

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

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T.B., Appellant)	
)	
and)	Docket No. 19-1841
)	Issued: July 7, 2020
U.S. POSTAL SERVICE, RAVENSWOOD)	
STATION POST OFFICE, Chicago, IL,)	
Employer)	
_____)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 3, 2019 appellant filed a timely appeal from a June 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 19-1841.

On May 31, 2018 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 25, 2018 she sustained a bilateral knee injury when her right knee buckled, causing her to fall to the ground while in the performance of duty. She stopped work and first received medical care on May 25, 2018. By decision dated June 14, 2018, OWCP accepted the claim for bilateral knee contusions. Appellant received continuation of pay (COP) from May 25 through July 9, 2018. OWCP paid her wage-loss compensation for the period July 14, 2018 through February 15, 2019 on the supplemental rolls.

¹ The Board notes that, following the June 11, 2019 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 additional evidence for the first time on appeal. *Id.*

Beginning March 7, 2019, appellant filed claims for compensation (Form CA-7) for leave without pay for the period of February 16, 2019 and continuing.

In support of her claim, appellant submitted medical reports dated March 22, 2018, January 25 and February 22, 2019 from Dr. Gregory Primus, a Board-certified orthopedic surgeon.

In a March 22, 2018 report, Dr. Primus evaluated appellant for bilateral knee conditions, noting that on March 4, 2017 appellant fell through a porch while at work and landed on her knees. He reviewed diagnostic testing and diagnosed bilateral primary osteoarthritis of the knee and complex tear of left knee medial meniscus, initial encounter.

In medical reports dated January 25 and February 22, 2019, Dr. Primus evaluated appellant's bilateral knee conditions and reviewed a December 21, 2018 magnetic resonance imaging scan of the left knee. He reported that the scan revealed tricompartmental osteoarthritis, severe in the medial compartment, complex degenerative type tear of body, posterior horn of medial meniscus, and a peri-cruciate ganglion cyst to the posterior cruciate ligament.

In a March 12, 2019 development letter, OWCP informed appellant that additional medical evidence was required to establish disability on or after February 16, 2019 as a result of the accepted May 25, 2018 employment-related injury.² It afforded her 30 days to submit the necessary evidence.

In support of her claim, appellant submitted various medical reports, work status notes, and duty status reports (Form CA-17) dated February 22 through May 24, 2019 documenting treatment for her condition with Dr. Primus.

In a March 22, 2019 report, Dr. Primus diagnosed bilateral primary osteoarthritis of the knee and complex tear of left knee medial meniscus. He opined that, based on appellant's history, physical examination findings, and review of medical records and diagnostic studies, appellant's injuries were causally and directly related to the work injury. Dr. Primus explained that appellant's bilateral knee osteoarthritis was related to her bilateral knee contusion. He noted that, although the osteoarthritis was present at the time of the May 25, 2018 employment injury, the condition had been asymptomatic which was evidenced by the fact that appellant was working her full-duty job without restrictions. When she fell at work on that date, appellant sustained acute contusions that lead to pain and disability. As such, the contusions allowed the bilateral knee osteoarthritis to become symptomatic to the point of not allowing her knee to return to baseline function and pain abatement. Dr. Primus reported that appellant essentially had an acute trauma to the knees that lead to symptomatic knee osteoarthritis. He concluded that appellant's employment injury was the direct cause of her painful knee contusions and progressive osteoarthritis symptoms, but did not cause the original bilateral knee osteoarthritis to develop.

In a March 22, 2019 work status note and Form CA-17, Dr. Primus restricted appellant from working due to a meniscal tear. On April 24, 2019 he released appellant to limited-duty work

² OWCP noted that the medical evidence of record contained a March 22, 2018 medical report documenting bilateral knee conditions which predated the May 25, 2018 employment injury. It requested she provide additional medical evidence in support of her claim, as well as a detailed description on the development of her condition.

due to her bilateral knee contusions, citing a May 25, 2018 date of injury. Medical reports, work status notes, and Form CA-17's dated April 22 through May 29, 2019 documented appellant's continued treatment and work restrictions.

By decision dated June 11, 2019, OWCP denied appellant's claims for wage-loss compensation, commencing February 16, 2019, finding that the medical evidence of record was insufficient to establish that she was disabled from work during the claimed period causally related to her accepted May 25, 2018 employment injury. It only specifically referenced review of the March 22, 2018 report from Dr. Primus.

The Board, having duly reviewed the case record, finds that this case is not in posture for decision.³

FECA provides that OWCP shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as OWCP considers necessary with respect to the claim.⁴ Since the Board's jurisdiction of a case is limited to reviewing that evidence which is before OWCP at the time of its final decision,⁵ it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,⁶ it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.⁷

In the present case, OWCP did not review all of the evidence of record received prior to the issuance of its June 11, 2019 decision. It only referenced and considered the March 22, 2018 report from Dr. Primus. The Board, therefore, must set aside the June 11, 2019 decision of OWCP and remand the case so that it may fully consider the evidence that was properly submitted by appellant prior to the issuance of its decision and make proper findings. Following such further consideration and after any further development as it deems necessary, it shall issue a *de novo* decision.

³ *L.D.*, Docket No. 19-0350 (issued October 22, 2019).

⁴ 5 U.S.C. § 8124(a)(2).

⁵ 20 C.F.R. § 501.2(c).

⁶ *Id.* at § 501.6(d).

⁷ *See N.S.*, Docket No. 18-0759 (issued March 11, 2019); *E.P.*, Docket No. 14-0278 (issued February 26, 2014). *See also William A. Couch*, 41 ECAB 548, 553 (1990).

IT IS HEREBY ORDERED THAT the June 11, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 7, 2020
Washington, DC

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

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

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