

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

Y.L., Appellant)
and) Docket No. 10-2278
DEPARTMENT OF THE TREASURY,) Issued: July 14, 2011
INTERNAL REVENUE SERVICE,)
Chamblee, GA, Employer)

)

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 September 10, 2010 appellant filed a timely appeal from a July 27, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

Appellant, a 42-year-old collections representative, filed a traumatic injury claim alleging that she injured her left shoulder, arm and upper back on January 13, 2010 when some tables fell against her. On February 17, 2010 Dr. Rohit M. Desai, a Board-certified internist, advised that appellant was unable to work January 25 through March 11, 2010 due to employment-related injuries to her shoulder, back and arm.² He subsequently extended the period of disability through March 15, 2010.

By decision dated March 22, 2010, OWCP denied appellant's traumatic injury claim because she failed to establish fact of injury.

¹ 5 U.S.C. § 8101 *et seq.*

² Dr. Desai did not identify a specific date of injury or provide a history of injury. Furthermore, he did not provide a specific diagnosis with respect to appellant's reported shoulder, back and arm injuries.

On March 25, 2010 appellant requested a review of the written record. OWCP subsequently received chiropractic treatment records for the period April through July 2010. Appellant also submitted a June 26, 2010 report from her chiropractor, Dr. Shandreika Neal, who diagnosed, *inter alia*, cervical, thoracic and lumbar sprains, brachial neuritis and lumbar disc displacement. OWCP also received a May 11, 2010 report from Dr. Srihari R. Malempati, a Board-certified general surgeon, who diagnosed cervical and upper thoracic strains with left shoulder sprain secondary to fall of a heavy object. Dr. Malempati identified January 13, 2010 as the date of injury. Lastly, appellant submitted additional evidence from Dr. Desai. In a March 17, 2010 note, he extended the period of disability through March 29, 2010. Dr. Desai also provided an April 5, 2010 narrative report wherein he diagnosed cervical sprain/strain, cervical intersegmental dysfunction, thoracic sprain/strain, left shoulder strain and left shoulder tendinitis with bursitis. He identified January 13, 2010 as the date of appellant's injury when reportedly "tables fell on [her] upper back and left shoulder." In an April 5, 2010 report, Dr. Desai advised that appellant had recovered approximately 80 percent since her injury and she was able to resume work with no heavy lifting.

In her July 27, 2010 decision, the hearing representative noted that the medical evidence consisted of disability notes from Dr. Desai dated February 17, March 5 and 17, 2010. She also noted chiropractic records for treatment beginning April 15, 2010. The hearing representative did not reference Dr. Desai's April 5, 2010 narrative report or Dr. Malempati's May 11, 2010 report, both of which included specific medical diagnoses ostensibly related to the January 13, 2010 employment incident.

In affirming the previous denial of the claim, the hearing representative found that Dr. Desai provided "no diagnosis of the condition for which he was treating [appellant]." The hearing representative concluded that appellant had not provided adequate medical evidence to support that she suffered an injury as a result of the January 13, 2010 employment incident.

On the issue of fact of injury, the case is not in posture for decision. The Board's jurisdiction over a case is limited to reviewing the evidence that was before OWCP at the time of its final decision.³ 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.⁴ In this instance, the hearing representative failed to consider at least two relevant medical reports that OWCP received prior to the issuance of the July 27, 2010 decision. Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.⁵ As the hearing representative failed to address all relevant evidenced before her at the time she issued the July 27, 2010 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

³ 20 C.F.R. § 501.2(c)(1) (2010).

⁴ *Id.* at § 501.6(d); see *William A. Couch*, 41 ECAB 548, 553 (1990).

⁵ *Willard McKennon*, 51 ECAB 145 (1999).

IT IS HEREBY ORDERED THAT the July 27, 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: July 14, 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