

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

N.L., Appellant)	
)	
and)	Docket No. 18-0166
)	Issued: May 2, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Santa Clarita, CA, 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 October 30, 2017 appellant filed a timely appeal from an October 12, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 18-0166.

On July 20, 2017 appellant, then a 46-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed a right shoulder and neck injury as a result of her repetitive employment duties.

In support of her claim, appellant submitted an August 3, 2017 medical report from Dr. Adam Sherman, Board-certified in family medicine, who provided physical examination findings, review of diagnostic testing, and treatment pertaining to the right shoulder.

By decision dated September 22, 2017, OWCP denied appellant's claim, finding that the medical evidence of record did not show that her diagnosed condition was causally related to the established factors of federal employment.

On September 29, 2017 appellant requested reconsideration of OWCP's September 22, 2017 decision. She requested that OWCP review a new report submitted from Dr. Sherman with highlighted language.

On October 11, 2017 OWCP received a September 29, 2017 medical report from Dr. Sherman who provided detailed findings pertaining to appellant's right shoulder magnetic resonance imaging scan which revealed a full thickness rotator cuff tear. Dr. Sherman reported that her work-related duties over time had exacerbated her degenerative joint disease of the right shoulder. He described appellant's employment activities and opined that her long-standing, strenuous work activities directly caused, contributed, and aggravated her diagnosed medical conditions.

By decision dated October 12, 2017, OWCP denied appellant's request for reconsideration, finding that she neither raised substantive legal questions, nor submitted relevant and pertinent new evidence.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision. In its October 12, 2017 denial, OWCP found that appellant failed to submit any medical evidence as there were no notes attached to her request and no evidence submitted subsequent to the September 22, 2017 decision. However, the record reflects that on October 11, 2017 OWCP received Dr. Sherman's September 29, 2017 medical report.

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.¹ It makes no difference that the claims examiner may not have been directly in possession of the evidence. Indeed, Board precedent envisions evidence received by OWCP, but not yet associated with the case record when the final decision is issued must be provided merit review.² In its final decision, OWCP found that no medical evidence was received. Because OWCP did not consider Dr. Sherman's September 29, 2017 medical report, the Board cannot review such evidence for the first time on appeal.³

The Board finds that this case is not in posture for a decision. Consequently, the case will be remanded for OWCP to fully consider all of the evidence that was of record at the time of OWCP's October 12, 2017 decision. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision.

¹ 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).

² *Id.*

³ 20 C.F.R. 501.2(c).

IT IS HEREBY ORDERED THAT the October 12, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this order.

Issued: May 2, 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