

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

R.P., Appellant)	
)	
and)	Docket No. 19-0301
)	Issued: August 21, 2019
U.S. POSTAL SERVICE, POST OFFICE, Manorville, NY, Employer)	
)	

Appearances:
Paul Kalker, 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 29, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0301.

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.

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, 553 (1990); see also *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).

On January 25, 2018 appellant, then a 48-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date he felt a sudden sharp pop/pain in his left bicep and armpit area when he reached for a scanner from a seated position while in the performance of duty.

Appellant submitted medical evidence in support of his claim. By decision dated March 8, 2018, OWCP found that appellant had not met his burden of proof to establish his claim as the medical evidence of record failed to establish that the diagnosed conditions of left rotator cuff tear and left biceps tendon rupture were causally related to the accepted January 25, 2018 employment incident.

On August 7, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence in support of his claim. Counsel argued that a newly submitted medical report dated July 13, 2018 from appellant's treating physician Dr. Michael Sileo, a Board-certified orthopedic surgeon, was sufficient to establish appellant's traumatic injury claim. The July 13, 2018 report was received by OWCP on August 7, 2018. In his report, Dr. Sileo discussed the January 25, 2018 employment incident, reviewed diagnostic testing, provided an opinion on causal relationship, and described objective support for his findings.

By decision dated October 29, 2018, OWCP affirmed the March 8, 2018 decision, finding that the medical evidence of record was insufficient to meet appellant's burden of proof to establish that the diagnosed left rotator cuff tear and left biceps tendon rupture were causally related to the accepted January 25, 2018 employment incident. While the October 29, 2018 OWCP decision discussed some of the medical reports of record, it failed to acknowledge reference, or analyze the July 13, 2018 report of Dr. Sileo.³

The Federal Employees' Compensation Act provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.⁴ Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before OWCP at the time of its final decision,⁵ it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,⁶ it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.⁷

The Board finds that because OWCP did not review the July 13, 2018 report of Dr. Sileo, the case shall be remanded to OWCP for full consideration of all the evidence that was of record

³ *J.H.*, Docket No. 16-0450 (issued June 7, 2016).

⁴ 5 U.S.C. § 8124(a)(2).

⁵ 20 C.F.R. § 501.2(c).

⁶ *Id.* at § 501.6(d).

⁷ *N.S.*, Docket No. 18-0759 (issued March 11, 2019); *see also supra* note 2.

at the time of the October 29, 2018 decision.⁸ Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant's traumatic injury claim. Accordingly,

IT IS HEREBY ORDERED THAT the October 29, 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 21, 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

⁸ *G.M.*, Docket No. 16-1766 (issued February 16, 2017).