

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

D.M., Appellant)
and) Docket No. 19-0286
U.S. POSTAL SERVICE, POST OFFICE,) Issued: August 22, 2019
Greensboro, NC, Employer)

)

Appearances:

Erik Blowers, Esq., 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
JANICE B. ASKIN, Judge

On November 20, 2018 appellant, through counsel, filed a timely appeal from an October 25, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Board's docketed the appeal No. 19-0286.

On November 3, 2017 appellant's supervisor, A.K., filed a traumatic injury claim (Form CA-1) alleging that on October 11, 2017 appellant, then a 59-year-old rural carrier, was exposed to extreme heat and humidity and she rolled her pant legs up to her lower knees to cool down while in the performance of duty. Appellant continued to work and later noticed that her right leg was feeling uncomfortable. She then rolled her pant leg down because it was painful and stiff. A.K. indicated on the claim form that appellant sustained rhabdomyolysis in her right leg and nerve damage due to the October 11, 2017 incident.

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.

By decision dated December 20, 2017, OWCP denied the claim finding that the evidence of record failed to establish that her diagnosed medical condition was causally related to the accepted employment factors.

On March 15, 2018 appellant, through counsel, requested reconsideration and submitted a January 8, 2018 report from Dr. Kathleen E. Zeller, a family practitioner. She reported that on October 12, 2017, appellant stepped out of her mail vehicle and rolled her ankle, injuring her right foot. Dr. Zeller diagnosed sprain of the tibiofibular ligament of the right ankle initial encounter, plantar fascial fibromatosis, and a sprain of deltoid ligament of the right ankle initial encounter.

By decision dated May 25, 2018, OWCP denied modification of the December 20, 2017 decision. It found that Dr. Zeller did not have an accurate history of the October 11, 2017 injury as her report differed from the injury set forth on the November 3, 2017 Form CA-1.

On June 18, 2018 appellant, through counsel, requested reconsideration. In support of her request, she submitted a report dated June 12, 2018 from Dr. Tuan Huynh, a family practitioner. Dr. Huynh diagnosed a sprain of the tibiofibular ligament of right ankle, plantar fascial fibromatosis, and a sprain of the deltoid ligament of the right ankle as a result of stepping out of her vehicle and rolling her ankle on October 11, 2017.

By decision dated September 10, 2018, OWCP denied modification of the May 25, 2018 decision. It found that Dr. Huynh's history of injury did not correspond to the history provided by appellant on her November 3, 2017 Form CA-1.

On October 10, 2018 appellant, through counsel, again requested reconsideration. Counsel acknowledged the inconsistencies between the November 3, 2017 Form CA-1 and the medical evidence of record, but contended that appellant had not signed the Form CA-1 of record as she was unable to work at that time. Rather, the narrative account of injury on the claim form was merely an interpretation of alleged events provided by the employing establishment's representative, A.K., who filed the form in appellant's absence. Counsel further reported that appellant had not seen the Form CA-1 until the September 10, 2018 decision was issued.

In an accompanying September 10, 2018 signed sworn statement, appellant attested that on October 11, 2017, she was exiting her vehicle to deliver a package when she encountered an uneven surface/steps on a sidewalk. She stepped onto this surface and rolled her ankle under the weight of her body. Appellant reported that it was very hot on that date and after she rolled her ankle, she was sweating and becoming overheated so she decided to roll up her sleeves and pant legs to try to cool herself down. She asserted that the Form CA-1 on file, signed by A.K., was not the Form CA-1 that she submitted and she had not seen the form signed by A.K. until September 10, 2018.

By decision dated October 25, 2018, OWCP denied modification of the September 10, 2018 decision without conducting a merit review, finding that her reconsideration request neither raised substantive legal questions, nor included new and relevant evidence.

The Board finds that the case is not in posture for decision. Although appellant's September 10, 2018 signed sworn statement was part of the case record that was before OWCP at the time of its October 25, 2018 decision, it was not acknowledged or considered by OWCP in its

October 25, 2018 decision. As the Board's jurisdiction of a case is limited to reviewing the evidence that was before OWCP at the time of its final decision, it is critical that OWCP review all evidence relevant to the subject matter of the disputed issue and received by OWCP prior to the issuance of its final decision.² The October 25, 2018 decision will therefore be set aside and the case remanded to OWCP to consider all of the evidence submitted on reconsideration. Following such further development as deemed necessary, OWCP shall issue an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the October 25, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this order of the Board.

Issued: August 22, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

² See *K.L.*, Docket No. 16-1341 (issued December 20, 2016); *E.Z.*, Docket No. 14-274 (issued March 16, 2015); *Linda Johnson*, 45 ECAB 439 (1994); *William A. Couch*, 41 ECAB 548 (1990).