

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

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**J.V., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Paramus, NJ, Employer**

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**Docket No. 13-295  
Issued: April 17, 2013**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On November 20, 2012 appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) decision dated October 25, 2012 that denied appellant's claim for a traumatic injury. The appeal was docketed as 13-295.

In this case, appellant filed a traumatic injury claim on September 25, 2012. The Board notes that, prior to the October 25, 2012 decision, OWCP informed appellant on October 3, 2012 that the evidence submitted was insufficient to establish his claim. OWCP advised him of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence, particularly requesting that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors. It advised appellant that his case would be held open for 30 days to submit the requested information.

The Board finds that OWCP did not follow its regulations which requires that OWCP advise appellant of the additional evidence needed to support his claim and allow 30 days in which to submit such evidence. In this instance, OWCP issued a decision denying appellant's claim on October 25, 2012, prior to the end of the 30-day period.

The Board has duly considered the matter and notes that the case is not in posture for a decision. Section 10.121 of OWCP's regulation, states that, if a claimant submits factual evidence, medical evidence, or both in support of his or her claim, but OWCP determines that

this evidence is not sufficient to meet the burden of proof, OWCP will inform the claimant of the additional evidence needed and provide the claimant at least 30 days to submit the evidence required.<sup>1</sup> Proceedings under the Federal Employees' Compensation Act<sup>2</sup> (FECA) are not adversarial in nature. OWCP shares responsibility in the development of the evidence and has an obligation to see that justice is done.<sup>3</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP's regulations at section 10.121.<sup>4</sup>

As the 30-day period for submission of additional evidence had not expired at the time it issued its decision denying appellant's claim, the Board finds that OWCP did not fulfill its responsibility under section 10.121 of its regulations.<sup>5</sup>

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 25, 2012 be set aside. The case is remanded to OWCP for further action consistent with this order.

Issued: April 17, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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<sup>1</sup> 20 C.F.R. § 10.121.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *William B. Webb*, 56 ECAB 156 (2004).

<sup>4</sup> *Id.*

<sup>5</sup> On December 6, 2012 OWCP issued a decision vacating the October 25, 2012 decision. However, this decision is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same case. OWCP may not issue a decision regarding the same issue on appeal before the Board. See *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).