

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

C.W., Appellant

and

**U.S. POSTAL SERVICE, WAVERLY STATION,
Baltimore, MD, Employer**

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**Docket No. 19-1739
Issued: May 28, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 16, 2019 appellant filed a timely appeal from a July 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-1739.¹

On October 30, 2018 appellant, then a 29-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on October 27, 2018 she sustained a broken right ankle when she slipped and fell while in the performance of duty.² She alleged that the incident took place at 3:15 p.m. Appellant first notified her supervisor, stopped work, and received medical care on October 27, 2018, the date of the claimed injury. On the reverse side of the form a customer service supervisor, S.A., controverted the claim stating that appellant did not know the address

¹ The Board notes that, following the July 15, 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.*

² It appears on his Form CA-1 the appellant inadvertently noted his injury occurred on October 27, 2019; however, the form was signed on October 27, 2018 and emergency medical treatment for her fracture was sought that date.

where the injury occurred and could not explain how the injury occurred, only stating that she was going up some steps and heard something pop in her leg.

By development letter dated November 1, 2018, OWCP advised appellant that the evidence of record was insufficient to establish her claim. It noted that she was employed as a personnel security specialist by the Department of Veterans Affairs and it had received her claim for a traumatic injury filed on October 16, 2018 alleging an August 15, 2018 injury which resulted from being pushed and assaulted by her supervisor at work. OWCP reported that it did not receive any other documentation with her claim form and advised her of the medical evidence necessary to establish her claim. It further reported that appellant had failed to substantiate the factual elements of her claim and requested that she respond to the provided questionnaire. In a series of questions, appellant was requested to provide additional details pertaining to the October 27, 2018 alleged assault, circumstances surrounding the incident, whether there was a police or agency investigative report, whether there were any witnesses to the assault, if there was any animosity between appellant and the assailant, and why she waited two months to file a Form CA-1. OWCP afforded appellant 30 days to provide the necessary information.

In support of her claim, appellant submitted discharge instructions and a work/school note dated October 27, 2018 which documented treatment for a tibial and fibular fracture on that date at 3:50 p.m. A November 7, 2018 work status note was also provided by her physician indicating that she should remain out of work until February 7, 2018.

By decision dated December 4, 2018, OWCP denied appellant's claim, finding the evidence of record was insufficient to establish that the October 27, 2018 employment incident occurred as alleged. It noted that although the November 1, 2018 development letter sent was issued in error and contained the incorrect job title, agency, and date of filing, appellant failed to respond to the factual questionnaire or refute the information provided in the letter, and therefore, had not substantiated the factual element of her claim.

On December 14, 2018 appellant requested an oral hearing before OWCP's hearing representative. In support of her claim, she submitted a December 28, 2018 work status report, a March 13, 2019 work status report, and a March 13, 2019 progress note.

A hearing was held on April 25, 2019 where appellant described the October 27, 2018 employment incident when she was delivering mail and slipped on a tarp and broke her right ankle. She reported that immediately after the incident, a neighbor came to help her and called 911. Appellant noted that she attempted to call the office, but could not get in contact with anyone so she called a fellow carrier and asked him to notify management. She testified that she was transported to the hospital by ambulance and described her course of medical treatment, stating that she subsequently underwent surgery and had plates and screws placed in her right ankle. Appellant indicated stopped work on the date of injury and returned to light-duty work on February 21, 2019. The record was held open for 30 days.

By decision dated July 15, 2019, OWCP's hearing representative affirmed the December 4, 2018 decision, finding that appellant had not provided sufficient evidence to establish that she sustained an injury on October 27, 2018, as alleged.

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

OWCP's procedures provide that OWCP is responsible for requesting evidence.⁴ The procedures further provide that the claims examiner should contact the claimant in writing to obtain evidence and should specifically request the information needed, tailored to the specifics of the individual case.⁵ In this instance, OWCP improperly developed the claim as the November 1, 2018 development letter requested factual information pertaining to an unrelated assault claim which was never alleged by appellant.⁶ The questionnaire requested detailed information pertaining to an August 15, 2018 work-related assault and failed to inquire about any aspect of her alleged October 27, 2018 right ankle injury while delivering mail on her mail route. Furthermore, OWCP's December 4, 2018 decision acknowledged that the November 1, 2018 development letter was issued in error, but continued to deny the claim for fact of injury finding that appellant failed to respond to or refute the information provided to her in the letter. By decision dated July 15, 2019, OWCP's hearing representative affirmed the December 4, 2018 decision. The Board notes that the record does not indicate that OWCP's development letter was resent or reissued.⁷ Because appellant did not receive a properly issued development letter, she was not afforded an opportunity to submit the required evidence in support of her claim based on detailed instructions advising her of the evidence required to demonstrate her entitlement to compensation.⁸

As appellant failed to receive proper guidance from OWCP regarding the specific evidence required to establish a traumatic injury claim, the Board finds that this case must be remanded for further development.⁹ Following such further development as it deems necessary, OWCP shall issue a *de novo* decision on appellant's claim.¹⁰

³ See *T.Z.*, Docket No. 17-0679 (issued May 9, 2019).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.4 (June 2011).

⁵ *Id.* at Chapter 2.800.5. See also *V.R.*, Docket No. 16-1167 (issued December 22, 2016).

⁶ See *P.D.* Docket No. 19-0763 (issued November 26, 2019).

⁷ *R.P.*, Docket No. 18-0909 (issued October 28, 2019); *E.C.*, Docket No. 11-1774 (issued February 27, 2012).

⁸ *Supra* note 4.

⁹ *D.K.*, Docket No. 18-0604 (issued October 21, 2019). See *S.S.*, Docket No. 17-0871 (issued November 6, 2017).

¹⁰ Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). The Board has exercised its discretion and, given the disposition of the case, denies the request, finding that the arguments on appeal have been addressed based on the case record.

IT IS HEREBY ORDERED THAT the July 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order.

Issued: May 28, 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