

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

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<b>D.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-1867</b>
	)	<b>Issued: January 26, 2021</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Joplin, MO, Employer</b>	)	
_____	)	

*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 September 9, 2019 appellant filed a timely appeal from an August 20, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1867.<sup>1</sup>

On October 10, 2017 appellant, then a 51-year-old rural carrier associate, filed a traumatic injury form (Form CA-1) alleging that on October 2, 2017 she sustained left elbow, lumbar, and cervical strains in a motor vehicle accident in the performance of duty. OWCP accepted the claim for sprain of the ligaments of the cervical spine, a contusion of the right elbow, a sacroiliac joint sprain, a right eye choroidal rupture, and a right eye retinal neovascularization. It paid appellant wage-loss compensation on the supplemental rolls commencing November 18, 2017.

In a report dated May 13, 2019, Katherine M. Baker, a nurse practitioner, noted assessments of spondylosis without myelopathy or radiculopathy, cervical region; neck pain; low back pain; and sacroiliitis, not elsewhere classified. She opined that appellant could return to work

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<sup>1</sup> The Board notes that following the August 20, 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 evidence for the first time on appeal. *Id.*

with restrictions of lifting no more than 10 pounds, no pushing or pulling over 20 pounds, no carrying over 10 pounds, no computer work, no commercial driving, or binnocular vision work. Standing was allowed with rest breaks for 15 minutes every hour.

The employing establishment subsequently offered appellant a modified assignment for limited-duty work, effective June 3, 2019. The offer noted appellant's date of injury as October 2, 2017 and provided work hours of 2 hours and 50 minutes daily, Monday to Saturday. Appellant accepted the job offer on June 7, 2019.

On June 7, 2019 appellant filed a claim for compensation (Form CA-7) for intermittent disability during the period May 25 through June 7, 2019. In an attached time analysis form (Form CA-7a), appellant listed the specific dates and hours for which she was claiming compensation, most days claiming either 4 or 5 hours of leave without pay (LWOP), but 2.17 hours of LWOP for June 7, 2019. She indicated that on June 7, 2019 she worked 2.88 hours, and stated "short hours" as the reason for her use of LWOP. The employing establishment certified that it paid \$50.32 in wages to appellant for her work during the period May 31 to June 7, 2019.

On June 10, 2019 OWCP received a copy of the employing establishment's offer of a modified assignment for limited-duty work, effective June 3, 2019.

In a development letter dated June 20, 2019, OWCP requested that the employing establishment provide additional information concerning appellant's Form CA-7 claim for compensation for the period May 25 through June 7, 2019, including verification of appellant's pay status, the number of days/hours of leave without pay being claimed, and appellant's pay rate for her date-of-injury job effective May 25, 2019. It afforded the employing establishment 15 days to respond.

On June 26, 2019 the employing establishment submitted a handwritten response to OWCP's June 20, 2019 development letter, indicating that appellant was off work due to a nonjob-related injury from May 25 through 30, 2019 and that it "[m]ade job offer May 31, 2019." The employing establishment also noted that appellant was "[e]ntitled to compensation" for the period May 31 through June 7, 2019 and her pay rate for her date of injury job effective May 25, 2019 was Level 05, Step W (\$17.78/hr).

By decision dated August 20, 2019, OWCP denied appellant's claim for compensation, finding that the evidence of record was insufficient to establish that appellant was intermittently disabled from work for the period May 25 through June 7, 2019. In its decision OWCP noted that it had not received any evidence to support appellant's claim.

The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP. In the case of *William A. Couch*,<sup>2</sup> 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.

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<sup>2</sup> *J.S.*, Docket No. 19-1073 (issued January 6, 2020).

The Board finds that OWCP failed to consider the June 3, 2019 modified job offer received by OWCP on June 10, 2019. Whether OWCP receives relevant evidence on the date of the decision or days before, such evidence must be considered.<sup>3</sup> As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim properly submitted to OWCP be reviewed and addressed.<sup>4</sup> The case will therefore be remanded to OWCP to enable a proper consideration of the evidence that was of record at the time of its August 20, 2019 decision to be followed by a *de novo* decision regarding appellant's claim for compensation.

**IT IS HEREBY ORDERED THAT** the August 20, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: January 26, 2021  
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

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<sup>3</sup> *T.J.*, Docket No. 14-1854 (issued February 3, 2015); *J.J.*, Docket No. 12-1062 (issued December 12, 2012); *William McKennon*, 51 ECAB 145 (1999).

<sup>4</sup> *T.J.*, *id.*; see *Yvette N. Davis*, 55 ECAB 475 (2004).