

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

_____)
R.C., Appellant)

and)

DEPARTMENT OF DEFENSE, DEFENSE)
AGENCIES, WASHINGTON)
HEADQUARTERS SERVICES, Alexandria, VA,)
Employer)
_____)

Docket No. 21-0845
Issued: December 13, 2021

Appearances:
Wayne Johnson, Esq. for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 15, 2021 appellant filed a timely appeal from a November 16, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0845.

On July 27, 2017 appellant, then a 34-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on July 23, 2017 he sprained his left ankle playing basketball while in the performance of duty. He stopped work on that date. Appellant underwent surgery to repair the rupture of his left Achilles tendon on August 3, 2017. On September 21, 2017 OWCP accepted his claim for strain of the left Achilles tendon, and sprain of an unspecified ligament of the left ankle.

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.

On October 16, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated April 12, 2019, OWCP granted appellant a schedule award for five percent permanent impairment of the left lower extremity to run for 14.4 weeks for the period from November 30, 2018 through March 10, 2019.² It found that the effective date of pay rate was July 23, 2017 and that his weekly pay at that time was \$1,065.10 such that his weekly compensation at the 75 percent augmented rate was \$798.82. OWCP increased appellant's pay rate based on cost-of-living adjustment effective March 1, 2019 to reach his weekly compensation rate of \$813.25 for 10 days within his schedule award period.³

On May 10, 2019 appellant, through his representative, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on September 9, 2019.

By decision dated November 1, 2019, OWCP's hearing representative found that appellant had no more than five percent permanent impairment of his left lower extremity for which he had previously received a schedule award.

On November 1, 2020 appellant, through his representative, requested reconsideration of the November 1, 2019 decision and asserted that his schedule award was based on the wrong impairment rating and that he was paid at an incorrect pay rate. He did not submit any evidence in support of his request.

By decision dated November 16, 2020, OWCP denied appellant's request for reconsideration finding that the request did not raise substantive legal questions nor include new and relevant evidence.

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

The Board finds that OWCP did not make findings regarding the arguments counsel submitted in support of the reconsideration request.⁴ OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁵ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁶ Its regulations

² The Board notes that the April 12, 2019 decision notes the period of the award as "November 30, 2018 through March 10, 2018." This appears to be a typographical error.

³ On July 16, 2018 the employing establishment informed OWCP that effective July 23, 2017, the date of injury, appellant was entitled to a base pay of \$43,576.00 and locality pay of \$11,809.00 for a yearly salary of \$55,385.00 or a weekly salary of \$1,065.10.

⁴ See *R.C.*, *Order Remanding Case*, Docket No. 20-1671 (issued May 6, 2021); *J.K.*, *Order Remanding Case*, Docket No. 20-0556 (issued August 13, 2020); *C.D.*, *Order Remanding Case*, Docket No. 20-0450 (issued August 13, 2020); *T.B.*, *Order Remanding Case*, Docket No. 20-0426 (issued July 27, 2020).

⁵ See *C.G.*, Docket No. 20-0051 (issued June 29, 2020); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also 20 C.F.R. § 10.607(b).

⁶ 5 U.S.C. § 8124(a).

at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁷ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁸

In denying appellant's November 1, 2020 reconsideration request, OWCP failed to analyze counsel's arguments on reconsideration. The November 16, 2021 decision simply noted: "your letter neither raised substantive legal questions nor included new and relevant evidence, it is insufficient to warrant a review of our decision of our prior decision at this time."

The Board will therefore set aside OWCP's November 16, 2021 decision and remand the case for an appropriate decision on appellant's reconsideration request, which describes the arguments submitted on reconsideration and provides detailed reasons for accepting or rejecting the reconsideration request.⁹ Accordingly,

IT IS HEREBY ORDERED THAT the November 16, 2021 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: December 13, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

⁷ 20 C.F.R. § 10.126.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁹ 5 U.S.C. § 8124(a). 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. *Id.*, at Chapter 2.1401.5(b)(2) (November 2012).