

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

S.S., Appellant)	
)	
and)	Docket No. 25-0003
)	Issued: November 6, 2024
U.S. POSTAL SERVICE, POST OFFICE)	
CENTRAL ILLINOIS DISTRICT,)	
Bedford Park, IL, 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
JAMES D. MCGINLEY, Alternate Judge

On October 1, 2024 appellant filed a timely appeal from an April 11, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0003.¹

On April 29, 2021 appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 2021 she injured her right knee when she fell on a concrete porch while in the performance of duty. She stopped work on April 2, 2021. OWCP accepted the claim for right knee contusion and right knee abrasion.

Appellant filed claims for wage-loss compensation (Forms CA-7) for disability from work during the period May 17 through July 16, 2021. She submitted evidence in support of her claims.

¹ The Board notes that following the April 11, 2024 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.*

By decision dated July 29, 2021, OWCP denied appellant's claim for disability from work commencing May 17, 2021.

OWCP subsequently received reports dated July 26, August 23, September 27 and November 3, 2021, wherein Dr. Ryon M. Hennessy, a Board-certified orthopedic surgeon, noted appellant's diagnosis as internal derangement of the right knee and opined that appellant was to remain off work. Dr. Hennessy related that appellant had right knee pain beyond that of a contusion, which by definition was caused by internal derangement of the knee. In his November 3, 2021 report, he added that appellant also had likely right knee meniscal tears.²

OWCP also received a Form CA-17, dated July 26, 2021, wherein a certified physician assistant noted diagnoses of right knee internal derangement and contusion, and indicating that appellant was disabled from work.

Appellant filed additional Form CA-7s claiming wage-loss compensation for disability from work during the period July 17 through September 24, 2021.

In a December 29, 2021 report, Dr. Hennessy opined that appellant was limited to light-duty work.

On February 22, 2022 appellant requested reconsideration. In an attached statement, she explained that she had been held off work from April 1 through October 2021 due to her knee pain and returned to work with restrictions in October 2021.

In support of her claim, appellant submitted Forms CA-17 dated August 23, September 27, December 29, 2021 from Dr. Hennessy, and Forms CA-17 dated December 1, 2021 and February 16, 2022 from a physician assistant, wherein appellant's work restrictions were related. OWCP also received reports dated December 1, 2021, February 16, 23, and March 14, 2022 wherein Dr. Hennessy found appellant was limited to light-duty work.

By decision dated April 18, 2022, OWCP denied modification of the July 29, 2021 decision.

Appellant subsequently submitted additional reports from Dr. Hennessy dated April 20, May 23, June 27, August 3, September 21, and October 19, 2022, wherein he related appellant's physical examination findings. In these reports, Dr. Hennessy continued to report that she was limited to light-duty work. OWCP also continued to receive Forms CA-17 signed by a physician assistant.

On November 4, 2022 appellant requested reconsideration.

By decision dated November 9, 2022, OWCP denied modification. It cited a review of the medical evidence, including medical reports from Dr. Hennessy dated through October 19, 2022.

² As of November 3, 2021, Dr. Hennessy also noted a diagnosis of lumbar radiculopathy.

Thereafter, OWCP continued to receive medical evidence. In a report dated October 27, 2022, Dr. Moni Abraham, a specialist in internal medicine, noted appellant's history of injury and diagnosed post-traumatic osteoarthritis of the right knee. OWCP also received additional reports dated November 30, 2022, January 11 and April 26, 2023 from Dr. Hennessy.

OWCP offered appellant a modified limited-duty assignment, as a modified administrative assignment on January 12, 2023. Appellant accepted the position on that date.

A March 9, 2024 magnetic resonance imaging (MRI) scan of appellant's right knee demonstrated findings of tricompartmental osteoarthritic changes, most prominent and severe in the patellofemoral compartment; small radial tear suspected in the posterior horn of the lateral meniscus; and small Baker's cyst.

In February 28, 2023 and March 19, 2024 progress reports, Dr. J. Michael Morgenstern, an orthopedic surgeon, noted appellant's history of injury, provided examination findings, and diagnosed right knee tricompartmental arthritis with torn meniscus, which he attributed to the April 1, 2021 employment injury. He opined that appellant was totally disabled from her date-of-injury job. OWCP also received Forms CA-17 from Dr. Morgenstern dated February 28, 2023 and March 19, 2024 wherein he noted appellant's diagnosis of right knee internal derangement and related appellant's work restrictions.

OWCP also received a March 27, 2024 report from Dr. Chandrasekhar Sompalli, an orthopedic surgeon, who noted appellant's physical examination findings. Dr. Sompalli's diagnoses were listed as right knee unilateral primary osteoarthritis and probable tear of the right knee lateral meniscus. She recommended that appellant undergo right knee surgery.

On April 5, 2024 appellant requested reconsideration.

By decision dated April 11, 2024, OWCP summarily denied appellant's reconsideration request, finding that it was untimely filed, and failed to demonstrate clear evidence of error.

The Board, having duly considered this matter, finds that the 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 and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its April 11, 2024 decision, OWCP did not consider or address the medical evidence received following the November 9, 2022 merit decision. This evidence included the October 27, 2022 report from Dr. Abraham; additional reports dated November 30, 2022, January 11 and April 26, 2023 from Dr. Hennessy; the March 9, 2024 MRI scan of appellant's right knee;

³ 41 ECAB 548 (1990); *see also Order Remanding Case, G.V.*, Docket No. 24-0781 (issued August 26, 2024); *Order Remanding Case, P.B.*, Docket No. 24-0368 (issued May 22, 2024); *Order Remanding Case, A.D.*, Docket No. 22-0519 (issued January 11, 2023); *Order Remanding Case, A.B.*, Docket No. 22-0179 (issued June 28, 2022); *Order Remanding Case, S.H.*, Docket No. 19-1582 (issued May 26, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

February 28, 2023 and March 19, 2024 reports from Dr. Morgenstern, and the March 27, 2024 report from Dr. Sompalli.

As such, OWCP failed to follow its procedures by properly reviewing and discussing all of the evidence of record.⁴ It is crucial that OWCP consider and address all evidence relevant to the subject matter properly submitted prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.⁵

The Board thus finds that this case is not in posture for a decision as OWCP did not consider and address evidence submitted by appellant in support of her untimely request for reconsideration. On remand OWCP shall review all evidence of record and issue an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the April 11, 2024 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: November 6, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief 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 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 2.1401.5b(2) (November 2012).

⁵ See *Order Remanding Case, D.P.*, Docket No. 24-0259 (issued February 16, 2024); *Order Remanding Case, B.J.*, Docket No. 23-0927 (issued November 29, 2023); *Order Remanding Case, 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.