

³ *Linda Johnson*, 45 ECAB 439 (1994); *see also Patsy R. Tatum*, 44 ECAB 490, 496 (1993).

On December 13, 2011 appellant filed a claim for a fractured right big toe due to her employment activities. In a letter dated January 5, 2012, OWCP requested additional factual and medical evidence in support of her claim. It allotted appellant 30 days within which to submit the requested evidence.

On January 6, 2012 appellant submitted a work status report dated December 2, 2011 by Dr. Arcelia Martin, a Board-certified internist, diagnosing appellant with closed fracture (fx) toe, phalanx and placing her off work from December 6 through 9, 2011.

On February 2, 2012 she submitted a Doctor's First Report of Occupational Injury or Illness dated January 30, 2012. The report listed appellant's description of the incident, her subjective complaints, and made an objective finding that she had pain in her right shin and big toe. It was signed by Dr. Thai T. Do, a Board-certified internist, who diagnosed fx toe, phalanx, Anserine Bursitis. On February 2, 2012 appellant also submitted a physical therapy/occupational therapy authorization request signed by Dr. Do.

On February 3, 2012, the same date OWCP issued its final decision, appellant submitted a medical report from Kaiser Permanente that related her history of injury and diagnosis. On February 3, 2012 she also submitted an orthopedic clinic report, an authorization for use or disclosure of patient health information and a physical therapist report.

Nonetheless, in denying appellant's claim, OWCP stated that appellant responded to the OWCP development letter with the work status report received January 6, 2012 and OWCP "did not receive any medical evidence indicating the cause of the medical condition." It concluded, therefore, that she had not established that she sustained an injury in the performance of duty, as alleged.

OWCP, in its February 3, 2012 decision, did not review the additional evidence properly submitted by appellant and received by OWCP on February 2 and 3, 2012. For this reason, the case must be remanded for a proper review of the evidence and an appropriate final decision on her entitlement to compensation. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the February 3, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: December 21, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board