

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

C.S., Appellant)	
)	
and)	Docket No. 18-1760
)	Issued: November 25, 2019
U.S. POSTAL SERVICE, BUSTLETON)	
STATION, Philadelphia, PA, Employer)	
)	

Appearances:
Michael D. Overman, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 21, 2018 appellant, through counsel, filed a timely appeal from an April 27, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 18-1760.

On April 15, 2002 appellant, then a 41-year old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he tripped and twisted his left knee while in the performance of duty.

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 The Board notes that following the April 27, 2018 decision, OWCP received additional evidence. 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 evidence for the first time on appeal. *Id.*

By decision dated July 29, 2002, OWCP accepted appellant's claim for a left knee sprain. On November 3, 2003 appellant underwent nonwork-related left knee surgery.

On September 3, 2011 he returned to part-time, limited-duty work as a modified city letter carrier working three hours per day. In a letter dated November 28, 2011, appellant advised OWCP that he could no longer perform the modified, limited-duty position and had been out of work since September 27, 2011. Subsequently, appellant filed a claim for compensation (Form CA-7) for the periods October 8, 2011 to February 27, 2012 and January 12, 2013 and continuing. By decisions from January 31, 2013 through April 27, 2018, OWCP denied appellant's claim for wage-loss compensation.

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,³ 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.

On November 20, 2017, prior to the issuance of OWCP's April 27, 2018 decision, appellant submitted a medical report dated October 25, 2017 from Dr. Walter W. Dearolf, III, a Board-certified orthopedic surgeon. In his report, Dr. Dearolf noted that appellant reported having more difficulty with his left knee and had been experiencing episodes with his knee buckling. He opined that appellant was limited to performing sedentary or light-duty work and was restricted from delivering mail.

In its April 27, 2018 decision, OWCP's hearing representative affirmed the September 29, 2017 decision finding that the medical evidence of record failed to establish appellant's claim for compensation for the periods October 8, 2011 to February 27, 2012, and January 12, 2013 and continuing. He found that the weight of the evidence rested with Dr. Menachem Mueller, a Board-certified orthopedic surgeon and OWCP's impartial medical examiner, who opined that the modified city letter carrier position was appropriate for the period October 8, 2011 to February 27, 2012 and that there was no basis for any limitations on or after January 12, 2013.

The Board finds that in the April 27, 2018 decision, the hearing representative did not reference or consider the October 25, 2017 report from Dr. Dearolf despite having received it prior to the issuance of his decision. As the hearing representative did consider the relevant medical report from Dr. Dearolf, OWCP failed to follow its own procedures by properly discussing the relevant medical reports of record.⁴

³ 41 ECAB 548 (1990). See also *R.D.*, Docket No.17-1818 (issued April 3, 2018).

⁴ 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).

As the Board's decisions are final with regard to the subject matter appealed,⁵ it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁶ As OWCP's hearing representative did not review the above-noted evidence in the April 27, 2018 decision, the Board finds that this case is not in posture for decision.⁷ On remand, OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the April 27, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this order of the Board.

Issued: November 25, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁵ 20 C.F.R. § 501.6(d).

⁶ See *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 2.

⁷ See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).