

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

A.J., Appellant	)	
	)	
and	)	<b>Docket No. 20-0463</b>
	)	<b>Issued: November 9, 2020</b>
U.S. POSTAL SERVICE, WESLEY CHAPEL	)	
POST OFFICE, Decatur, GA, 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  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On December 23, 2019 appellant filed a timely appeal from a November 4, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0463.<sup>1</sup>

On November 23, 2012 appellant, then a 42-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 20, 2012 she developed an emotional condition when she was robbed at gun point in the performance of duty. She stopped work following the injury. OWCP accepted the claim for acute reaction to stress and post-traumatic stress disorder (PTSD). It paid appellant wage-loss compensation on the supplemental rolls as of January 11, 2013, and on the periodic rolls as of February 10, 2013.

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<sup>1</sup> The Board notes that following the November 4, 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.*

Appellant returned to work on December 2, 2013 as a full-time modified sales solution team member in a call center. On April 13, 2017 appellant accepted a limited-duty job offer as a learning and development associate at the Atlanta, Georgia, Processing and Distribution Center.

On January 11, 2018 the employing establishment offered appellant a position as a learning and development associate located at North Metro Processing and Distribution Center (P&DC) in Duluth, Georgia. On January 24, 2018 appellant signed and accepted the January 11, 2018 job offer “under protest -- doctor’s appt.”

On January 26, 2018 appellant filed a claim for compensation (Form CA-7) and time analysis form (Form CA-7a) which indicated that she stopped work on January 13, 2018. She claimed wage-loss compensation for total disability from January 15 through 19, 2018.

In a report dated January 31, 2018, Dr. Karen R. Stewart, a Board-certified psychiatrist, related that appellant was seen for treatment of PTSD and recurrent major depressive disorder which worsened with a change in work location that required appellant to drive past areas that triggered flashbacks of the employment incident. Dr. David W. Aycock, a licensed psychologist indicated in a report dated February 6, 2018 that appellant had classic PTSD symptoms and that she should not be required to drive long distances to work. In a report dated February 22, 2018, Dr. Aycock related that appellant’s PTSD was exacerbated due to extensive travel to the worksite through Decatur, Georgia, the setting of her employment-related trauma, which triggered flashbacks of the incident.

Appellant continued to file Form CA-7’s and accompanying Form CA-7a’s, claiming continued total disability.

By decision dated March 15, 2018, OWCP denied appellant’s claims for compensation for the period January 13, 2018 and continuing. It found that the medical evidence of record was insufficient to establish disability from work due to the accepted conditions.<sup>2</sup>

On March 28, 2018 appellant requested review of the written record by an OWCP hearing representative. By decision dated August 8, 2018, an OWCP hearing representative affirmed the March 15, 2018 decision. The hearing representative found that appellant did not claim nor had any of the medical evidence of record opined that her condition spontaneously worsened and caused the claimed disability without an intervening injury. She concluded that an emotional condition related to a fear of future violence was not compensable.

Appellant continued to claim total disability. Multiple additional reports from Dr. Aycock regarding appellant’s disability due to the change in her workplace were received.

On October 1, 2019 appellant requested reconsideration. Appellant contended that the medical documentation supported that her PTSD was exacerbated when she was given the

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<sup>2</sup> By decision dated May 7, 2018, OWCP terminated appellant’s entitlement to wage-loss compensation and schedule award benefits, effective May 8, 2018, due to her refusal of suitable work under 5 U.S.C. § 8106(c)(2). By decision dated July 15, 2019, OWCP vacated its May 7, 2018 termination decision as the evidence of record was insufficient to establish that the January 11, 2018 job offer was permanent.

January 11, 2018 job offer. In a newly submitted report dated September 6, 2018, Dr. Aycock related that when appellant drove to the North Metro work site on January 10, 2018 her symptoms complex returned with a vengeance. Appellant's anxiety heightened to the degree that she was stopped by Dekalb County police for slow driving. She then experienced a day filled with anxiety and panic attacks. Appellant attempted to return to work again with the same consequences. Dr. Aycock concluded that appellant had been unable to work in any capacity since that time.

By decision dated November 4, 2019, OWCP denied appellant's request for reconsideration finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that the case is not in posture for decision.

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.<sup>3</sup> Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.<sup>4</sup> Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.<sup>5</sup> As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.<sup>6</sup>

In denying appellant's October 1, 2019 reconsideration request, OWCP failed to analyze the evidence or argument as to whether it was sufficient to demonstrate clear evidence of error. The November 4, 2019 decision simply noted: "Although you have now submitted a written statement requesting review of your case file and payment of compensation, at the time of the decision the conclusion was accurate." However, OWCP did not address the arguments made by appellant in her October 1, 2019 reconsideration request and provided no discussion relative to the new evidence submitted by appellant following the last merit decision of August 8, 2018.<sup>7</sup> The Board will therefore set aside OWCP's November 4, 2019 decision and remand the case for an appropriate decision on appellant's reconsideration request.<sup>8</sup> Accordingly,

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<sup>3</sup> *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

<sup>4</sup> 5 U.S.C. § 8124(a).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1400.5 (February 2013).

<sup>5</sup> 20 C.F.R. § 10.126.

<sup>6</sup> *See id.*

<sup>7</sup> *See Order Remanding Case, J.K.*, Docket No. 20-0556 (issued August 13, 2020); *Order Remanding Case, C.D.*, Docket No. 19-1962 (issued June 29, 2020); *Order Remanding Case, C.G.*, Docket No. 20-0051 (issued June 29, 2020).

<sup>8</sup> *Supra* note 4.

**IT IS HEREBY ORDERED THAT** the November 4, 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: November 9, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board