

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

_____)	
T.G., Appellant)	
)	
and)	Docket No. 18-1378
)	Issued: July 9, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Macomb, MI, Employer)	
_____)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On July 2, 2018 appellant, through counsel, filed a timely appeal from a May 4, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1378.

On December 19, 2016 appellant then a 51-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she sustained a right wrist and bilateral knee injury when she fell on ice while in the performance of duty. She stopped work on December 29, 2016.

By decision dated February 22, 2017, OWCP denied appellant's claim, finding that the medical evidence of record failed to provide a firm medical diagnosis which could be reasonably attributed to the accepted December 19, 2016 employment incident. By decision dated June 1,

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.

2017, it vacated the February 22, 2017 decision and accepted the claim for sprain of unspecified site of right knee causally related to the accepted December 19, 2016 employment incident.

Following the acceptance of her claim, appellant filed a claim for compensation (Form CA-7) for leave without pay for the period February 11 through July 14, 2017.

In a February 27, 2017 medical report and an attending physician's report (Form CA-20), Dr. Margaret Eckel, Board-certified in family medicine, diagnosed severe right knee strain and cervicgia. She checked the box marked "yes" when asked if the condition was caused or aggravated by the employment injury. Dr. Eckel noted that appellant had been disabled from December 29, 2016 through March 31, 2017, or until further evaluation by an orthopedic surgeon.

In a March 3, 2017 narrative report, Dr. Eckel reported that on December 19, 2016 appellant fell on ice and injured both knees, as well as her neck. She explained that because appellant was unable to weight bear for long amounts of time and did not have full range of motion in her neck, she was unable to return to work. Dr. Eckel opined that these issues were directly related to the injuries she sustained when she fell on the ice.

OWCP also received reports dated June 8 through August 3, 2017 from Dr. C. Christopher Stroud, a Board-certified orthopedic surgeon. In a June 8, 2017 report, Dr. Stroud diagnosed bilateral patellofemoral pain. He noted that appellant was to remain off work for four weeks because she did not believe she could handle her job requirements. In a July 6, 2017 report, Dr. Stroud diagnosed bilateral patellofemoral chondrosis and opined that she could return to work with one day off per week as needed for the next six months.

In an August 1, 2017 narrative report, Dr. Stroud diagnosed bilateral patellofemoral chondrosis/cartilage cracking. He explained that appellant was placed off work at that time because no light-duty work was available within her restrictions. Dr. Stroud noted that her symptoms worsened with squatting and kneeling and she remained off work due to no light-duty work being available. He reported that on July 6, 2017 appellant's condition had improved and she was released to work without restrictions commencing July 15, 2017.

In an August 3, 2017 attending physician's report (Form CA-20), Dr. Stroud diagnosed bilateral patellofemoral chondrosis/pain and checked the box marked "yes" when asked if the condition was caused or aggravated by the employment injury. He further reported that appellant was disabled from June 8 through July 14, 2017.

By decision dated September 12, 2017, OWCP denied appellant's claim for wage-loss compensation for the period commencing February 11, 2017 and continuing, finding that the medical evidence of record failed to establish that she was disabled as a result of her accepted December 19, 2016 right knee sprain.

By letter dated October 11, 2017, appellant, through counsel, requested an oral hearing before an OWCP hearing representative. A hearing was held on February 27, 2018. Counsel argued that Dr. Stroud's August 1, 2017 report provided objective evidence of a work-related bilateral knee injury which justified appellant's absence from work during the period of disability claimed.

By decision dated May 4, 2018, OWCP's hearing representative affirmed the September 12, 2017 decision finding that the medical evidence of record failed to establish that appellant was disabled for the period February 11 through July 14, 2017 as a result of her accepted December 19, 2016 right knee sprain. He noted that Dr. Stroud's August 1, 2017 medical report related appellant's disability to her patellofemoral chondrosis, a condition which had not been accepted by OWCP as causally related to the December 19, 2016 employment incident.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision.²

In its May 4, 2018 decision, OWCP denied appellant's claim for compensation for the period February 11 through July 14, 2017 finding that the medical evidence of record failed to establish total disability as a result of the accepted December 19, 2016 right knee sprain. The hearing representative noted that Dr. Stroud's August 1, 2017 report failed to provide a rationalized opinion that the diagnosis of patellofemoral chondrosis was causally related to the December 19, 2016 employment incident, and the physician provided no medical opinion finding appellant disabled for work for the claimed period due to her accepted injury.

The Board notes that in the May 4, 2018 decision, the hearing representative only discussed Dr. Stroud's August 1, 2017 report and failed to reference the other medical reports of record. The record reflects that appellant submitted medical reports dated February 27 and March 3, 2017 from Dr. Eckel who discussed appellant's disability for a portion of the period claimed as it related to the accepted right knee sprain and December 19, 2016 employment injury. However, OWCP's initial September 12, 2017 denial failed to consider these medical reports despite having received this evidence prior to the issuance of the decision, nor were these reports discussed or addressed in the hearing representative's May 4, 2018 decision. As it did not note receipt or consideration of the relevant medical reports of record as it related to appellant's claim for disability compensation, it failed to follow its own procedures by properly discussing the relevant medical reports of record.³

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.⁴ It makes no difference that the claims examiner may not have been directly in possession of the evidence. Because it does not appear that OWCP considered Dr. Eckel's medical reports, the Board cannot review such evidence for the first time on appeal.⁵

² *J.J.*, Docket No. 13-1666 (issued August 18, 2014).

³ 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. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁴ See *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, 41 ECAB 548 (1990).

⁵ 20 C.F.R. § 501.2(c).

For these reasons, the case will be remanded to OWCP to enable it to properly consider all of the evidence of record in this claim. Following such further development as it deems necessary, OWCP shall issue an appropriate merit decision.

IT IS HEREBY ORDERED THAT the May 4, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this order.

Issued: July 9, 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