

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

_____)	
J.A., Appellant)	
)	
and)	Docket No. 19-0981
)	Issued: December 30, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Teterboro, 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
JANICE B. ASKIN, Judge

On April 1, 2019 appellant filed a timely appeal from a January 14, 2019 decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 19-0981.²

The Board has duly considered the matter and finds that the case is not in posture for a decision.

¹ The Board notes that following the January 14, 2019 decision appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² The Board notes that, during the pendency of this appeal, OWCP issued an April 15, 2019 decision, which denied reconsideration of the January 14, 2019 decision that is the subject of the current appeal. The Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). 20 C.F.R. §§ 501.2(c)(3), 10.626. *See Arlonia B. Taylor*, 44 ECAB 591 (1993); *Douglas E. Billings*, 41 ECAB 880 (1990). Consequently, OWCP's April 15, 2019 decision is set aside as null and void.

This case has previously been before the Board.³ The facts and circumstances outlined in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On September 4, 2015 appellant, then a 58-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that same date he sustained right arm and shoulder injuries when lifting mail trays while in the performance of duty. He notified his supervisor, stopped work, and sought medical treatment on the date of injury.

Following development of the case record, by decision dated October 21, 2015, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that his diagnosed conditions were causally related to the accepted September 4, 2015 employment incident. By decision dated March 30, 2016 a hearing representative affirmed the October 21, 2015 decision. Appellant subsequently requested reconsideration. By decisions dated December 28, 2016 and August 8, 2017, OWCP denied modification of its prior decision.

On September 14, 2017 appellant, through counsel, appealed to the Board. By decision dated August 13, 2018, the Board affirmed OWCP's August 8, 2017 decision finding that appellant had not met his burden of proof to establish that his diagnosed conditions were causally related to the accepted September 4, 2015 employment incident.⁴

On October 15, 2018 appellant, through counsel, requested reconsideration with OWCP and submitted additional medical reports in support of his claim. Accompanying counsel's reconsideration request was an October 2, 2018 medical report from Dr. Tony Wanich, a Board-certified orthopedic surgeon, and an August 22, 2018 medical report from Dr. Lorelane Tindoc, Board-certified in family medicine. On December 10, 2018 appellant resubmitted Dr. Wanich's October 2, 2018 report and Dr. Tindoc's August 22, 2018 report. Dr. Tindoc's report included an October 19, 2018 addendum which discussed treatment for appellant's right shoulder injury, corresponding employment factors, and an opinion on causal relationship.

By decision dated January 14, 2019, OWCP denied modification of its prior decision, finding that the evidence of record was insufficient to establish that appellant's diagnosed conditions were causally related to the accepted September 4, 2015 employment incident.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for decision.

In its January 14, 2019 decision, OWCP discussed some of the medical reports of record, but it failed to acknowledge, reference, or analyze Dr. Tindoc's October 19, 2018 addendum report which discussed appellant's employment duties, medical treatment, a confirmed diagnosis, and an opinion on causal relationship.⁵ As OWCP did not note receipt or consideration of this pertinent

³ Docket No. 17-1936 (issued August 13, 2018).

⁴ *Id.*

⁵ *A.M.*, Docket No. 18-1040 (issued June 21, 2019).

medical report of record as it related to appellant's traumatic injury claim, it failed to follow its own procedures regarding discussion of the relevant medical reports of record.⁶

In the case of *William A. Couch*,⁷ the Board explained 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. 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.⁸ Because OWCP failed to consider Dr. Tindoc's October 19, 2018 report, the Board cannot review such evidence for the first time on appeal.⁹

For these reasons, the case will be remanded to OWCP to enable it to properly consider all of the evidence.¹⁰ Following such further development as it deems necessary, OWCP shall issue a *de novo* decision.¹¹

⁶ All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. FECA Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁷ 41 ECAB 548, 553 (1990).

⁸ See *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where OWCP did not consider a medical report received on the date of its decision).

⁹ 20 C.F.R. § 501.2(c). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

¹⁰ *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

¹¹ *B.N.*, Docket No. 17-0787 (issued July 6, 2018).

IT IS HEREBY ORDERED THAT the January 14, 2019 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: December 30, 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