

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

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L.Y., Appellant)	
)	
and)	Docket No. 20-1383
)	Issued: February 16, 2021
DEPARTMENT OF THE AIR FORCE, SPACE)	
& MISSILE SYSTEMS CENTER, LOS)	
ANGELES AIR FORCE BASE, El Segundo, CA,)	
Employer)	
_____)	

Appearances:
Toby Rubenstein, 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, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 13, 2020 appellant, through counsel, filed a timely appeal from a January 30, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1383.

On July 23, 2017 appellant, then a 60-year-old logistics management specialist, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome as well as muscle, neck, and back spasms with radiculopathy due to factors of her federal

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.

employment.² She described her contributing employment duties as handwriting and keyboard, answering telephones, handwriting and typing meeting notes to be distributed approximately two to three times per day, handling extensive paperwork, repetitive use of office equipment, lifting luggage in and out of air plane overhead bins, typing on a laptop computer, and handling a carrying case. Appellant indicated that these activities caused her to develop soreness in her wrists, arms, and shoulders over time. She noted that she first became aware of her condition on June 4, 2007 and first realized that it was caused or aggravated by her federal employment on January 9, 2017. Appellant stopped work on January 19, 2017.

By decision dated September 19, 2017, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the employment events occurred as she described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 18, 2018 appellant, through counsel, requested reconsideration of OWCP's September 19, 2017 decision. Counsel discussed appellant's employment duties over the previous eight years, including answering telephone calls for approximately one and a half hours a day, keyboarding for approximately three to four hours a day, pinching, gripping, grasping, lifting and carrying her laptop and luggage, walking and standing on concrete floors for approximately half a mile a day, and as well as carrying, pushing and lifting her luggage on various travel assignments over the years. He attached additional medical evidence and reasoned that it would be sufficient to establish her claim.

Counsel attached a January 9, 2017 medical report in which Dr. Raven Copeland, Board-certified in family medicine, reviewed appellant's history of symptoms and diagnosed bilateral carpal tunnel syndrome, bilateral hip joint pain, right tarsal tunnel syndrome, and muscle spasms of the neck and back. In a diagnostic report of even date, Dr. Augusto Salceda, a Board-certified radiologist, performed an x-ray of appellant's hips, finding no fractures and mild narrowing in the periacetabular region on the right hip joint.

Appellant also submitted a September 26, 2018 narrative medical report wherein Dr. John Ellis, Board-certified in occupational medicine, reviewed the history of her employment duties and observed that she filed multiple occupational disease claims related to her employment duties.³ Dr. Ellis detailed her subsequent medical history and diagnosed a muscle tendon unit strain of the neck, a strain of the right shoulder, right shoulder traumatic arthritis, right shoulder tendinitis, a strain of the left shoulder, right mid brachial plexus impingement, left mid brachial plexus impingement, right medial epicondylitis, right cubital tunnel syndrome, left medial epicondylitis, left cubital tunnel syndrome, right carpal tunnel syndrome, left carpal tunnel syndrome, right thumb traumatic arthritis metacarpophalangeal joint, left middle finger trigger finger, muscle

² The Board notes that appellant originally filed two separate Form CA-2s and that on August 2, 2017 OWCP determined that her conditions were caused by the same work factors and added the evidence from the other claim to the present one.

³ Appellant previously filed multiple Form CA-2s dated July 23, 2017 and September 18, 2018 claiming that she developed right tarsal tunnel syndrome, bilateral knee osteoarthritis, left vitreous detachment, and right hip osteoarthritis under OWCP File Nos. xxxxxxx653, xxxxxxx718, xxxxxxx825, and xxxxxxx342, respectively. On January 14, 2019 it accepted, under OWCP File No. xxxxxxx342, unilateral primary osteoarthritis right hip.

tendon unit strain of the back, deranged discs in the back, and right S1 spinal nerve impairment and left S1 spinal nerve impairment. He opined that appellant's conditions were caused by her prolonged sitting, walking, and repetitive use of a straight keyboard at work.

By decision dated December 11, 2018, OWCP affirmed, as modified, its September 19, 2017 decision, finding that the new evidence submitted by appellant was sufficient to establish the factual component of fact of injury. The claim remained denied, however, because she failed to submit a rationalized opinion from her treating physician explaining how her diagnosed conditions were causally related to the accepted factors of her federal employment.

Appellant subsequently submitted medical evidence dated from November 26, 2018 to February 6, 2019 detailing her continued treatment for her diagnosed conditions.

On November 19, 2019 appellant, through counsel, requested reconsideration of OWCP's December 11, 2018 decision. In support thereof, appellant submitted a series of additional medical evidence dated from November 26, 2018 to February 11, 2019 detailing her treatment relating to her diagnosed conditions.

By decision dated January 30, 2020, OWCP denied modification of its December 11, 2018 decision.

The Board finds that this case is not in posture for decision.

OWCP did not make any findings regarding the evidence submitted in support of the reconsideration request.⁴ It summarily denied appellant's occupational disease claim 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 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 its January 30, 2020 decision, OWCP failed to analyze the substantial amount of medical evidence as to whether it was sufficient to establish causal relationship between appellant's diagnosed medical conditions and the accepted factors of her federal employment. The

⁴ See *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).

⁷ 20 C.F.R. § 10.126.

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

January 30, 2020 decision simply noted: “[t]he evidence is [in]sufficient to modify the decision dated [December 11, 2018] because the additional medical and factual evidence received and reviewed by this Office was insufficient for the previous decision to be modified in any way.” However, OWCP provided no discussion relative to the new medical evidence submitted by appellant.⁹ The Board will therefore set aside OWCP’s January 30, 2020 decision and remand the case for a *de novo* decision,

IT IS HEREBY ORDERED THAT the January 30, 2020 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: February 16, 2021
Washington, DC

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

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

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

⁹ *J.K., supra* note 4.