

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

P.K., Appellant

and

**DEPARTMENT OF DEFENSE, DEFENSE
COMMISSARY AGENCY, QUANTICO
COMMISSARY, Quantico, VA, Employer**

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**Docket No. 20-0940
Issued: June 1, 2021**

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 26, 2020 appellant, through counsel, filed a timely appeal from a March 6, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 20-0940.

On July 27, 2018 appellant, then a 50-year-old commissary worker, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2018 she injured her left shoulder while in the performance of duty. She explained that she strained her shoulder while pulling pallet jacks filled with produce to the produce section after unloading a truck. On the reverse side of the claim form, the employing establishment indicated that appellant was injured in the performance of duty on July 17, 2018 and stopped work on July 21, 2018.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

In a development letter dated August 17, 2018, OWCP informed appellant that additional evidence was needed in support of her claim and afforded her 30 days to submit the requested evidence.

By decision dated September 18, 2018, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish a diagnosed medical condition in connection with the accepted July 17, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On October 23, 2018 appellant requested reconsideration. She submitted additional medical evidence.

By decision dated January 18, 2019, OWCP modified its September 18, 2018 decision finding that the evidence of record established a diagnosed medical condition; however, it found that the claim remained denied as the evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted July 17, 2018 employment incident.

On March 1, 2019 appellant requested reconsideration. She submitted additional medical evidence.

By decision dated May 20, 2019, OWCP denied modification of its January 18, 2019 decision.

Following OWCP's May 20, 2019 decision, appellant submitted November 5, December 11, 2018, and April 30, 2019 reports from Dr. Anthony Ho, a Board certified orthopedic surgeon.

OWCP also received: November 12, 2018 progress notes by Dr. Jennifer Coulter, an osteopath Board-certified in physical medicine and rehabilitation; a January 25, 2019 report by Dr. Harman Bajwa, Board-certified in neurology; an April 30, 2019 report by Dr. Diane Franchi, Board-certified in internal medicine; and July 17, 2019 hospital records signed by Dr. Ken Accousti, a Board-certified orthopedic surgeon.

Additionally, OWCP received October 6, 2019 emergency department notes by Dr. Brian Hoff, Board-certified in emergency medicine, and Dr. Brent Williamson, Board-certified in internal medicine; and an October 6, 2019 magnetic resonance imaging scan of appellant's cervical spine interpreted by Dr. Heather Newman, Board-certified in radiology.

On December 19, 2019 appellant, through counsel, requested reconsideration. Appellant submitted a November 8, 2019 report from Dr. Accousti.

By decision dated March 6, 2020, OWCP denied modification of its May 20, 2019 decision. It found that the evidence reviewed in support of appellant's reconsideration request included a November 8, 2019 narrative medical report by Dr. Accousti and appellant's December 19, 2019 reconsideration request.

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*,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.

OWCP's March 6, 2020 decision stated that the evidence it reviewed in support of appellant's reconsideration request included a November 8, 2019 narrative medical report by Dr. Accousti and appellant's December 19, 2019 reconsideration request. However, OWCP did not address the medical reports from Dr. Ho dated November 5, 2018, December 11, 2018 and April 30, 2019, November 12, 2018 progress notes by Dr. Coulter, a January 25, 2019 report by Dr. Bajwa, an April 30, 2019 report by Dr. Franchi, July 17, 2019 hospital records by Dr. Accousti, and October 6, 2019 emergency department notes by Dr. Hoff and Dr. Williamson.

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 The Board finds that, this case is not in posture for decision, as OWCP did not address the above-noted evidence in its March 6, 2020 decision.⁴ On remand OWCP shall address all evidence of record and following any further development as it deems necessary, it shall issue a *de novo* decision.

² 41 ECAB 548 (1990); *D.M.*, Docket No. 20-0099 (issued July 16, 2020); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

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

⁴ *Supra* note 2; *see also V.C.*, Docket No. 16-0694 (issued August 19, 2016).

IT IS HEREBY ORDERED THAT the March 6, 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: June 1, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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