

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

K.C., Appellant)	
)	
and)	Docket No. 21-0255
)	Issued: November 30, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Aurora, CO, 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 December 1, 2020 appellant filed a timely appeal from June 8 and August 3, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 21-0255.²

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from June 8, 2020 was December 5, 2020. As this fell on a Saturday, appellant had until the following business day, Monday, December 7, 2020 to file the appeal from the June 8, 2020 decision. *See* 20 C.F.R. § 501.3(f)(3). Since using December 10, 2020, the date the appeal was received by the Clerk of the Appellate Boards would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is December 1, 2020, which renders the appeal with regard to the June 8, 2020 decision timely filed. *See* 20 C.F.R. § 501.3(f)(1).

² The Board notes that, by decision dated May 14, 2021, OWCP denied modification of the August 3, 2020 decision. However, appellant had already filed the current appeal to the Board on December 10, 2020. The OWCP may not simultaneously have jurisdiction over the same issue. Consequently, the May 14, 2021 decision is set aside as null and void. *See L.F.*, Docket No. 19-1275 (issued October 29, 2020); *Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993) (Alternate Member, Groom concurring in part and dissenting in part); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

On December 10, 2018 appellant, then a 54-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that on November 11, 2018 she sustained left knee and right wrist injuries when she tripped over an empty bin cart while in the performance of duty. On February 8, 2019 OWCP accepted appellant's claim for contusion of the left knee and sprain of the right wrist. On August 14, 2019 it expanded the acceptance of the claim to include strain of the muscle, fascia, and tendons of the lower back. OWCP subsequently also accepted lumbar spondylosis without myelopathy or radiculopathy, and sacroiliitis.

In a report dated February 7, 2020, Dr. Amanda Cava, a Board-certified family practitioner, diagnosed lumbar spondylosis without myelopathy or radiculopathy and advised that appellant would undergo right wrist surgery on February 25, 2020. Dr. Cava recommended no work beginning February 25, 2020. On February 25, 2020 appellant underwent OWCP-approved right wrist arthroscopy performed by Dr. Kulvinder Sachar, a Board-certified orthopedic and hand surgeon.

On March 16, 2020 appellant filed claims for compensation (Form CA-7) for disability from work for the periods February 25 through 29 and March 1 through 14, 2020.

In a letter from the employing establishment dated March 23, 2020, a representative of the employing establishment explained that appellant had not worked due to surgery for her on-the-job injury from February 25 through March 12, 2020, and that she returned to a limited-duty assignment at four hours per day on March 13, 2020 as instructed by her physician.

OWCP subsequently received additional evidence. On March 9 and 23, 2020 a physician assistant assessed contusion of appellant's left knee, ganglion cyst of the volar aspect of the right wrist, right wrist sprain, and lumbar strain. On March 9, 2020 he recommended that appellant return to work with restrictions of working only four hours per day, lifting up to 10 pounds occasionally, pushing/pulling up to 10 pounds occasionally, wearing a splint/brace on the right upper extremity, and sitting 50 percent of the time. On March 23, 2020 the physician assistant again noted appellant's restrictions, but indicated that appellant could work up to eight hours per day.

On April 15, 2020 appellant filed a Form CA-7 for the period March 1 through 10, 2020.

OWCP subsequently received a report dated April 9, 2020, wherein Dr. John Aschberger, Board-certified in physical medicine and rehabilitation, diagnosed strain of the muscle, fascia, and tendons of the lower back, lumbar facet pain, and wrist strain. He noted that appellant was currently working, but with a reduced schedule, stating that appellant had been working four hours per day due to her right wrist condition, but that now she was working two six-hour days per week.

By decision dated June 8, 2020, OWCP denied appellant's claim for wage-loss compensation, finding that she had not established disability from work for the period February 25 through 29, 2020 causally related to the accepted November 11, 2018 employment injury. It stated that it had not received from appellant any medical evidence supporting a restrictive work schedule.

On June 8, 2020 OWCP received a report dated April 29, 2020 in which Dr. Cava diagnosed right wrist sprain, triangular fibrocartilage complex (TFCC) tear, and lumbar strain.

Dr. Cava noted that appellant's wrist strain was improving and that "she was released by Dr. Sachar" on March 30, 2020. She noted that appellant could return to modified work and work her entire shift with restrictions of lifting up to 10 pounds constantly and 20 pounds occasionally, with pushing/pulling of up to 20 pounds occasionally.

By decision dated August 3, 2020, OWCP denied appellant's claim for wage-loss compensation, finding that she had not established disability from work for the period March 1 through 28, 2020 causally related to the accepted November 11, 2018 employment injury. It noted that it had not received any medical evidence supporting a restrictive work schedule.

The Board has duly considered this matter and finds that this case is not in posture for a decision. In the case of *William A. Couch*,³ 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 June 8 and August 3, 2020 decisions, OWCP failed to address the relevant evidence submitted by appellant. As such, OWCP failed to follow its procedures by properly discussing all of the relevant evidence of record.⁴ 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.⁵

The Board thus finds that this case is not in posture for decision, as OWCP did not address the evidence submitted by appellant in support of her claims for compensation.⁶ On remand, OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.

³ 41 ECAB 548 (1990); *see also S.H.*, Docket No. 19-1582 (issued May 26, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁴ "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).

⁵ *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 3.

⁶ *See S.H.*, *supra* note 3; *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

IT IS HEREBY ORDERED THAT the August 3 and June 8, 2020 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: November 30, 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