

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

K.N., Appellant	)	
	)	
and	)	<b>Docket No. 17-0771</b>
	)	<b>Issued: August 9, 2018</b>
U.S. POSTAL SERVICE, POST OFFICE,	)	
Bellmawr, NJ, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*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  
ALEC J. KOROMILAS, Alternate Judge

On February 21, 2017 appellant filed a timely appeal from a February 8, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as number 17-0771.

On April 7, 2004 appellant, then a 42-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that her repetitive employment duties caused numbness and tingling in her hands and elbows. By decision dated May 14, 2004, OWCP accepted the claim for bilateral carpal tunnel syndrome under this master File, No. xxxxxx674. It subsequently expanded the claim to include bilateral lesion of the ulnar nerve. Appellant underwent a cubital tunnel release and on July 5, 2005 appellant accepted an April 27, 2005 modified job offer as a mail processor.<sup>1</sup>

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<sup>1</sup> The record indicates that appellant had a prior claim with an October 17, 2001 date of injury which was accepted for bilateral carpal tunnel syndrome under OWCP File No. xxxxxx739. OWCP authorized right carpal tunnel surgery on February 25, 2002 and left carpal tunnel surgery on April 22, 2002. On March 15, 2006 OWCP combined File Nos. xxxxxx739 and xxxxxx674, with the latter number as the master file. OWCP File No. xxxxxx674 has also been combined with a number of other claim files including a resolved right shoulder and upper arm strain/sprain under OWCP File No. xxxxxx841, and a September 21, 2012 occupational disease claim OWCP File No. xxxxxx659, accepted for right carpal tunnel syndrome and right trigger finger. Under OWCP File No. xxxxxx659 appellant underwent an approved right trigger thumb release and was released to limited-duty work in June 2013. She returned to part-time limited duty in September 2013.

On July 31, 2014 OWCP accepted appellant's claim for left trigger thumb under File No. xxxxxx674. On September 11, 2014 appellant underwent a left trigger finger release and was provided appropriate benefits. She returned to part-time limited-duty work on October 29, 2014.

On October 29, 2014 appellant accepted a part-time limited-duty assignment as an expedition clerk. She worked for two hours per day from October 29, 2014 through January 28, 2015.

In a November 26, 2014 medical report, Dr. Leo Rasis, a Board-certified orthopedic surgeon, reported that appellant had restrictions with regard to repetitive use of her upper extremities which included repetitive gripping, pushing or pulling, and use of the arms at shoulder level or above. He reported that she could lift 5 to 10 pounds continuously and up to 20 pounds intermittently. Appellant could also do one to two hours of simple grasping and fine manipulation per day. Dr. Rasis noted that appellant complained of pain when driving a car for a long time due to her upper extremity conditions.

On January 29, 2015 appellant filed a claim for a recurrence of disability (Form CA2a) under the instant claim, No. xxxxxx674, reporting that the employing establishment informed her that there was no available work within her restrictions.

Appellant provided a January 20, 2015 office note from Dr. Rasis who reported that she could drive up to 15 miles per day for work purposes.

On February 23, 2015 OWCP requested clarification from the employing establishment as to whether they could no longer accommodate the appellant at working two hours per day.

The employing establishment responded advising that appellant provided a limitation that stated that she could not drive more than 15 miles per day for work, but that she lived more than 15 miles from her assigned duty station. It noted that her modified-duty job was available for two hours per day which did not entail any driving.

Appellant was referred to Dr. Robert F. Draper, a Board-certified orthopedic surgeon, for a second opinion examination and opinion on her work-related injuries and disability. In a March 23, 2015 report, Dr. Draper reported that appellant could drive for a total of one hour each way, to and from work.

By decision dated March 30, 2015, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish a recurrence of disability commencing January 29, 2015 due to a material change/worsening of her accepted work-related conditions. It noted that the weight of the medical evidence rested with Dr. Draper who reported that she could drive up to an hour each way to and from work.

On April 13, 2015 appellant requested review of the written record before an OWCP hearing representative. By decision dated September 25, 2015, an OWCP hearing representative affirmed the March 30, 2015 decision finding that appellant failed to establish a recurrence of disability beginning January 29, 2015 due to a material change/worsening of her accepted work-related injuries.

On June 27, 2016 appellant appealed the September 25, 2015 OWCP decision to the Board. In an order issued December 20, 2016, the Board set aside OWCP's September 25, 2015 decision finding that the decision was never received by appellant as it was returned to OWCP as undeliverable, and never resent or reissued in a timely manner.<sup>2</sup> The Board remanded the case for OWCP to issue a proper *de novo* decision.

Following OWCP's September 25, 2015 decision, the record contained various medical documents discussing appellant's treatment, disability, and work restrictions.

By decision dated February 8, 2017, an OWCP hearing representative affirmed the March 30, 2015 decision, finding that appellant failed to establish a recurrence of disability beginning January 29, 2015 due to a material change/worsening of her accepted work-related injuries.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision. The Board notes that OWCP failed to follow the Board's instructions on remand as the February 8, 2017 decision issued was not a *de novo* decision. Rather, the February 8, 2017 decision was an exact replica of the previously issued September 25, 2015 decision. The only change made was the date the decision was issued. The decision failed to discuss the evidence that was submitted to OWCP following the September 25, 2015 decision.

Section 8124(a) of FECA provides: OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.<sup>3</sup> Its regulations at section 10.126 of Title 20 of the Code of Federal Regulations provide: The decision of the Director of OWCP shall contain findings of fact and a statement of reasons.<sup>4</sup> Moreover, OWCP's procedure manual provides: The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>5</sup>

The February 8, 2017 OWCP decision failed to provide any findings related to the evidence received after the September 25, 2015 decision. As the 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.<sup>6</sup> Because OWCP did not consider this additional evidence, the Board cannot review such evidence for the first time on appeal.<sup>7</sup>

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<sup>2</sup> *Order Remanding Case*, Docket No. 16-1412 (issued December 20, 2016).

<sup>3</sup> 5 U.S.C. § 8124(a); *see Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

<sup>4</sup> 20 C.F.R. § 10.126. *See also O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *M.L.*, Docket No. 09-0956 (issued April 15, 2010).

<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>6</sup> *See Yvette N. Davis*, 55 ECAB 475 (2004); *see also 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) (applying *Couch* where OWCP did not consider a medical report received on the date of its decision).

<sup>7</sup> 20 C.F.R. § 501.2(c).

Thus, the Board finds that this case is not in posture for a decision. Consequently, the case will be remanded for OWCP to issue a *de novo* decision as previously ordered by the Board.<sup>8</sup> Following this and such other development as deemed necessary, OWCP shall issue an appropriate *de novo* decision.

**IT IS HEREBY ORDERED THAT** the February 8, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order.

Issued: August 9, 2018  
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> *Kenneth W. Yansick*, Docket No. 80-0664 (issued May 22, 1980).