

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

R.Z., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pembroke Pines, FL, Employer**

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**Docket No. 20-0766
Issued: October 12, 2021**

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 February 24, 2020 appellant sought an appeal from a February 10, 2020 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-0766.

On May 31, 2005 appellant, then a 46-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that repetitive lifting and loading of flats caused injury to his lower left back and left leg. He noted that he first became aware of his conditions and realized their relationship to his federal employment on May 17, 2005. On August 3, 2005 OWCP accepted the claim for sprain/strain of the lumbar region and paid compensation. On September 23, 2008 it expanded the acceptance of the claim to include herniated nucleus pulposus (HNP) at L2-3 and L4-5. OWCP paid appellant wage-loss compensation for intermittent disability on the supplemental rolls as of September 1, 2005 and on the periodic rolls beginning June 6, 2010.

By decision dated February 25, 2014, OWCP issued a loss of wage-earning capacity (LWEC) decision and reduced appellant's compensation, effective March 9, 2014, based on the constructed position of data entry clerk with the ability to earn \$390.00 per week.¹

Appellant requested modification of the LWEC determination by filing requests for reconsideration. OWCP last denied modification of the LWEC decision on August 8, 2019. It reviewed the medical evidence appellant submitted in support of his request for modification of the LWEC and found that the evidence was insufficient to modify the February 24, 2014 LWEC decision.

On January 16, 2020 appellant wrote to his OWCP claims examiner. He noted that he was inquiring about the status of a refund to which he was entitled, commencing on November 21, 2013. Appellant also indicated that he was enclosing 135 pages of documentation to show that his hip labral tear was an accepted condition and medical reports to support that he had pain and suffering. OWCP received copies of prior decisions from OWCP, and letters related to appellant's LWEC determination, and correspondence/documents from the employing establishment. It also received medical evidence including an illegible attending physician's report, a December 7, 2017 disability certificate and medical reports from Dr. Neil A. Beinhaker, an orthopedic surgery specialist, a January 9, 2020 report from Dr. Lance Lehmann, a Board-certified anesthesiologist, and a January 29, 2020 report from Dr. Erick M. Salado, a family medicine specialist. OWCP also received part of a motion from the United States District Court, Southern District of Florida, which included a partially-illegible proposed settlement, motion to show just cause, and motion to quash service or dismiss.

On February 10, 2020 OWCP acknowledged receipt of appellant's January 16, 2020 letter, which inquired into the status of his refund and discussed his hip labral tear. It informed appellant that his request to modify the LWEC decision was previously denied on August 8, 2019, and enclosed a copy of that decision. OWCP noted that the August 8, 2019 LWEC decision had an attached appeal rights form and that appellant could follow any of the courses of action outlined therein.

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

Appellant submitted a statement received by OWCP on January 16, 2020, with arguments and documentation in support of his request for modification of OWCP's February 25, 2014 LWEC decision. OWCP, however, did not address appellant's arguments or the evidence

¹ On January 9, 2014 OWCP proposed to reduce appellant's LWEC benefits based on his capacity to earn wages of \$390.00 per week as a data entry clerk. It found that he was no longer totally disabled, and that the position of data entry clerk was medically and vocationally suitable, and fairly and reasonably represented his wage-earning capacity.

² 41 ECAB 548 (1990); see *K.B.*, Docket No. 20-1320 (issued February 8, 2021); see also *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

submitted; instead it summarily denied appellant's request for review of his claim and modification of the LWEC determination. As such, it failed to consider all of the relevant evidence of record, in denying appellant's request for modification of the LWEC determination.³

It is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision, as Board decisions are final with regard to the subject matter appealed.⁴ The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted arguments and evidence in its February 10, 2020 decision.⁵ On remand, following any further development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the February 10, 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: October 12, 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

³ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should 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 *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *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.

⁵ *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).