

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

J.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Sewell, NJ, Employer**

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**Docket No. 17-1356
Issued: October 4, 2017**

Appearances:
*Michael D. Overman, Esq., for the appellant*¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On June 9, 2017 appellant, through counsel, filed a timely appeal from an April 17, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). In the April 17, 2017 decision, an OWCP hearing representative affirmed a November 8, 2016 decision that denied appellant's occupational disease claim.

On March 7, 2016 appellant, a 41-year-old rural carrier associate, filed an occupational disease claim (Form CA-2) alleging that employment duties caused bilateral carpal tunnel syndrome. She also noted having two additional claims for injuries on June 5, 2013 and October 13, 2014, adjudicated by OWCP under File Nos. xxxxxx536 and xxxxxx404. The employing establishment noted on the claim form that appellant last worked on

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

October 13, 2014.² Appellant submitted medical reports from Dr. Scott M. Fried, a Board-certified osteopath specializing in orthopedic surgery, dated January 13, 2016. These consisted of neuromusculoskeletal ultrasounds of the left brachial plexus, the left radial nerve and forearm extensor musculature, and the left median nerve and carpal tunnel. All were interpreted as positive. Dr. Fried noted appellant's cervical spine and bilateral shoulder pain complaints and his review of the ultrasound studies, indicating they were consistent with her complaints and injuries. He reported findings and diagnosed concussion, low back pain, cervical strain and sprain, status post a June 5, 2013 motor vehicle accident, left shoulder capsulitis, posterior occipital neuralgia, bilateral median neuropathy, and bilateral brachial plexopathy/cervical radiculopathy. In an August 16, 2016 report that referenced File No. xxxxxx536,³ Dr. Fried advised that appellant's symptoms continued.

In the November 8, 2016 decision, OWCP denied the claim, finding that the medical evidence was insufficient to establish causal relationship. Counsel requested a hearing with OWCP's Branch of Hearings and Review which was held on March 1, 2017. In an October 10, 2016 report, Dr. Fried reviewed appellant's treatment and maintained that her repetitive activities at the employing establishment aggravated and exacerbated her underlying traumatic injury that occurred in the June 5, 2013 motor vehicle accident. He indicated that objective testing was consistent with bilateral carpal tunnel syndrome. In the April 17, 2017 decision, an OWCP hearing representative referenced medical evidence found in File No. xxxxxx404. He affirmed the November 8, 2016 decision, finding that appellant had failed to submit sufficient medical evidence to establish that the diagnosed carpal tunnel syndrome was causally related to her federal employment duties.

The Board finds that the case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings.⁴ Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.⁵ Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file

² The instant case was adjudicated by OWCP under File No. xxxxxx273. In a July 20, 2017 decision, the Board remanded File No. xxxxxx404 to OWCP to obtain a second opinion evaluation regarding appellant's claim that work factors caused cervical strain and sprain, bilateral brachial plexopathy/cervical radiculopathy, back sprain, lumbar radiculopathy, bilateral posterior occipital neuralgia and facial radiation, long thoracic neuritis with scapula winging on the right, cervical and lumbar radiculitis, low back pain, concussion and post-concussion syndrome, and adhesive capsulitis of the left shoulder. The July 20, 2017 decision indicated that, under File No. xxxxxx536, OWCP accepted that a June 5, 2013 motor vehicle accident caused a sprain of neck, sprain of lumbar region, cervical radiculitis, and lumbar radiculitis. *J.B.*, Docket No. 16-0661 (issued July 20, 2017).

³ *Supra* note 2.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

⁵ *Id.*

being adjudicated.⁶ All evidence that forms the basis of a decision must be in that claimant's case record.⁷

The hearing representative's April 17, 2017 decision referenced evidence associated with appellant's prior claim, File No. xxxxxx404. He specifically referenced a July 16, 2014 electrodiagnostic study, indicating that it failed to establish carpal tunnel syndrome, and a September 28, 2015 report from Dr. Fried. The hearing representative relied on these reports, indicating that Dr. Fried offered no explanation for certain discrepancies. Neither of these reports is in the case record of File No. xxxxxx273, on appeal in this case. As the hearing representative relied on this medical evidence, found in File No. xxxxxx404, in denying appellant's claim, he neglected to include the referenced evidence into the current case record, File No. xxxxxx273. Due to this oversight, the Board is not in a position to make an informed decision regarding appellant's claim for employment-related carpal tunnel syndrome.⁸

Since the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. As noted, all evidence that forms the basis of a decision must be included in the case record.⁹ After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's claim for bilateral carpal tunnel syndrome.

⁶ *Id.*

⁷ *Id.*

⁸ *See L.W.*, Docket No. 17-0526 (issued May 12, 2017).

⁹ *Supra* note 4.

IT IS HEREBY ORDERED THAT the April 17, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: October 4, 2017
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board