

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

M.P., Appellant)	
)	
and)	Docket No. 24-0636
)	Issued: September 30, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, 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 May 23, 2024 appellant filed a timely appeal from an April 12, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0636.¹

On January 24, 2024 appellant, then a 46-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 22, 2024 at 3:09 p.m., she sustained injuries to her head, back, and left shoulder when she slipped on ice on brick stairs while in the performance of duty. She noted a specific address in which the injury occurred. On the reverse side of the claim form M.B., an employing establishment supervisor, controverted the claim, noting that appellant had not cooperated with the employing establishment's investigation of the claim or provided medical documentation. Appellant stopped work on the date of injury and returned to full-duty work on February 27, 2024.

¹ The Board notes that, following the April 12, 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.*

An emergency room visit summary dated January 22, 2024 indicated that appellant was seen for “a fall.”

In a January 20, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In a January 26, 2024 visit summary, Vanessa Cambray, an advanced practice nurse, indicated that appellant was seen for a fall. She diagnosed musculoskeletal pain.

In a January 30, 2024 attending physician’s report (Form CA-20), Dr. Ankur Chhadia, a Board-certified orthopedic surgeon and sports medicine specialist, noted a history that appellant was delivering mail and fell down some stairs onto her left side. He diagnosed a partial left rotator cuff tear which was “more likely than not” caused by the fall. Dr. Chhadia opined that appellant was unable to return to work as of January 22, 2024 and provided an estimated return to work date of April 23, 2024. In an order form of even date, he referred her for physical therapy and diagnosed incomplete rotator cuff tear or rupture of left shoulder, not specified as traumatic; bicipital tendinitis, left shoulder; contusion, left shoulder; impingement syndrome, left shoulder; other shoulder lesions, left shoulder; and unspecified sprain of left shoulder joint.

In a letter dated February 7, 2024, L.H., an employing establishment occupational health claims specialist, challenged the claim. She indicated that on the date of injury appellant advised her supervisor that she had fallen, but “was okay and just wanted to go home.” L.H. related that she then proceeded to unload her postal vehicle and when she returned to the building, she asked to go to the hospital noting that her union had instructed her to do so. Management then informed appellant that it needed a statement and a photograph of her footwear, which appellant refused. L.H. noted that management was able to capture a photograph of her footwear as she walked away. She also noted that management visited the location appellant provided on her Form CA-1 to take pictures and spoke with the homeowner who indicated that they had cameras, that there was no video, and that no one fell on their property. L.H. indicated that a supervisor transported appellant to the hospital, but she left the hospital after advising that they were taking too long to see her.

In a duty status report (Form CA-17) dated February 20, 2024, Dr. Chhadia released appellant to return to full-duty work without restrictions, effective February 27, 2024. In an order form of even date, he prescribed physical therapy.

OWCP also received a list of scheduled physical therapy appointments.

In a March 4, 2024 follow-up development letter, OWCP informed appellant that the evidence of record remained insufficient to establish the factual and medical aspects of her claim, and advised her of the type of evidence required. It further indicated that “you have been afforded 60 days from our letter of March 4, 2024 to submit the requested information.”

In a medical report dated March 19, 2024, Dr. Chhadia noted that appellant related complaints of neck and mid-back pain, which she attributed to a fall downstairs onto her left side while delivering mail on January 22, 2024. On physical examination, he observed mild-to-moderate tenderness to palpation about the shoulder with limited range of active range of motion, positive impingement signs, positive Speed’s and O’Brien’s tests, pain with empty can test, and

mild weakness. Dr. Chhadia diagnosed a partial left rotator cuff tear and released appellant to return to full-time work with no lifting over 25 pounds, effective March 20, 2024.

By decision dated April 12, 2024, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred, as alleged. It noted that she had not submitted a statement in response to its January 31 and March 4, 2024 development letters. Therefore, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

The Board, having duly considered this matter, finds that OWCP prematurely issued its decision on April 12, 2024. In a letter dated March 4, 2024, OWCP requested that appellant submit additional factual and medical evidence to support her traumatic injury claim.² It informed her that she would have "60 days from our letter of March 4, 2024 to submit the requested information." The 60th day following March 4, 2024 was May 3, 2024. By decision dated April 12, 2024, however, OWCP denied appellant's traumatic injury claim.

OWCP, therefore, prematurely issued its decision on April 12, 2024 denying appellant's claim, before the 60-day period it afforded to her in its March 4, 2024 letter had expired. As such, the Board finds that the decision denying her traumatic injury claim was improper, and the case must be remanded to OWCP for a proper decision on appellant's traumatic injury claim. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

² OWCP's procedures provide that OWCP is responsible for requesting evidence. Its procedures further provide that the claims examiner should contact the claimant in writing to obtain evidence and should specifically request the information needed, tailored to the specifics of the individual case. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.0800.5 (November 2023); *see also V.R.*, Docket No. 16-1167 (issued December 22, 2016).

IT IS HEREBY ORDERED THAT the April 12, 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: September 30, 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