

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

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L.R., Appellant)	
)	
and)	Docket No. 20-0697
)	Issued: November 9, 2020
DEPARTMENT OF STATE, U.S. EMBASSY,)	
Managua, Nicaragua, 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 February 7, 2020 appellant filed a timely appeal from a January 9, 2020 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0697.¹

On November 1, 2019 appellant, then a 51-year-old human resources assistant, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her palm and numbness in the right hand up to the right shoulder due to factors of her federal employment, including typing on her desktop computer. She noted that she first became aware of her conditions on February 8, 2017 and first realized that they were caused or aggravated by her federal employment on March 14, 2019. Appellant did not stop work.

¹ The Board notes that, following the January 9, 2020 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.*

In a development letter dated November 22, 2019, OWCP informed appellant of the deficiencies in her claim. It advised her of the type of medical evidence necessary to establish her claim and afforded her 30 days to respond.

In an October 15, 2019 statement, appellant asserted that she was providing medical documentation and a brief historical work-related background in support of her claim.

On January 8, 2020 OWCP received medical evidence, including a July 25, 2019 clinical summary from Dr. Hector Mejia Meza, an orthopedic surgeon. Dr. Meza noted that appellant presented with complaints of acute cervical pain and paresthesia of the bilateral upper extremity. He recounted her history of injury, treatment and objective findings. Dr. Meza indicated that appellant was diagnosed with bilateral carpal tunnel syndrome following a March 23, 2019 electromyography (EMG) study. He opined that her condition was related to repetitive actions performed with her hands, including typing and fine motor movements.

Appellant also submitted results from a March 6, 2019 EMG study performed by Dr. Gerardo Reyes, a neurology specialist, which demonstrated mild-to-moderate neuropathy and moderate-to-severe sensitive mononeuropathy of the right ulnar nerve, July 3, 2019 blood test results ordered by Dr. Meza, and a July 11, 2019 x-ray of the hands revealing signs of developing arthritis.² In addition, OWCP received medical reports dated March 23, 2019 from Dr. Reyes and June 20, 2019 from Dr. Meza.³

By decision dated January 9, 2020, OWCP denied appellant's occupational disease claim, finding that she had not provided any medical evidence in support of her claim. As such, it concluded that the requirements had not been met to establish an injury as defined by FECA.

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*, 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.⁴

In its January 9, 2020 decision, OWCP found that appellant had not submitted any medical evidence in support of her claim. However, as detailed above, appellant submitted medical reports dated from March 6 to July 25, 2019, which OWCP received on January 8, 2020. OWCP thus failed to follow its procedures by failing to discuss all of the relevant evidence of record.⁵ It is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision,

² The July 11, 2019 x-ray report was translated from Spanish.

³ The medical reports were in Spanish.

⁴ *William A. Couch*, 41 ECAB 548, 553 (1990).

⁵ OWCP's procedures provide that 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).

as the Board's decisions are final with regard to the subject matter appealed.⁶ Furthermore, while some of the medical evidence submitted was in Spanish, the Board has long held that OWCP should attempt to secure an accurate translation of the evidence if there is a need for clarification.⁷ The Board, therefore, finds that this case is not in posture as OWCP did not address the above-noted evidence in its January 9, 2020 decision and failed to obtain an accurate translation of the available evidence of record. On remand, following such further development as deemed necessary, OWCP shall review all evidence of record and shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the January 9, 2020 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

⁶ See *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004).

⁷ See *S.D.* Docket No. 11-2004 (issued July 25, 2012); *H.S.*, Docket No. 11-1170 (issued December 14, 2011); *Patrick T. Wall*, Docket No. 01-1802 (issued March 26, 2002); *Armando Colon*, 41 ECAB 563 (1990).