

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

C.G., Appellant)	
)	
and)	Docket No. 20-1202
)	Issued: January 27, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
CHEYENNE VA MEDICAL CENTER,)	
Cheyenne, WY, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 27, 2020 appellant filed a timely appeal from an April 27, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1202.

On January 8, 2019 appellant, then a 34-year-old diagnostic radiologist technologist, filed a traumatic injury claim (Form CA-1) alleging that on January 1, 2019 she sustained a low back strain when assisting a patient who had a medical emergency while in the performance of duty. She stopped work on January 1, 2019. OWCP accepted the claim for low back strain.

In a letter dated March 6, 2020, Kristi Roybal, a nurse practitioner, requested that OWCP expand acceptance of the claim to include a bulge in the lumbar spine as an accepted condition causally related to the January 1, 2019 employment injury.

In a development letter dated March 26, 2020, OWCP advised appellant that it had received notification of a possible consequential condition of lumbar spine bulge. It advised her of the medical and factual evidence required, including a rationalized report from a physician explaining the cause of her back condition. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received February 21, and March 20, 2020 office notes from Nurse Practitioner Roybal.

In a March 9, 2020 progress note, Dr. Kirby J. Duvall, a Board-certified family practitioner, noted that appellant was seen for exacerbation of back pain. He advised that she had multilevel disc disease and noted that she had a strain of the lower back. Dr. Duvall diagnosed exacerbation of back pain and multilevel disc disease.

A March 21, 2019 magnetic resonance imaging (MRI) scan interpreted by Dr. Nathaniel S. Charter, a Board-certified neurologist, revealed mild early degenerative disc disease from L3-L5 with mild effacement of the ventral thecal sac, mild bilateral foramina narrowing, and nonspecific mild superficial subcutaneous soft tissue swelling.

In a report dated April 20, 2020, Dr. Mark R. Rangitsch, a Board-certified orthopedic surgeon, acting as OWCP's second opinion physician, noted that appellant had sustained injury at L3-L4, and L4-L5.

On April 27, 2020 OWCP received a March 27, 2020 report by Dr. Harlan Ribnik, a pain medicine specialist, wherein he noted diagnoses including lumbar radiculopathy, low back strain, strain of low back fascia, low back tendon strain. He noted onset dates for appellant's diagnoses and provided left sacroiliac joint steroid injections. OWCP also received a January 23, 2020 report from Nurse Practitioner Roybal.

By decision dated April 27, 2020, OWCP denied expansion of the acceptance of appellant's claim to include the additional diagnosis of lumbar spine bulge. It explained that the medical evidence did not demonstrate that the additional medical condition was related to the established work injury or illness. OWCP noted receipt of encounter notes from Nurse Practitioner Roybal dated March 6, February 21, and March 20, 2020, as well as a progress report from Dr. Duvall dated March 9, 2020, and a March 21, 2019 MRI scan report.

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*,¹ 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. The *Couch* principle applies with equal force when evidence is received by OWCP the same day a final decision is issued.²

In its April 27, 2020 decision, OWCP indicated that the evidence received included a March 21, 2019 MRI scan report, February 21, March 6 and March 20, 2020 notes from Nurse Practitioner Roybal, and a March 9, 2020 report from Dr. Duvall. However, appellant also

¹ 41 ECAB 548 (1990); *see also* *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *S.D.*, Docket No. 17-1818 (issued April 3, 2018).

² *See S.S.*, Docket No. 19-1737 (issued April 7, 2020); *J.S.*, Docket No. 16-0505 (issued July 18, 2016); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision).

submitted a March 27, 2020 report from Dr. Ribnik, January 23, 2020 notes from Nurse Practitioner Roybal, and OWCP also received Dr. Rangitsch's April 20, 2020 report.

It is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.³ As OWCP did not note receipt or consideration of these pertinent medical reports it possessed, it failed to follow its own procedures by properly discussing the relevant medical reports of record.⁴ The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its April 27, 2020 decision.⁵ On remand, following any further development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the April 27, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further 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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

³ See C.S., Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 1.

⁴ *K.F.*, Docket No. 19-0888 (issued January 2, 2020).

⁵ *Supra* note 2.