

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

J.W., Appellant)	
)	
and)	Docket No. 13-1666
)	Issued: August 18, 2014
DEPARTMENT OF TREASURY, INTERNAL)	
REVENUE SERVICE NATIONAL OFFICE,)	
Richmond, VA, Employer)	
)	

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA HOWARD FITZGERALD, Acting Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

On July 8, 2013 appellant filed a timely appeal from a January 16, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for disability compensation.

On December 3, 2009 appellant, then a 60-year-old tax examiner, filed an occupational disease claim (Form CA-2) alleging that she developed hand, back, neck, shoulder and arm problems as a result of repetitive data entry from her federal employment duties. By decision dated March 17, 2010, OWCP accepted the claim for brachial neuritis or radiculitis. Appellant stopped work and filed a claim for compensation (Form CA-7) for leave without pay beginning September 26, 2011.

By decision dated January 19, 2012, OWCP denied appellant's claim finding that the medical evidence failed to support that she was disabled for work as a result of the accepted June 18, 2009 work injury entitling her to compensation for total disability for the period September 26 to December 17, 2011.

On February 15, 2012 appellant requested review by the Branch of Hearings and Review. In support of her claim, she submitted additional medical reports from her physicians including Dr. Anthony Hicks, Board-certified in internal medicine.

OWCP referred appellant to Dr. Donald Mauldin, a Board-certified orthopedic surgeon. In his February 20, 2012 report, Dr. Mauldin opined that there was no clear relationship between appellant's symptoms and her employment

By decision dated May 23, 2012, an OWCP hearing representative affirmed the January 19, 2012 decision.

On October 9, 2012 appellant requested reconsideration of the May 23, 2012 decision.

In a May 22, 2012 report, Dr. Hicks disagreed with Dr. Mauldin's findings. Medical reports and duty status reports (Form CA-17) were also submitted from Dr. Hicks dated April 18, July 5, August 9 and October 11, 2012. A June 4, 2012 medical report and undated surgical report was submitted from Dr. Scott Spann, Board-certified in orthopedic surgeon.

On June 13, 2012 the case file was referred to Dr. Michael M. Katz, a district medical adviser, for an opinion on appellant's diagnosed conditions and whether surgical intervention was warranted. In a June 20, 2012 diagnostic report, Dr. Gerald E. York, a Board-certified diagnostic radiologist, provided findings from a magnetic resonance imaging (MRI) scan of the cervical spine. A June 29, 2012 electrodiagnostic study was submitted from Dr. Joel Wolinsky, a Board-certified neurologist. A July 16, 2012 follow-up report was also submitted from Dr. Spann.

On July 24, 2012 the case file was again referred to Dr. Katz for a diagnosis of appellant's condition and whether surgical intervention was warranted. OWCP found a conflict of opinion between the reports of Dr. Hicks and Dr. Mauldin's second opinion report. It referred the case file to Dr. Joshua T. Woody, an orthopedic surgeon in Austin Texas, for a referee examination and opinion on appellant's diagnosed condition.

In a September 10, 2012 referee report, Dr. Woody opined that appellant was totally disabled as a result of cervical degenerative disc disease, a nonwork-related condition.

By decision dated January 16, 2013, OWCP affirmed the May 23, 2012 decision.

The Board finds that this case is not in posture for decision.

In its January 16, 2013 denial of appellant's claim for disability for the period September 26 to December 17, 2011, OWCP noted that the only evidence submitted were letters from appellant, a November 6, 2012 letter to Dr. Hicks, authorization from appellant's attorney, a note from Dr. David S. Litton, Ph.D. and an October 11, 2012 Form CA-17. The record reflects that OWCP received new medical evidence from appellant prior to the issuance of its January 16, 2013 decision. OWCP, however, did not note receipt or consideration of the above-listed medical reports and failed to follow its own procedures by properly discussing the medical reports of record, including the report from Dr. Woody.¹

The Board finds that OWCP, in its January 16, 2013 decision, did not review all the medical evidence in the record prior to the issuance of the January 16, 2013 decision. As the

¹ All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, reference the evidence by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.² Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.³ Because OWCP did not consider the new medical evidence submitted by appellant, the Board cannot review such evidence for the first time on appeal.⁴

For this reason, the case will be remanded to OWCP to enable it to properly consider all of the evidence. Following such further development as OWCP deems necessary, it shall issue an appropriate *de novo* final decision on the claim.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the January 16, 2013 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision of the Board.

Issued: August 18, 2014
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

² *William A. Couch*, 41 ECAB 548 (1990) (OWCP did not consider new evidence received four days prior to the date of its decision); *see Linda Johnson*, 45 ECAB 439 (1994).

³ *Willard McKennon*, 51 ECAB 145 (1999).

⁴ 20 C.F.R. § 501.2(c).