

The September 26, 2012 hearing representative's decision which is the subject of the current appeal, affirmed OWCP's refusal to accept an employment-related lumbar condition. The December 4, 2012 decision, also issued by the Branch of Hearings and Review, affirmed OWCP's termination of medical benefits and wage-loss compensation effective May 16, 2012. This latter decision, authored by a different hearing representative, also concurred with the September 26, 2012 finding that appellant failed to establish an employment-related lumbar condition.

In a report dated February 3, 2012, Dr. Sherita M. Latimore-Collier, an internist, explained how the December 21, 2011 employment incident not only caused damage to appellant's left knee, but also compressed the S1 nerve root resulting in lower back pain radiating down appellant's left leg into his left foot. Dr. Latimore-Collier first examined appellant on December 21, 2011.³ She ordered the December 22, 2011 left knee MRI scan that revealed patellar tendinitis. Dr. Latimore-Collier also saw appellant in follow-up on December 27, 2011, at which time she referred him to an orthopedist for further evaluation.⁴ Appellant identified Dr. Latimore-Collier as his wife.

In the September 26, 2012 decision, the hearing representative disregarded Dr. Latimore-Collier's February 3, 2012 opinion on causal relationship solely because she is appellant's spouse. The hearing representative also mistakenly believed appellant had not received any other medical treatment between the time of his December 21, 2011 visit to the employer's occupational health unit and December 28, 2011, when he first saw Dr. Harrer. The hearing representative noted that appellant had not sought immediate treatment other than his December 21, 2011 visit to the employee health unit. As such, the hearing representative effectively ignored Dr. Latimore-Collier's December 21 and 27, 2011 treatment notes which specifically documented appellant's lower back complaints.⁵

The December 4, 2012 decision also overlooked Dr. Latimore-Collier's treatment records. While this latter decision acknowledged that she had reportedly seen appellant on December 21, 2011, the hearing representative incorrectly stated that the "record [did] not include any examination notes or findings from Dr. Latimore-Collier's December 21, 2011 examination."

The case is not in posture for decision. Because Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior

³ Earlier that same day, appellant was seen by a nurse practitioner, Sarah A. Foster-Chang, at the employing establishment's occupational health unit. The initial clinical impression was possible patellar subluxation and/or joint effusion. Appellant was excused from work and advised against any weight bearing for two days. He was to remain off duty until December 26, 2012.

⁴ He was seen the following day by Dr. Michael F. Harrer, a Board-certified orthopedic surgeon, whose initial impression on December 28, 2011 was probable left lower back issue, creating left leg radiculopathy with minimal patella tendinitis of the left knee. Dr. Harrer explained that this all started when appellant was at work manually pumping up the bed with a patient in the bed. At the time, he ordered a lumbar MRI scan to rule out left-side L4-5 herniated nucleus pulposus.

⁵ OWCP received Dr. Latimore-Collier's December 21 and 27, 2011 treatment records on February 3, 2012.

to the issuance of its final decision.⁶ In this instance, OWCP failed to consider relevant medical evidence it received prior to the issuance of both the September 26 and December 4, 2012 decisions. Dr. Latimore-Collier was the first physician to examine appellant following the December 21, 2011 employment injury. Her December 21 and 27, 2011 treatment notes are relevant to the issues currently on appeal, and this evidence was part of the record at the time OWCP issued both decisions. Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.⁷ As it failed to address all relevant evidence before it at the time, the case shall be remanded for a proper review of the evidence and issuance of an appropriate final decision.

IT IS HEREBY ORDERED THAT the December 4 and September 26, 2012 decisions of the Office of Workers' Compensation Programs are set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: July 12, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

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