

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

N.F., Appellant

and

**U.S. POSTAL SERVICE, SOUTH SHORE
ANNEX, Staten Island, NY, Employer**

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**Docket No. 11-13
Issued: August 12, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On October 1, 2010 appellant filed a timely appeal from an August 30, 2010 decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3 the Board has jurisdiction over the merits of this case.

This case has been before the Board on prior appeal.² Appellant, a 54-year-old mail handler, injured himself in the performance of duty on May 16, 2006. OWCP accepted his traumatic injury claim for right groin strain, lumbar sprain and herniated lumbar disc, and paid appropriate wage-loss compensation. Effective February 6, 2008, it terminated appellant's wage-loss compensation and medical benefits.³ The February 6, 2008 decision was subsequently affirmed by the Branch of Hearings & Review. By decision dated July 1, 2009, the Board

¹ 5 U.S.C. § 8101 *et seq.*

² Docket No. 08-2460 (issued July 2, 2009).

³ OWCP based its decision to terminate compensation and medical benefits on the November 8, 2007 report of Dr. Stanley Soren, a Board-certified orthopedic surgeon and impartial medical examiner, who found that appellant's accepted conditions had resolved and appellant was capable of resuming his regular duties as a mail handler.

similarly affirmed OWCP's termination of benefits effective February 6, 2008 (Docket No. 08-2460).⁴

On June 25, 2010 appellant's attorney timely requested reconsideration. Counsel's request was premised on the June 20, 2010 report of Dr. William N. Grant, a Board-certified internist, who attributed appellant's ongoing lower back and groin pain to his May 16, 2006 employment injury.

In a decision dated August 30, 2010, OWCP reviewed the claim on the merits but denied modification of its prior decision terminating compensation and medical benefits. It found that Dr. Grant's June 20, 2010 report was insufficient to overcome the weight of the medical evidence as represented by Dr. Soren's November 8, 2007 referee examination.

Counsel timely filed the instant appeal on October 1, 2010.

As noted, the Board previously affirmed OWCP's decision to terminate benefits effective February 6, 2008. The Board's July 1, 2009 decision noted that the record at the time included evidence received after the Branch of Hearings & Review issued its August 19, 2008 decision affirming the termination of benefits. Because this evidence was received after the final decision had been issued, the Board advised that it could not consider evidence for the first time on appeal.⁵

OWCP's August 30, 2010 merit decision did not specifically address any of the other evidence received since the August 19, 2008 decision, but instead focused entirely on Dr. Grant's June 20, 2010 report. The additional evidence included treatment notes dating back to July 22, 2008, attending physician's reports (Form CA-20), work capacity evaluations (Form OWCP-5c), other narrative reports and even a recent report from the district medical adviser. OWCP should not have limited its review to the newly submitted evidence highlighted by appellant's counsel.

As the Board's decisions are final with regard to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.⁶ In this instance, OWCP failed to consider relevant medical evidence it received prior to the issuance of the August 30, 2010 decision. Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.⁷ As OWCP failed to address all relevant evidence before it at the time, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

⁴ The Board's prior decision is incorporated herein by reference.

⁵ See 20 C.F.R. § 501.2(c).

⁶ 20 C.F.R. § 501.6(d); see *William A. Couch*, 41 ECAB 548, 553 (1990).

⁷ *Willard McKennon*, 51 ECAB 145 (1999).

IT IS HEREBY ORDERED THAT the August 30, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 12, 2011
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board