

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

A.C., Appellant)	
)	
and)	Docket No. 20-0917
)	Issued: January 27, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Beaver Falls, PA, 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 March 22, 2020 appellant filed a timely appeal from a March 2, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 20-0917.

The Board has duly considered the matter and finds that this case is not in posture for decision.

On January 13, 2020 appellant, then a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained injuries to his hands due to factors of his federal employment. He noted that he first became aware of his condition and realized it was caused or aggravated by his federal employment on October 15, 2019. Appellant explained that the repetitive motions of grabbing, holding, and putting mail into mailboxes hundreds of times a day has caused him to experience numbness and pain in his fingers and hands that was possibly carpal tunnel syndrome (CTS). He did not stop work.

In a January 14, 2020 statement, appellant explained that since October 15, 2019 he had experienced numbness and tingling in his right hand and fingers. He indicated that, as time went on, the pain became more frequent to the point that he would wake up almost every night with pain in his hand and arm multiple times a night. Appellant described the contributing factors of his federal employment as the repetitive motions of grabbing, holding, and putting mail into

mailboxes hundreds of times each day. He asserted that he performed these duties for eight to nine hours per day for six days a week.

By development letter dated January 24, 2020, OWCP advised appellant that it required additional factual and medical evidence to determine whether he was eligible for FECA benefits. It requested that he respond to its questionnaire and submit medical evidence which contained a firm diagnosis and a physician's opinion supported by a medical explanation as to how the work activities in his federal employment caused, contributed to, or aggravated his medical condition. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. It afford both parties 30 days to respond.

In a February 2, 2020 response to OWCP's development questionnaire, appellant described the progression of his symptoms as his hands going from occasionally tingling and falling asleep to it happening regularly every day and night. He noted that in October 2019 his symptoms seemed to become worse to the point where he would have to stand outside of his bed for 10 to 15 minutes at night until the pain stopped. Appellant again asserted that the job activities he believed contributed to his symptoms were the repetitive motions of grabbing, holding and placing mail into mailboxes hundreds of times per day and asserted that he sustained no previous injuries to his hand, arm, or shoulder. He listed his outside hobbies and activities as going to the gym and occasionally shooting pistols at the range.

OWCP subsequently received medical evidence from Dr. Oriente Ditano, a Board-certified orthopedic surgeon. In his February 4, 2020 medical report, Dr. Ditano noted evaluating appellant for the numbness and tingling he was experiencing in his right hand for over a year. On examination and review of an x-ray of his wrists and hands, he diagnosed CTS of the bilateral upper limbs. Dr. Ditano recommended a right wrist cock-up brace for appellant. In a February 25, 2020 medical report, he reiterated his diagnosis of CTS of the bilateral upper limbs and also diagnosed other synovitis and tenosynovitis of both hands. Dr. Ditano recommended that appellant undergo a right open carpal tunnel release and flexor tenosynovectomy to treat his condition.

By decision dated March 2, 2020, OWCP denied appellant's occupational disease claim, finding that he did not submit any medical evidence containing a valid medical diagnosis in connection with his claimed factors of federal employment. It noted his submission of his January 4 and February 2, 2020 statements and indicated that it had received no medical evidence in support of appellant's claim.

The Board, having duly considered the matter, notes that in denying appellant's January 20, 2020 claim, OWCP did not discuss the medical evidence submitted in support of his claim, which included diagnoses of bilateral CTS of the upper limbs and synovitis and tenosynovitis of the hands. Thus, the Board finds that this case is not in posture for decision.¹

¹ See *K.F.*, Docket No. 19-0888 (issued January 2, 2020); *J.J.*, Docket No. 13-1666 (issued August 18, 2014).

In the case of *William A. Couch*,² 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.

In its March 2, 2020 decision, OWCP denied appellant's occupational disease claim, finding that he failed to submit any medical evidence containing a valid medical diagnosis in connection with his claimed factors of federal employment. However, it did not acknowledge Dr. Ditano's February 4 and 25, 2020 medical reports in which he diagnosed bilateral CTS of the upper limbs and other synovitis and tenosynovitis of both hands. OWCP only acknowledged the January 14 and February 2, 2020 statements submitted by appellant and concluded that no medical evidence had been received. As it did not reference or address Dr. Ditano's medical reports, it failed to follow its own procedures by properly discussing the relevant medical reports of record.³

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 which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.⁴ Because OWCP did not consider Dr. Ditano's February 4 and 25, 2020 medical reports, the Board cannot review such evidence for the first time on appeal.⁵

For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

² 41 ECAB 548, 553 (1990).

³ 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).

⁴ See *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where OWCP did not consider a medical report received on the date of its decision).

⁵ 20 C.F.R. § 501.2(c). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

⁶ *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

IT IS HEREBY ORDERED THAT the March 2, 2020 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for proceedings consistent with this order of the Board.

Issued: January 27, 2021
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