

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

C.B., Appellant)	
)	
and)	Docket No. 19-1559
)	Issued: April 30, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Clifton Park, NY, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

On July 15, 2019 appellant filed a timely appeal from a March 28, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1559.

On September 14, 2018 appellant, then a 53-year-old clerk/supervisor, filed a traumatic injury claim (Form CA-1) alleging that on September 12, 2018 he fell and broke his right leg while in the performance of duty. He stopped work on September 13, 2018 and did not return.

By decision December 4, 2018, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish a right knee condition causally related to the accepted September 12, 2018 employment incident.

On December 26, 2018 appellant requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. On the form he noted a new address in Gansevoort, New York.

By decision dated February 6, 2019, OWCP's hearing representative set aside the December 4, 2018 decision and required further development of the medical record. The hearing representative instructed that, upon return of the case record, OWCP should request a narrative report from appellant's attending physician, Dr. Lawrence H. Fein, a Board-certified orthopedic

surgeon, explaining causal relationship prior to further adjudication of the claim. The February 6, 2019 decision was properly sent to appellant's updated address of record.

In a development letter dated February 14, 2019, OWCP requested that appellant provide a narrative report discussing causal relationship from Dr. Fein. The letter was addressed to appellant's prior address of record.

In a March 27, 2019 CA-110 telephone note, appellant informed the claims examiner that he only just received the February 14, 2019 letter requesting additional information from his treating physician because it was not sent to his new address. The claims examiner requested that he submit a change of address request in writing and noted that a decision on his claim would be issued the following day.

By decision dated March 28, 2019, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish a right knee condition causally related to the accepted September 12, 2018 employment incident.

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

The hearing representative's February 6, 2019 decision instructed OWCP to further develop the medical evidence on remand, specifically instructing the claims examiner to write directly to the attending physician.

The Board finds that the claims examiner did not follow the instructions of OWCP's hearing representative as noted in the February 6, 2019 decision. Instead of contacting Dr. Fein directly, a development letter was sent to appellant requiring him to obtain and submit the necessary report. Additionally, the record shows that OWCP did not mail this development letter to appellant's current home address of record, thus effectively denying his claim without proper notice and 30 days to respond to the request for additional medical evidence by Dr. Fein.¹

Therefore, the Board will remand the case for further development of the medical evidence by OWCP's claims examiner on the issue of causal relationship and such further issues which may have since developed.

On remand OWCP should follow the instructions provided by its hearing representative in the February 6, 2019 decision by obtaining an opinion on causal relationship from Dr. Fein.² Following this and such further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's traumatic injury claim.³

¹ *L.R.*, Docket No. 14-0361 (issued June 5, 2014).

² *Id.*

³ A copy of the decision shall be mailed to appellant's current address. *See* 20C.F.R. § 10.127.

IT IS HEREBY ORDERED THAT the March 28, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for proceedings consistent with this order of the Board.

Issued: April 30, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board