

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

M.M., Appellant

and

**TENNESSEE VALLEY AUTHORITY, BOONE
DAM RESERVATION, Kingsport, TN, Employer**

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

**Docket No. 19-0899
Issued: May 26, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 26, 2019 appellant filed a timely appeal from a January 30, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0899.¹

On December 8, 2004 appellant, then a 43-year-old grounds maintenance worker, filed a traumatic injury claim (Form CA-1) alleging that on December 7, 2004 he sustained a back strain while placing a file cabinet in an upright position from a leaning position while in the performance of duty. He did not stop work. OWCP accepted the claim for lumbar spondylosis without myelopathy and lumbar strain/sprain.

¹ The Board notes that, following the January 30, 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.*

On April 3, 2018 OWCP issued a notice of proposed suspension based on appellant's failure to report for a medical examination scheduled for March 5, 2018.² By decision dated May 24, 2018, OWCP suspended appellant's medical benefits and compensation, effective May 26, 2018, for failure to report for scheduled medical examinations on February 7, March 5, and May 23, 2018. On June 20, 2018 appellant filed a request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated January 30, 2019, OWCP's hearing representative affirmed the suspension, noting that appellant had been advised in letters dated December 22, 2017³ of a scheduled appointment on February 7, 2018 and that the appointment had been rescheduled to March 5, 2018 and to May 23, 2018.

The record submitted to the Board is incomplete. In its January 30, 2019 decision, OWCP's hearing representative discussed and relied upon letters referring appellant for a medical appointment. The record before the Board on appeal does not contain a December 22, 2017 letter scheduling a medical appointment on February 7, 2018 or a letter scheduling a medical appointment on March 5, 2018. In light of OWCP's reliance on this evidence, the Board finds that the case is not in posture for decision.

Section 501.2(c) of the Board's *Rules of Procedure*⁴ provides that the Board has jurisdiction to consider and decide appeals from the final decision of OWCP in cases arising under the Federal Employees' Compensation Act.⁵ Because the record as transmitted to the Board does not contain evidence that OWCP relied upon in reaching a final decision, which includes letters referring appellant for medical appointments scheduled for February 7 and March 5, 2018, it is incomplete and would not permit an informed adjudication of the case.⁶ The Board will, therefore, remand the case to OWCP for reconstruction and proper assemblage of the record to include the letters referring appellant for medical appointments scheduled for February 7 and March 5, 2018.⁷ After such further development as deemed necessary, OWCP shall issue a *de novo* decision on whether OWCP properly suspended appellant's wage-loss compensation and medical benefits pursuant to 5 U.S.C. § 8123(d), due to his failure to attend scheduled medical examinations.

² OWCP attached e-mail correspondence, dated January 10 and March 5, 2018, regarding scheduled medical appointments for February 7 and March 5, 2018.

³ The December 22, 2017 letter referred to by OWCP's hearing representative does not include a physician's name, the date of the scheduled appointment, or the time.

⁴ 20 C.F.R. § 501.2(c).

⁵ 5 U.S.C. § 8101 *et seq.*

⁶ *See M.B.*, Docket No. 18-1290 (issued August 13, 2019); *D.H.*, Docket No. 17-0224 (issued August 16, 2018).

⁷ *Id.*; *W.M.*, Docket No. 17-1667 (issued October 1, 2018).

IT IS HEREBY ORDERED THAT the January 30, 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: May 26, 2020
Washington, DC

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

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

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