

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

P.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bronx, NY, Employer**

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**Docket No. 16-0700
Issued: September 26, 2017**

Appearances:
Stephen Larkin, for the appellant¹
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
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 20, 2016 appellant, through her representative, filed a timely appeal from a February 5, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 16-1766.

The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP. In the case of *William A. Couch*,² the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. In this case, appellant filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right shoulder when an elevator jerked causing postal containers to hit her shoulder. In an October 1, 2014 decision, OWCP denied appellant's claim, finding that the medical evidence of record was

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.

² 41 ECAB 548 (1990).

insufficient to establish a work injury. On October 7, 2014 appellant requested a telephonic hearing, held before an OWCP hearing representative on April 15, 2015. On June 3, 2015 the hearing representative vacated the October 1, 2014 decision and remanded the claim for further medical development.³ On October 1, 2015 OWCP accepted the claim for contusion of the right shoulder and sequela based on the second opinion of referral physician, Dr. Mark Kramer, a Board-certified orthopedic surgeon.⁴

On October 21, 2015 appellant submitted Form CA-7 claims for wage-loss compensation for the periods September 29 to October 17, 2014 and November 4, 2014 to October 16, 2015. By decision dated January 5, 2016, OWCP denied appellant's claim for compensation for the period from November 4, 2014 to October 16, 2015.⁵ By letter dated January 5, 2016, it informed appellant of the type of evidence needed to support her claim for disability during the period September 29 to October 17, 2014. In a January 22, 2016 memorandum, OWCP requested that the case file be updated with an updated statement of accepted facts and an updated opinion from Dr. Kramer with regard to whether appellant could return to her duties as a mail handler and whether the accepted condition had resolved. On January 29, 2016 it received a supplemental opinion of the same date by Dr. Kramer in which he opined that appellant could return to her duties as a mail handler without restrictions and clarified an error made in his September 16, 2015 report. By decision dated February 5, 2016, OWCP denied appellant's claim for compensation for the period September 29 to October 17, 2014. It did not note receipt or consideration of the January 29, 2016 supplemental opinion of Dr. Kramer.

³ On November 29, 2015 appellant, through her representative, sought an appeal from the June 3, 2015 decision of OWCP. However, on March 10, 2016 the Board issued an order dismissing appeal as the matter was in an interlocutory posture. *Order Dismissing Appeal*, Docket No. 16-0251 (issued March 10, 2016).

⁴ The information provided did not include details of appellant's duties as a mail handler.

⁵ Docket No. 16-0491 will be issued under a separate decision.

The Board finds that, as OWCP did not review Dr. Kramer's January 29, 2016 supplemental opinion, the case will be remanded to OWCP to enable it to properly consider all of the evidence submitted at the time of the February 5, 2016 decision. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant's traumatic injury claim.

IT IS HEREBY ORDERED THAT the February 5, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: September 26, 2017
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