

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

L.T., Appellant

and

**U.S. POSTAL SERVICE, TROY CUSTOMER
CARE CENTER, Troy, MI, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 18-1034
Issued: April 30, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

On April 23, 2018 appellant filed a timely appeal from a February 26, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1034.

Appellant, then a 47-year old customer care agent filed a traumatic injury claim (Form CA-1) alleging aggravation of a preexisting asthma condition as a result of exposure to construction pollutants in the workplace on February 6, 2017. However, the development letter sent to her by OWCP requested information based upon an occupational disease claim. In her January 24, 2018 narrative statement, appellant explained that she was exposed to dust, debris, and air pollutants from the construction 8 hours a day, 40 hours a week while at work since January 2017, which is indicative of a claim for an occupational disease produced by her work environment over a period longer than a single workday or shift.¹

¹ A traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

Under FECA, although it is the employee's burden of proof to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence.² It is the duty of the claims examiner to develop a claim based on the facts at hand and not solely on the basis of the type of claim form filed.³ The Federal (FECA) Procedure Manual provides that if the actual benefits claimed cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed. Based upon the response to the development letter, OWCP should make a determination as to whether the correct claim was filed and, if not, it should convert the claim to the proper type of claim and notify both appellant and the employing establishment (and any representative, if applicable) of the conversion.⁴

Herein, OWCP's development appears to have sought to develop appellant's claim as one for occupational disease and not a traumatic injury as alleged on the claim form. Based upon her January 24, 2018 response to the development letter and the other evidence of record, it should have converted the claim to an occupational disease and then notified appellant and the employing establishment of the conversion.⁵ The Board finds that OWCP failed to provide this necessary notification and instead denied appellant's traumatic injury claim, finding that the medical evidence of record was based upon an inaccurate history of injury.⁶ As OWCP continued to treat this claim as a traumatic injury claim, appellant's history of exposure to the work environment over a period of time was not properly acknowledged as employment factors by OWCP, nor was proper notice of the claim conversion provided as is required.

Therefore, the case shall be remanded for conversion of the claim to one for an occupational disease followed by appropriate notice provided to appellant. Following this and any other further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an occupational disease.

² *G.S.*, Docket No. 16-0908 (issued October 26, 2017); *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

³ *Id.*

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3(c)(2)(b) (June 2011); *C.f. S.N.*, Docket No. 12-1814 (issued March 11, 2013).

⁵ *Id.*

⁶ *See A.J.*, Docket No. 18-0727 (issued February 2019).

IT IS HEREBY ORDERED THAT the February 26, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: April 30, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board