

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

J.S., Appellant)	
)	
and)	Docket No. 19-1073
)	Issued: January 6, 2020
U.S. POSTAL SERVICE, POST OFFICE, Homewood, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On April 16, 2019 appellant, through counsel, filed a timely appeal from a March 1, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1073.²

On December 11, 2017 appellant, then a 35-year-old city carrier, filed an occupational disease claim (Form CA-2) for a right knee condition due to factors of her federal employment including ascending and descending stairs. She noted that she first became aware of her condition and realized its relation to her federal employment on December 15, 2015. Appellant did not stop

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 March 1, 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.*

work. On February 14, 2018 OWCP accepted appellant's claim for right knee anterior cruciate ligament (ACL) rupture.³

On June 22, 2018 appellant filed a claim for wage-loss compensation (Form CA-7) for the period June 9 to 22, 2018. The accompanying time analysis form (Form CA-7a) indicated that appellant took leave without pay for 1.75 hours on June 13, 2018, 3.5 hours on June 15, 2018, and 4 hours on June 19, 2018 for medical appointments.

In a development letter dated July 9, 2018, OWCP advised appellant that her claim for wage-loss compensation for the period June 9 to 22, 2018 was not payable in its entirety. It authorized wage-loss compensation for June 13, 2018 (1.75 hours), but noted it had not received evidence to establish appellant's wage-loss compensation claim for June 15, 2018 (3.5 hours) and June 19, 2018 (4 hours). OWCP afforded appellant 30 days to submit the requested evidence.

By decision dated August 15, 2018, OWCP denied appellant's claim for wage-loss compensation for the period June 9 through 22, 2018, finding that she had not submitted evidence to establish that she sought treatment for her accepted condition on June 15, 2018 for 3.5 hours or on June 19, 2018 for 4 hours.

On August 23, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on January 3, 2019. The hearing representative held the record open for 30 days for the submission of additional evidence.

OWCP subsequently received a January 3, 2019 letter, signed by Jatin Patel, a medical practice administrator. Mr. Patel indicated that appellant had appointments at a patient service center on June 15 and 19, 2018, where she met with a certified and licensed orthotist for brace measurements, as well as a fitting and dispensement.

By decision dated March 1, 2019, the hearing representative affirmed the August 15, 2018 decision denying wage-loss compensation for June 15, 2019 (3.5 hours) and June 19, 2019 (4 hours). Specifically, OWCP's hearing representative found that there is no evidence that appellant attended appointments to be fitted for the brace, and then for a final fitting and pick-up of the brace, on June 15 and 19, 2018.

The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP. In the case of *William A. Couch*,⁴ 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. In its March 1, 2019 decision,

³ OWCP subsequently authorized a right knee arthroscopic procedure, which was performed on September 4, 2018.

⁴ 41 ECAB 548, 553 (1990); *see also K.L.*, Docket No. 16-1341 (issued December 20, 2016); *E.Z.*, Docket No. 14-0274 (issued March 16, 2015); *Linda Johnson*, 45 ECAB 439 (1994).

OWCP failed to consider the January 3, 2019 letter from Mr. Patel. Whether OWCP receives relevant evidence on the date of the decision or days before, such evidence must be considered.⁵

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 properly submitted to OWCP be reviewed and addressed.⁶ For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the March 1, 2019 decision. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on the claim. Accordingly,

IT IS HEREBY ORDERED THAT the March 1, 2019 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: January 6, 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

⁵ *T.J.*, Docket No. 14-1854 (issued February 3, 2015); *J.J.*, Docket No. 12-1062 (issued December 12, 2012); *William McKennon*, 51 ECAB 145 (1999).

⁶ *T.J.*, *id.*; see *Yvette N. Davis*, 55 ECAB 475 (2004).