

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

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T.M., Appellant)	
)	
and)	Docket No. 23-0265
)	Issued: August 7, 2023
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On December 15, 2022 appellant filed a timely appeal from a November 30, 2022 merit decision of the Office of Workers' Compensation Programs OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0265.

On March 29, 2022 appellant, then a 35-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that she developed chronic back pain, stiffness, and pinching while sitting for long periods of time, along with soreness and limited mobility throughout the spine while bending or twisting, due to factors of her federal employment. She noted that she first became aware of her condition on January 27, 2022 and realized its relation to her federal employment on March 24, 2022. Appellant did not initially stop work.

On June 24, 2022 OWCP accepted appellant's claim for spondylosis without myelopathy or radiculopathy, lumbar region.

¹ The Board notes that, following the November 30, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

In a report dated June 30, 2022, Dr. Thomas P. Canseco, a chiropractor, provided treatment notes and assessed lumbar sprain/strain rule out herniated nucleus pulposus, lumbar sprain, rule out radiculopathy, and spondylosis without myelopathy.

Beginning on September 2, 2022 appellant filed claims for compensation (Form CA-7) for disability from work commencing July 16, 2022.

In support of her claim, appellant submitted reports and treatment notes from Dr. Bandhu Paudyal, a Board-certified neurophysiologist, who reviewed August 4, 2022 nerve conduction velocity studies and electromyography scans.

OWCP received a Form CA-17 dated August 29, 2022, from Dr. Christian A. Fras, an orthopedic surgeon, who opined that appellant was able to return to work with restrictions on August 29, 2022.

By development letter dated September 7, 2022, OWCP informed appellant of the deficiencies of her claims for compensation. It advised her of the type of medical evidence needed to establish her claims and afforded her 30 days to respond.

Appellant then submitted reports and diagnostic studies including an August 17, 2022 x-ray of the lumbar spine read by Dr. Jeffery B. Nemeroff, a Board-certified diagnostic radiologist; September 13, 2022 treatment notes and an after-visit summary from Dr. Robert Nick Hernandez, a neurosurgeon; chiropractic treatment notes from Dr. Canseco dated March 29 through October 3, 2022 and a September 28, 2022 report and September 29, 2022 Form CA-17 from Dr. Sagi M. Kuznits, a Board-certified neurosurgeon.

OWCP also received narrative reports dated August 16, and 29, 2022 from Dr. Fras. In the August 29, 2022 report, Dr. Fras provided physical examination findings, recommended lumbar surgery, and noted that he had completed work restriction forms.

By decision dated November 30, 2022, OWCP denied appellant's claims for compensation for disability from work commencing July 16, 2022. The decision review the August 29, 2022 narrative report from Dr. Fras.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

In the case of *William A. Couch*,² 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. While OWCP is not required to list every piece of evidence submitted, the Board notes that the August 29, 2022¹ report from Dr. Fras was not considered or addressed by OWCP in its September 2, 2021 decision.³

² 41 ECAB 548 (1990); *see J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

³ *See C.D.*, Docket No. 20-0168 (issued March 5, 2020).

Because Board decisions are final with regard to the subject matter appealed,⁴ it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.⁵ As OWCP did not consider and address all of the relevant evidence submitted prior to its November 30, 2022 decision, the Board finds that this case is not in posture for decision.⁶

On remand OWCP shall review all relevant evidence that was of record at the time of the November 30, 2022 decision. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the November 30, 2022 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: August 7, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

⁴ 20 C.F.R. § 501.6(d).

⁵ All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012). *See also E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Linda Johnson*, 45 ECAB 439 (1994) (OWCP must review all evidence relevant to the subject matter and received by OWCP before issuance of its final decision, including medical reports received on the same day it issues its decision); *William A. Couch*, 41 ECAB 548, 553 (1990).

⁶ *See M.N.*, Docket No. 20-0110 (issued July 7, 2020); *Y.B.*, Docket No. 20-0205 (issued July 7, 2020); *H.H.*, Docket No. 14-1985 (issued June 26, 2015).