

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

_____)	
A.M., Appellant)	
)	
and)	Docket No. 18-1040
)	Issued: June 21, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
New Orleans, LA, 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 23, 2018 appellant filed a timely appeal from an April 11, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellant Boards docketed the appeal as No. 18-1040. The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP for further development.

This case has previously been before Board.¹ The facts and circumstances as set forth in the Board decisions and orders are incorporated herein by reference. The relevant facts are as follows.

On March 21, 1989, appellant, then a 31-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 5, 1989 she sustained an emotional condition when robbed at gunpoint on the employing establishment's premises while in the performance of her federal employment duties. On July 10, 1989 OWCP accepted that the incident caused an anxiety

¹ *Order Remanding Case*, Docket No. 16-1520 (issued December 20 2016); Docket No. 12-0533 (issued May 3, 2012); *Order Dismissing Appeal*, Docket No. 11-0967 (issued October 7, 2011); Docket No. 10-0324 (issued August 13, 2010); Docket No. 08-2300 (issued July 6, 2009); Docket No. 04-2134 (issued February 15, 2005); Docket No. 02-0471 (issued August 26, 2002).

disorder.² OWCP paid appellant wage-loss compensation for work absences through April 23, 2001. Appellant stopped work on May 8, 2001 and did not return. On May 14, 2001 she claimed a recurrence of disability commencing May 9, 2001. OWCP initially denied the claim by decision dated June 29, 2001 and in subsequent adjudications as set forth in the Board's prior decisions.³

By decision dated May 21, 2014, OWCP denied appellant's claim for a recurrence of disability commencing May 9, 2001. By decision dated March 2, 2015, an OWCP hearing representative affirmed OWCP's May 21, 2014 decision. On March 2, 2016, appellant's representative requested reconsideration and submitted additional evidence. By decision dated April 11, 2016, OWCP denied reconsideration because appellant's request was untimely filed and failed to demonstrate clear evidence of error. Appellant, through her representative, appealed to the Board.

By order issued December 20, 2016,⁴ the Board found that appellant's March 2, 2016 request for reconsideration was timely filed and remanded the case to OWCP for review of the request under 5 U.S.C. § 8128(a), to be followed by issuance of an appropriate final decision.

On remand of the case, OWCP obtained a second opinion regarding the nature and extent of appellant's current emotional condition from Dr. Arwen Podesta, a Board-certified psychiatrist. In a report dated January 24, 2017, Dr. Podesta opined that the accepted emotional conditions remained active and disabling, and required immediate treatment.

By decision dated March 22, 2017, OWCP denied modification of its March 2, 2015 decision, finding that the medical evidence submitted by appellant was insufficient to establish that her continuing condition on and after May 9, 2001 was related to the accepted injury. It did not mention or review Dr. Podesta's opinion.

On August 21, 2017, appellant requested reconsideration and submitted new medical evidence. By decision dated November 16, 2017, OWCP denied modification as the additional medical evidence submitted failed to establish the claimed recurrence of disability. It did not mention or review Dr. Podesta's opinion.

On December 20, 2017 appellant again requested reconsideration and submitted additional medical evidence. She contended that OWCP had failed to review Dr. Podesta's January 24, 2017 report which strongly supported causal relationship. By decision dated April 11, 2018, OWCP again denied modification without reference to Dr. Podesta's opinion.

² On October 18, 2006 OWCP updated its acceptance of appellant's condition to "anxiety state, unspecified," and expanded its acceptance of the claim to include "transient disorder of initiating or maintaining sleep." OWCP subsequently expanded its acceptance of the claim to include post-traumatic stress disorder, anxiety, and recurrent major depression.

³ See *supra* note 1.

⁴ Docket No. 16-1250 (issued December 20, 2016).

The Federal Employee's Compensation Act⁵ provides that in deciding a claimant's entitlement to compensation benefits, OWCP is required by statute and regulations to make findings of fact⁶ after considering the claim presented by the employee and after completing such investigation as it considers necessary with respect to the claim.⁷ The Board has held that OWCP should make its decision on the basis of all the evidence of record at the time of the decision.⁸ A decision that rests on only part of the evidence will be set aside.⁹ In the case of *William A. Couch*,¹⁰ OWCP had not reviewed medical evidence received prior to the issuance of its final decision which denied the claim. The Board set aside the final decision and remanded the case for OWCP to consider this evidence fully.¹¹

The April 11, 2018 OWCP decision failed to provide findings or references related to Dr. Podesta's 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.¹² Because OWCP did not consider this additional evidence, the Board cannot review such evidence for the first time on appeal.¹³ The case will be remanded to OWCP for it to properly consider all of the evidence of record at the time of the April 11, 2018 decision, specifically addressing the report of Dr. Podesta. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on appellant's claim for recurrence of disability.

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

⁷ 5 U.S.C. § 8124(a). *See also Reyna M. Gonzalez*, Docket No. 03-1023 (issued June 17, 2003).

⁸ *Jovita Weaver*, 2 ECAB 122 (1948).

⁹ *Marshall G. Wright*, 2 ECAB 182 (1949).

¹⁰ 41 ECAB 548 (1990).

¹¹ *See also Darrel L. Gilbert*, Docket No. 94-2609 (issued September 4, 1996).

¹² *See Yvette N. Davis*, 55 ECAB 475 (2004).

¹³ 20 C.F.R. § 501.2(c).

IT IS HEREBY ORDERED THAT the April 11, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 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