

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

P.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Lithia Springs, GA, Employer**

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**Docket No. 16-0938
Issued: January 11, 2017**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On April 4, 2016 appellant filed a timely application for review from a November 2, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Board docketed the appeal as No. 16-0938.

The Board has duly considered the matter and finds that the case is not in posture for a decision and must be remanded to OWCP. In the case of *William A. Couch*,¹ 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.

In this case, appellant was injured in a work-related February 25, 2011 motor vehicle accident. She stopped work on the date of injury. On April 15, 2011 OWCP accepted appellant's claim for sprain of the neck and sprain of the back, lumbar region. It paid compensation for various hours of wage loss from April 13 to August 12, 2011. On February 25, 2014 OWCP expanded the accepted conditions to include lumbar radiculitis and displacement lumbar intervertebral disc at L4/5 and L5/S1 without myelopathy. It authorized a right L5-S1 laminotomy and discectomy performed on March 23, 2015 by Dr. Eric I. Francke, a Board-

¹ 41 ECAB 548 (1990).

certified orthopedic surgeon. The record does not indicate that OWCP paid any further wage-loss compensation under the present claim.

On August 26, 2015 appellant filed a Form CA-7 for compensation for leave without pay commencing February 25, 2011 and submitted medical evidence which addressed her cervical and lumbar conditions, work capacity, and work restrictions. In a September 8, 2015 letter, OWCP advised appellant of the deficiencies of her claim and requested that she respond to its inquiries. It noted that the evidence of record indicated that she had stopped work on March 23, 2015 due to her surgery on that date. OWCP also noted that there was conflicting evidence about the dates appellant had stopped work and the leave she had used during the claimed period of disability which required clarification. It noted that the employing establishment had stated that she had not returned to work following a new injury she sustained on February 19, 2013 under OWCP File No. xxxxxx080.² Appellant was afforded 30 days to submit the requested information.

By letters dated September 11, 2015, OWCP requested that Dr. Yong S. Lee, a Board-certified physiatrist, and Dr. Francke respond to several questions regarding their August 26, 2015 opinion that appellant was capable of performing modified work. In response, the physicians submitted medical reports which addressed appellant's lumbar and cervical conditions, work capacity, and work restriction. OWCP also received an August 6, 2015 functional capacity evaluation (FCE) which revealed that appellant had not met the medium physical demand level required for her previous position as a mail carrier. In a November 2, 2015 decision, it denied appellant's claim for compensation commencing February 25, 2011. OWCP found that the evidence of record was insufficient to establish disability commencing February 25, 2011 due to her accepted employment-related injuries. It noted that no further evidence had been received in response to its September 8, 2015 development letter.

The Board finds that OWCP, in its November 2, 2015 decision, had not reviewed the medical records submitted by Dr. Lee and Dr. Francke or the August 6, 2015 FCE which were received prior to and on the same date as its decision.³ In their submission, the physicians provided a response to OWCP's request for medical evidence regarding appellant's claim for disability. For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the November 2, 2015 decision. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant's claim.

² Under File No. xxxxxx080, the Board, in an August 23, 2016 decision, affirmed an OWCP hearing representative's December 9, 2014 decision denying appellant's occupational disease claim (Form CA-2). Docket No. 15-1345 (issued August 23, 2016). File No. xxxxxx080 is not before the Board on the present appeal.

³ See *M.B.*, Docket No. 09-17 (issued September 23, 2009); *Yvette N. Davis*, 55 ECAB 475 (2004); *Linda Johnson*, 45 ECAB 439, 440 (1994) (evidence received the same day on which OWCP issues its final decision must be considered).

ORDER

IT IS HEREBY ORDERED THAT the November 2, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 11, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board