

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

S.A., Appellant)	
)	
and)	Docket No. 20-1435
)	Issued: July 2, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
San Marcus, TX, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 25, 2020 appellant filed a timely appeal from a June 25, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 20-1435.²

On May 16, 2017 appellant, then a 52-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2017 she twisted her right foot in a trailer floor hole while in the performance of duty. She stopped work that day. OWCP accepted the claim for lumbar sprain, left hip sprain, left foot sprain, and strain of muscle, fascia, and tendon at neck. It

¹ Appellant's AB-1 form notes that she is also appealing from a September 25, 2019 merit decision. For final adverse decisions of OWCP issued on or after November 19, 2008, the Board's review authority is limited to appeals which are filed within 180 days from the date of issuance of OWCP's decision. The 180th day following the September 25, 2019 decision was March 23, 2020. As appellant did not file an appeal with the Board until July 25, 2020, the Board is without jurisdiction to review the appeal. Appellant has not offered a reason to explain the failure to timely file an appeal with supporting documentation sufficient to establish compelling circumstances.

² The Board notes that OWCP received additional evidence following the June 25, 2020 decision. 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.*

paid appellant on the supplemental rolls from June 27 through July 22, 2017 and on the periodic rolls from July 23 through August 19, 2017.

Appellant returned to work on August 16, 2017 in a limited-duty capacity working four hours a day. She stopped work the same day and filed a claim for disability compensation (Form CA-7) for the period August 16, 2017 and continuing. OWCP, by decisions dated October 23, 2017 and May 14, 2018, denied the claim. Effective February 9, 2018, the employing establishment terminated appellant's employment finding that she had abandoned her position.

By decision dated January 11, 2019, OWCP vacated its May 14, 2018 decision and awarded compensation for the period August 17, 2017 through February 10, 2018.

On January 2, 2019 appellant filed a Form CA-7 claiming disability for the period February 10, 2018 through January 2, 2019 and continuing. In a June 20, 2019 developmental letter, OWCP treated her claims for disability as a claim for a recurrence, advised appellant of the deficiencies of her recurrence claim, and requested a narrative report from her physician addressing appellant's disability as of February 11, 2018 and continuing. It afforded her 30 days to submit the requested evidence.

On July 5, 2019 appellant filed a notice of recurrence (Form CA-2a) claiming a recurrent need for medical treatment and wage-loss compensation from February 9, 2018 onwards. She indicated that she had restrictions on file, but her job was terminated/withdrawn on February 9, 2018 due to the accepted conditions. Appellant added that she filed the Form CA-2a "due to withdrawal of job I was working due to accepted conditions."

Appellant submitted medical evidence, which noted the history of the May 12, 2017 employment injury, discussed her medical conditions and her ability to work. This included a July 15, 2019 report from Dr. John W. Ellis, a Board-certified family practitioner, and medical evidence from Dr. Jeffrey Traina, a Board-certified orthopedic surgeon, dated February 5 through June 6, 2018.

In a July 16, 2019 letter, the employing establishment indicated that after appellant's injury and period of disability, it made multiple unsuccessful attempts to contact appellant to request medical documentation substantiating her absences and/or report to work. It indicated that it had terminated appellant's employment pursuant to its attendance policy as she failed to report to work without a probative cause and substantial justification.

Appellant submitted additional statements dated August 20 and September 23, 2019 and a June 27, 2019 report from Dr. Richard Francis, an orthopedic spine specialist.

By decision dated September 24, 2019, OWCP denied appellant's claim for compensation from February 11, 2018 through June 13, 2019 and continuing. It found that the employing establishment exercised its right to terminate her from employment effective February 9, 2018 as she had failed to report to work without probable cause and substantial justification. OWCP concluded that the evidence failed to establish that appellant's disability occurred or increased due to a change in the nature and extent of her light-duty job requirements or withdrawal of a light-duty assignment made specifically to accommodate her employment-related condition.

On November 8, 2019 appellant requested reconsideration. She submitted a November 7, 2019 report from T. Keith Wheeler, a chiropractor, and October 17, 2018 and April 23, 2020 reports from Dr. Ellis.

By decision dated June 25, 2020, OWCP denied modification of its September 24, 2019 decision. It listed Dr. Ellis' reports and hospital reports received.

The Board, having duly considered the matter, notes that in denying appellant's November 8, 2019 reconsideration request, OWCP did not fully discuss the medical evidence submitted in support of the reconsideration request.

Because Board decisions are final with regard to the subject matter appealed,³ it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁴ As OWCP did not address the relevant medical evidence, which was of record prior to OWCP's June 25, 2020 decision the Board finds that this case is not in posture for decision.⁵ On remand, OWCP shall review all relevant submitted evidence of record at the time of the June 25, 2020 decision. Following any further development of the medical evidence deemed necessary, it shall issue a *de novo* decision.

³ 20 C.F.R. § 501.6(d).

⁴ See *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *B.C.*, Docket No. 15-1222 (issued October 20, 2015); *William A. Couch*, 41 ECAB 548, 553 (1990).

⁵ See *M.N.*, Docket No. 20-0110 (issued July 7, 2020); *Y.B.*, Docket No. 20-0205 (issued July 7, 2020); *H.H.*, Docket No. 14-1985 (issued June 26, 2015).

IT IS HEREBY ORDERED THAT the June 25, 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: July 2, 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