

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

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L.G., Appellant)	
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and)	Docket No. 21-0535
)	Issued: July 13, 2022
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U.S. POSTAL SERVICE, STATEN ISLAND)	
STATION, Staten Island, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On February 23, 2021 appellant filed a timely appeal from a February 11, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellant Boards docketed the appeal as No. 21-0535.

On June 12, 2019 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2019 she sustained a low back strain when the mail truck she was seated in was rear ended by another vehicle while in the performance of duty. She stopped work on June 11, 2019 and work intermittently thereafter.¹

OWCP accepted appellant's claim for cervical sprain. Appellant filed multiple claims for compensation (Form CA-7) for disability from work commencing July 27, 2019.

On August 29, 2019 OWCP further developed appellant's claim by referring her to Dr. Paul Teja, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding whether her claim should be expanded to include herniated cervical disc, herniated lumbar disc,

¹ On November 27, 2017 appellant filed a Form CA-1 for right hip and low back pain that occurred on November 24, 2017 when delivering packages while in the performance of duty. OWCP assigned OWCP File No. xxxxxx446. It did not accept this claim. OWCP administratively combined OWCP File No. xxxxxx406 and OWCP File No. xxxxxx302, with the latter serving as the master file.

cervical radiculopathy, lumbar radiculopathy, and lumbosacral radiculopathy and whether appellant was totally disabled from work commencing July 27, 2019.

In an October 4, 2019 report, Dr. Teja diagnosed cervical strain, resolved. He opined that appellant sustained a soft tissue injury as a result of the June 11, 2019 work injury, which has resolved, and the claim should not be expanded to include cervical radiculopathy or lumbar radiculopathy. Dr. Teja further opined that appellant reached maximum medical improvement (MMI) and could return to regular duty without restrictions.²

In an addendum report dated February 17, 2020, Dr. Teja maintained that OWCP should not expand the acceptance of appellant's claim to include any additional conditions.

By decision dated March 4, 2020, OWCP denied expansion of the acceptance of appellant's claim to include the additional conditions of herniated cervical disc, herniated lumbar disc, cervical radiculopathy, lumbar radiculopathy, and lumbosacral radiculopathy.

On March 16, 2020 appellant, through then-counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated March 18, 2020, OWCP denied appellant's claims for wage-loss compensation, finding that she had not established disability from work commencing July 27, 2019 causally related to the accepted June 11, 2019 employment injury.

On April 1, 2020 appellant, through then-counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 1, 2020, an OWCP hearing representative set aside the decisions dated March 4 and 18, 2020 and remanded the matter for further development. The hearing representative found the opinion of Dr. Teja was insufficiently rationalized to constitute the weight of the evidence. It instructed OWCP to obtain a supplemental opinion from Dr. Teja addressing causation of herniated cervical disc, herniated lumbar disc, cervical radiculopathy, lumbar radiculopathy, and lumbosacral radiculopathy to the work injury and appellant's work capacity.

In a September 11, 2020 report, Dr. Teja advised that he found no objective evidence of cervical or lumbar radiculopathy. He opined that the cervical strain had resolved and that there was no objective evidence of any permanent injury as it related to the work injury.

By decision dated September 25, 2020, OWCP denied expansion of the acceptance of appellant's claim to include the additional conditions and denied appellant's claims for wage-loss compensation, finding that she had not established disability from work, commencing July 27, 2019, causally related to the accepted June 11, 2019 employment injury.

² On October 10, 2019 OWCP referred appellant's medical record, along with a statement of accepted facts (SOAF) to Dr. Franklin M. Epstein, a Board-certified neurosurgeon serving as an OWCP district medical adviser (DMA). In an October 21, 2019 report, Dr. Epstein opined that appellant's claim should be expanded to include lumbar intra vertebral disc displacement, lumbar radiculopathy, and cervical degenerative disease. The DMA further opined that appellant remained temporarily totally disabled.

On October 20, 2020 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated December 11, 2020, after preliminary review, the hearing representative vacated the September 25, 2020 decision and remanded the matter for further development. The hearing representative found that the SOAF was inaccurate, did not describe the physical job requirements of the date-of-injury position, and requested that Dr. Teja review additional diagnostic studies.

OWCP received additional evidence. In reports dated December 17, 2020 and January 26, 2021, Dr. Perez treated appellant for low back and bilateral leg pain, which began on June 11, 2019 when she was working as a letter carrier and was a driver in a parked postal truck that was rear ended causing injuries to her lower back and neck. He noted that appellant's medical history was significant for bulging lumbar discs. Dr. Perez diagnosed cervical spine sprain, left trochanteric bursitis, bulging disc C3-4, C5-6, and L5-S1, herniated disc at L4-5 with nerve root compression, cervical radiculopathy at C6 nerve root, and lumbar radiculopathy at L5-S1. He opined that the prior lumbar L4-5 disc bulge progressed to a herniation as a result of the June 11, 2019 employment injury and was an exacerbation of the preexisting employment injury. Dr. Perez noted that appellant was totally disabled from work in any capacity since her date of injury due to the June 11, 2019 employment injury.

In a January 11, 2021 report, Dr. Teja reviewed diagnostic studies including the October 10, 2019 EMG from Dr. Perez and the December 21, 2020 updated SOAF. Based on a review of the additional records, he noted that his opinion did not change. Dr. Teja opined that appellant fully recovered from the June 11, 2019 cervical sprain and reached MMI. He could not relate any additional conditions to the work injury and further opined that she was not disabled from June 11, 2019 through December 30, 2020 due to the employment injury.

By decision dated February 11, 2021, OWCP denied expansion of the acceptance of appellant's claim to include the additional conditions of herniated cervical disc, herniated lumbar disc, cervical radiculopathy, lumbar radiculopathy, and lumbosacral radiculopathy and denied appellant's claims for wage-loss compensation, finding that she had not established disability from work, commencing July 27, 2019, causally related to the accepted June 11, 2019 employment injury. It found the weight of the evidence rested with Dr. Teja, the second opinion physician. OWCP found that Dr. Perez's reports omitted appellant's preexisting history of lumbar herniations and chronic pain/impairment. It further indicated that Dr. Perez did not have an accurate history of injury, noting that appellant's vehicle was "not directly crushed by a car" as described.

The Board has duly considered the matter and finds that this case is not in posture for decision. In the case of *William A. Couch*,³ 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. As detailed above, on reconsideration appellant submitted additional reports from Dr. Perez dated December 17, 2020 and January 26, 2021. These reports describe the facts surrounding the June 11, 2019 work incident, noting that appellant was a driver in a parked postal truck that was rear ended. Dr. Perez further described appellant's prior medical

³ 41 ECAB 548 (1990); *see K.B.*, Docket No. 20-1320 (issued February 8, 2021); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

history of bulging lumbar discs. OWCP, however, did not review this additional evidence in its February 11, 2021 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.⁴

As the Board's decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁵ For this reason, the case will be remanded to OWCP to address the above-noted evidence submitted at the time of the February 11, 2021 decision.⁶ Following this and other such further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the February 11, 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: July 13, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

⁴ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by a author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁵ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 3.

⁶ *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).