until July 25, 2024, thereby rendering it untimely. OWCP further found that the March 10, 2022 medical report was insufficient to demonstrate clear evidence of error in OWCP's January 27, 2022 decision.

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

² Previously, under OWCP File No. xxxxxx327, OWCP accepted that on January 22, 2015, appellant sustained a triangular fibrocartilage complex (TFCC) tear of the right wrist when she lifted patients while in the performance of duty. Under OWCP File No. xxxxxx817, it accepted that on February 15, 2019 appellant sustained a sprain of the left wrist and hand when she fell as the chair in which she was about to sit rolled out from under her while in the performance of duty. OWCP has not administratively combined these claims.

In the case of *William A. Couch*,³ 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.

In its August 2, 2024 decision, OWCP found that Dr. Africano's March 10, 2022 report was insufficient to demonstrate clear evidence of error in OWCP's January 27, 2022 decision; however, it did not consider or address his reports dated September 20 through November 16, 2021, regarding the claimed period of disability.

As such, OWCP failed to follow its procedures by properly reviewing and discussing all of the evidence of record.⁴ It is crucial that OWCP consider and address all evidence relevant to the subject matter properly submitted prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.⁵

The Board thus finds that this case is not in posture for a decision as OWCP did not consider and address evidence submitted by appellant in support of her untimely request for reconsideration. On remand, OWCP shall review all evidence of record and issue an appropriate decision. Accordingly,

³ 41 ECAB 548 (1990); *see also Order Remanding Case, G.V.*, Docket No. 24-0781 (issued August 26, 2024); *Order Remanding Case, P.B.*, Docket No. 24-0368 (issued May 22, 2024); *Order Remanding Case, A.D.*, Docket No. 22-0519 (issued January 11, 2023); *Order Remanding Case, A.B.*, Docket No. 22-0179 (issued June 28, 2022); *Order Remanding Case, S.H.*, Docket No. 19-1582 (issued May 26, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁴ OWCP's procedures provide that 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).

⁵ *See Order Remanding Case, D.P.*, Docket No. 24-0259 (issued February 16, 2024); *Order Remanding Case, B.J.*, Docket No. 23-0927 (issued November 29, 2023); *Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 3.

IT IS HEREBY ORDERED THAT the August 2, 2024 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 27, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy 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