

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

E.S., Appellant)
and) Docket No. 12-460
U.S. POSTAL SERVICE, POST OFFICE,) Issued: November 29, 2012
Richmond, VA, Employer)

)

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 December 29, 2011 appellant filed an application for review of a November 25, 2011 decision of the Office of Workers' Compensation Programs (OWCP). By that decision, OWCP denied a merit review of OWCP's December 27, 2010 decision, as no new evidence had been submitted. OWCP affirmed the denial of appellant's claim for a permanent impairment to any upper extremity due to her accepted employment injury.¹

The Board, having duly considered the matter, concludes that the case is not in posture for decision. OWCP explained in its November 25, 2011 decision that, although appellant referred to an updated medical report from Dr. Phillip O'Donnell, a Board-certified neurologist, following her November 9, 2010 examination and the results of a magnetic resonance imaging (MRI) taken on October 14, 2010 and electromyogram/nerve conduction velocity (EMG/NCV) testing of September 22, 2010, these reports were not of record.

The Board notes that appellant provided evidence of receipt of these documents by OWCP.

¹ OWCP accepted appellant's occupational disease claim for thoracic outlet syndrome sustained in the performance of duty in her capacity as a letter carrier. On prior appeal the Board affirmed a July 7, 2004 OWCP decision, finding that appellant had not met her burden of proof to establish a recurrence of disability causally related to the accepted employment injury. Docket No. 05-78 (issued June 2, 2005).

The record reveals that on November 17, 2010 appellant sent a mailing to OWCP to “Office of Workers’ Comp, P.O. Box 8300” in London, KY 40742-8300 to the attention of “Jan Miller,” containing medical evidence consisting of the report from Dr. O’Donnell as well as the results of an MRI and EMG/NCV testing. The return receipt (hereinafter the green card) was stamped as received by “Philip Schuler” on November 23, 2010. Additionally, the recipient of the package wrote appellant’s OWCP file number on the green card. As appellant has established receipt by OWCP of these documents, the case will be remanded for OWCP to conduct any necessary further development, including obtaining copies of the missing medical evidence OWCP received on November 23, 2010, to be followed by an appropriate merit decision on appellant’s claim for a schedule award.² Accordingly,

IT IS HEREBY ORDERED THAT the decision of the Office of Workers’ Compensation Programs dated November 25, 2011 is set aside; the case is remanded for further proceedings consistent with this order of the Board.³

Issued: November 29, 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

² The Board notes that on appeal appellant submitted copies of the medical evidence she referenced in her several correspondences to OWCP. Appellant also submitted the results of an additional MRI dated October 21, 2010. As OWCP has not reviewed this evidence, the Board is precluded from doing so for the first time on appeal. *See* 20 C.F.R. § 501.2(c)(1).

³ Appellant requested and confirmed her request for oral argument before the Board. Due to the disposition of the case, the Board in its discretion denies the oral argument as it would only serve to delay the adjudication of this appeal.