

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

_____)	
G.T., Appellant)	
)	
and)	Docket No. 19-1619
)	Issued: May 22, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Washington Township, NJ, 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 July 18, 2019 appellant filed a timely appeal from a January 22, 2019 merit decision¹ and an April 1, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 19-1619.

On June 18, 2018 appellant, then a 47-year-old city carrier, filed a notice of recurrence (Form CA-2a) alleging that on June 16, 2018 he sustained a recurrence of his March 8, 2018 injury when he stumbled up a customer's steps when delivering mail while in the performance of duty.

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from January 22, 2019, the date of OWCP's last decision, was July 21, 2019. As this fell on a Sunday, appellant had until Monday, July 22, 2019 to file the appeal from the January 22, 2019 decision. Since using July 25, 2019, the date the appeal was received by the Clerk of the Appellate Boards, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is July 18, 2019, rendering the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² 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.*

He stopped work on June 16, 2018. In a July 25, 2018 memorandum, OWCP determined that appellant's recurrence claim should be converted into a new claim for a traumatic injury.

A June 20, 2018 duty status report (Form CA-17) bearing an illegible signature diagnosed hamstring strain as of June 16, 2018.

By development letter dated August 3, 2018, OWCP advised appellant that his claim was converted into a new traumatic injury claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received an August 1, 2018 report from Dr. Shawn Trokhan, a Board-certified orthopedic surgeon, noted that appellant was under his care for left leg pain. Dr. Trokhan indicated that he could not provide restrictions until a magnetic resonance imaging (MRI) scan was performed.

In an August 27, 2018 report, Dr. Trokhan diagnosed a posterior thigh muscle group strain and noted that appellant's worsening pain was due to an increased workload, per the patient.

By decision dated September 5, 2018, OWCP denied appellant's claim. It found that the medical evidence of record was insufficient to establish an injury/medical condition causally related to the accepted employment events. OWCP specifically noted receipt of Dr. Trokhan's August 1, 2018 report, but did not note receipt of his August 27, 2018 report.

On December 21, 2018 appellant requested reconsideration. OWCP received an October 1, 2018 follow-up report from Dr. Trokhan. Dr. Trokhan related that appellant had been under an eight-hour-a-day work restriction; however, he had been required to work more than eight hours a day, which caused his fall, the hyperextension injury to his left leg, and aggravation of his posterior thigh muscle condition.

By decision dated January 22, 2019, OWCP denied modification of its September 5, 2018 decision. It noted that it had received Dr. Trokhan's October 1, 2018 report, but the medical evidence of record did not provide a valid diagnosis of appellant's condition.

Appellant requested reconsideration on February 25, 2019. He did not submit any additional evidence.

In an April 1, 2019 decision, OWCP denied appellant's request for reconsideration, finding that his request neither raised a substantial legal argument nor provided new and relevant medical evidence, therefore, his request was insufficient to require merit review.

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,³ 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.

³ 41 ECAB 548 (1990); *see also R.D.*, Docket No.17-1818 (issued April 3, 2018).

In an August 27, 2018 report Dr. Trokhan, diagnosed appellant's condition as posterior thigh muscle group strain. In the January 22, 2019 decision, which reviewed the merits of appellant's claim, OWCP found that the evidence of record did not contain a valid diagnosis of appellant's condition. As OWCP did not consider the August 27, 2018 report from Dr. Trokhan, it failed to follow its procedures by properly discussing all of the relevant evidence of record.⁴

It is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.⁵ The Board finds that this case is not in posture for decision, as OWCP did not review the August 27, 2018 report from Dr. Trokhan in its January 22, 2019 merit decision.⁶ On remand, OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.⁷ Accordingly,

⁴ "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." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁵ See *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 3.

⁶ See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

⁷ In light of the Board's disposition with regard to the merits of the case, the issue of whether OWCP properly denied appellant's request for reconsideration of the merits of the case pursuant to 5 U.S.C. § 8128(a) is rendered moot.

IT IS HEREBY ORDERED THAT the April 1 and January 22, 2019 decisions of the Office of Workers' Compensation Programs are set aside, and the case is remanded to OWCP for further action consistent with this order of the Board.

Issued: May 22, 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