

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

S.P., Appellant)	
)	
and)	Docket No. 16-0253
)	Issued: March 23, 2016
U.S. POSTAL SERVICE, POST OFFICE, Fort Worth, TX, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 24, 2015 appellant filed a timely appeal of a September 30, 2015 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 to consider the merits of the case.

ISSUE

The issue is whether appellant met his burden of proof to establish an injury in the performance of duty on August 7, 2015.

FACTUAL HISTORY

On August 20, 2015 appellant, a city carrier assistant, filed a traumatic injury claim (Form CA-1) reporting that at 2:15 a.m. on August 7, 2015, he suffered tightness in his chest, difficulty breathing, and numbness and tingling in his fingers. He stopped work on August 8, 2015 and returned to work, full duty, August 31, 2015. The employing establishment controverted appellant's claim asserting that, while the incident occurred in the performance of

¹ 5 U.S.C. § 8101 *et seq.*

duty, causal relationship had not been established between the incident and the claimed medical conditions. In a letter dated August 20, 2015, it noted that neither fact of injury, nor causal relationship had been established.

On August 25, 2015 OWCP sent appellant a development letter with an attached questionnaire requesting a detailed description of the alleged incident. Appellant was provided 30 days to submit the requested information.

Appellant's completed questionnaire was received by OWCP on September 15, and 29, 2015. He noted that the time of the alleged incident was 2:15 p.m. to 2:15 a.m. Appellant stated that the employing establishment had prepared the claim form, which he signed without reading it carefully. He provided the number of the route he was delivering and the street where he was when his symptoms began. Appellant reported that he was exposed to temperatures at just over one hundred degrees. His condition worsened during the course of his route until he "could hardly breath[e]." Appellant reported that he sent text messages to his managers. He provided the supervisor's names along with copies of the text messages from his phone. Appellant stated that his managers called an ambulance. Firefighters provided him with assistance and he was taken by ambulance to the JPS Hospital emergency center. Appellant reported that he followed up with his personal physician.

Appellant submitted a number of medical reports to the record.

In a decision dated September 30, 2015, OWCP denied appellant's claim for benefits as he failed to establish the factual component of his claim, *i.e.*, that he "actually experienced the employment incident(s) alleged to have occurred." The text of OWCP's decision states that his failure to respond to the August 25, 2015 questionnaire was the reason the claim was denied.

LEGAL PRECEDENT

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim. Since the Board's jurisdiction in a case is limited to reviewing that evidence which was before OWCP at the time of its final decision, it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to the issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter, which was properly submitted to OWCP prior to the issuance of the final decision, be addressed by OWCP.²

ANALYSIS

The Board finds that this claim is not in posture for decision. The record of evidence clearly establishes that OWCP did not evaluate appellant's statement describing his incident on August 7, 2015 prior to its denial of his claim. The decision below expressly notes that appellant had not responded to the case development questionnaire that OWCP had mailed to him on

² *William A. Couch* 41 ECAB 548 (1990).

August 25, 2015. The decision further notes that without this information about appellant's incident OWCP was unable to determine that any compensable incident occurred.

It is clear that appellant's response, received by OWCP on September 15, 2015 and again on September 29, 2015 was not reviewed or considered by OWCP before it issued its September 30, 2015 decision denying appellant's claim. The Board has held that evidence received by OWCP before it issues its decision must be reviewed and considered.³ OWCP must review appellant's statement describing his incident to determine whether appellant has established fact of injury in his claim. Following this and any necessary further development, OWCP shall issue a *de novo* decision.

CONCLUSION

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

³ *Yvette N. Davis*, 55 ECAB 475 (2004). (The claims examiner wrote to claimant to explain that additional evidence had been received in OWCP's central mail facility in London, Kentucky on June 16, 2003 but that he worked in New York City, NY and had issued his decision on that date without knowing of the additional evidence. He explained that the evidence became available to him only on June 18, 2003. The Board held that possession by OWCP of properly submitted evidence required consideration of that evidence by OWCP); *Linda Johnson*, 45 ECAB 439 (1994). (The Board set aside OWCP's decision and remanded the case where OWCP did not review and consider a medical report it received the same day the decision denying appellant's claim was issued.)

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 30, 2015 is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: March 23, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board