

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

K.F., Appellant	)	
	)	
and	)	Docket No. 19-0888
	)	Issued: January 2, 2020
U.S. POSTAL SERVICE, POST OFFICE,	)	
Westport, WA, 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 March 19, 2019 appellant filed a timely appeal from an October 24, 2018 decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards assigned Docket No. 19-0888.

The Board has duly considered the matter and finds that this case is not in posture for a decision.

On March 22, 2018 appellant, then a 52-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome as a result of her repetitive federal employment duties which entailed casing and boxing mail for two to three hours per day. In an accompanying narrative statement, she reported that she was diagnosed with carpal tunnel syndrome in 2006, but her condition was not severe enough to require surgery. Appellant

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<sup>1</sup> The Board notes that appellant submitted additional evidence on appeal. 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.*

explained that after she began working for the employing establishment in 2012, her carpal tunnel condition had progressively worsened as her workload increased.

By decision dated June 21, 2018, OWCP denied appellant's occupational disease claim finding that she had not met her burden of proof to establish a diagnosed medical condition causally related to the accepted factors of her federal employment. It noted that she failed to submit medical evidence in support of her occupational disease claim.

On July 10, 2018, appellant requested review of the written record before OWCP's Branch of Hearings and Review.

In support of her claim, appellant submitted nerve conduction velocity studies dated December 14, 2005 and January 18, 2006, as well as a January 18, 2006 medical report from Dr. Joe Kooiker, a Board-certified neurologist, who provided a diagnosis of carpal tunnel syndrome. She also submitted medical reports dated February 28 and June 29, 2018 from Dr. Keith Birchard, a Board-certified orthopedic surgeon.

In his February 28, 2018 report, Dr. Birchard discussed appellant's employment duties for the employing establishment and her medical history stemming back to Dr. Kooiker's January 18, 2006 diagnostic testing. He reported that appellant's symptoms were consistent with carpal tunnel syndrome, but that she required bilateral median and ulnar nerve conduction testing to confirm the diagnosis. Dr. Birchard opined that these conditions were preexisting, but had been aggravated by her occupational exposure as a clerk for the employing establishment.

In a June 29, 2018 medical report, Dr. Birchard reported that appellant underwent nerve conduction testing on May 31, 2018 which confirmed bilateral moderately severe to severe carpal tunnel syndrome, worse on the left side. He opined that her carpal tunnel syndrome was related to her occupational exposure for the employing establishment which aggravated her condition. Dr. Birchard reported that once the workers' compensation claim was approved, he would recommend moving forward with carpal tunnel release.

By decision dated October 24, 2018, OWCP's hearing representative affirmed the June 21, 2018 decision. The hearing representative reviewed Dr. Birchard's February 28, 2018 medical report and found that he failed to address causal relationship between the accepted employment exposure and definitive diagnosis supported by medical rationale.

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

In the case of *William A. Couch*,<sup>3</sup> 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.

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

<sup>3</sup> 41 ECAB 548, 553 (1990).

In its October 24, 2018 decision, OWCP denied appellant's claim for compensation based on Dr. Birchard's February 28, 2018 medical report. While the October 29, 2018 decision discussed some of the medical reports of record, it failed to acknowledge, reference, or analyze the June 29, 2018 report from Dr. Birchard.<sup>4</sup> This June 29, 2018 report discussed current diagnostic testing, provided a medical diagnosis based on objective evidence, and also provided an opinion regarding causal relationship.<sup>5</sup> As OWCP did not note receipt or consideration of this pertinent medical report it possessed, it failed to follow its own procedures by properly discussing the relevant medical reports of record.<sup>6</sup>

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.<sup>7</sup> Because OWCP failed to consider Dr. Birchard's June 29, 2018 report, the Board cannot review such evidence for the first time on appeal.<sup>8</sup>

For these reasons, the case will be remanded to OWCP to properly consider all of the evidence of record.<sup>9</sup> Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>10</sup> Accordingly,

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<sup>4</sup> *R.P.*, Docket No. 19-0301 (issued August 21, 2019).

<sup>5</sup> *A.M.*, Docket No. 18-1040 (issued June 21, 2019).

<sup>6</sup> 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. FECA Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

<sup>7</sup> See *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where OWCP did not consider a medical report received on the date of its decision).

<sup>8</sup> 20 C.F.R. 501.2(c). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

<sup>9</sup> *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

<sup>10</sup> *B.N.*, Docket No. 17-0787 (issued July 6, 2018).

**IT IS HEREBY ORDERED THAT** the October 24, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this order of the Board.

Issued: January 2, 2020  
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