

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

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C.L., Appellant	)	
	)	
and	)	<b>Docket No. 13-981</b>
	)	<b>Issued: August 12, 2013</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>	)	
<b>VETERANS HEALTH ADMINISTRATION,</b>	)	
<b>Las Vegas, NV, Employer</b>	)	

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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On March 18, 2013 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) decision dated February 14, 2013.

Appellant, then a 42-year-old health technician, filed a traumatic injury claim alleging that on April 4, 2005 she sustained a low back strain when she picked up a pro paq off of the counter and turned to put it on the shelf behind her. OWCP accepted the claim for a lumbar strain. Appellant stopped work and received wage-loss compensation from May 20 to July 7, 2005. She returned to work without restrictions. The record reveals that appellant continued to receive medical treatment for her back sprain, including epidural injections, and received intermittent wage-loss compensation.

On August 23, 2010 appellant filed a recurrence claim alleging that she sustained a recurrence of the April 4, 2005 injury. She stopped work on August 17, 2010. On May 25, 2011 OWCP updated appellant's claim to accept disc bulge and protrusion at the L5-S1 and lumbar radiculitis. Appellant received disability compensation for the period August 17, 2010 to June 4, 2011 and was placed on the periodic rolls. She continued to receive medical treatment and receive compensation for intermittent periods of disability.

On December 7, 2012 appellant informed OWCP *via* telephone that her neck now hurt and she wanted to know if her neck could be accepted along with her back condition. On December 26, 2012 she filed a claim for compensation for December 19, 2012. In an attached time analysis form, appellant indicated that she was claiming eight hours of compensation for medical reasons.

Appellant submitted various reports by Dr. George M. Elkanich, a Board-certified orthopedic surgeon, dated August 9, September 6, November 1 and 29, and December 6, 2012. Dr. Elkanich stated that appellant's lumbar pain had significantly improved and noted that her main problem at this time was bilateral neck pain. Upon examination, he observed tenderness on palpation of the trapezius, scalene and paracervical muscles and decreased range of motion. Cervical spine pain was noted by bilateral motion, flexion, extension and rotation. Examination of appellant's back revealed no swelling, indurations or erythema. Straight leg raise test was negative. Dr. Elkanich diagnosed lower back pain, herniated cervical disc, cervical and lumbar spondylosis, cervical and lumbar stenosis and cervicalgia.

On January 14, 2013 OWCP advised appellant that the evidence was insufficient to establish that appellant received medical treatment on December 19, 2012 as a result of her accepted back condition and requested additional evidence to establish her claim.

Appellant subsequently submitted a February 7, 2013 report from Dr. Elkanich, who stated that he had treated appellant for many years of cervical neck and lower back symptomatology and noted that he was asked to write a report addressing how the diagnosed condition was causally related to the April 4, 2005 injury. Dr. Elkanich reported that he treated appellant shortly after her initial industrial injury and during that time she complained of cervical neck and lower back symptomatology. He explained that there were periods of time when he did not discuss her cervical spine in the treatment records because the focus on the treatment was her lower back. Dr. Elkanich concluded that appellant's cervical symptomatology and complaints were causally related to the industrial injury of April 4, 2005.

By decision dated February 14, 2013, OWCP denied the claim for compensation finding that the medical evidence was insufficient to establish that she was disabled from work on December 19, 2012 as a result of her accepted back condition.

The Board has held that OWCP must review all evidence submitted by a claimant and received by it prior to the issuance of a final decision, including evidence received on the date of the decision.<sup>1</sup> Since Board decisions are final as to the subject matter appealed,<sup>2</sup> it is crucial that all of the evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.<sup>3</sup> In its February 14, 2013 decision, OWCP did not consider Dr. Elkanich's February 7, 2013 report, which was received on February 14, 2013. It only noted Dr. Elkanich's January 3, 2013 report and stated that he did not

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<sup>1</sup> *Linda Johnson*, 45 ECAB 439 (1994).

<sup>2</sup> 20 C.F.R. § 501.6(c).

<sup>3</sup> *William A. Couch*, 41 ECAB 548 (1990).

provide an opinion as to the relationship of the April 4, 2005 injury and appellant's current complaints. In Dr. Elkanich's February 7, 2013 report, however, he does provide an opinion on causal relationship, which OWCP does not address. As OWCP failed to address all the relevant evidence of record at the time it issued its February 14, 2013 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.<sup>4</sup>

**IT IS HEREBY ORDERED THAT** the February 14, 2013 decision of the Office of Workers' Compensation Programs is set aside, and the case record is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: August 12, 2013  
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

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<sup>4</sup> See *A.B.*, Docket No. 12-1907 (issued May 13, 2013).