

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

_____)
D.J., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Evergreen Park, IL, Employer)
_____)

Docket No. 21-0826
Issued: February 8, 2022

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 May 7, 2021 appellant filed a timely appeal from an April 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 21-0826.

On December 14, 2017 appellant, then a 28-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on that day she hit her head on the steering wheel when she was involved in a motor vehicle accident while in the performance of duty. On December 21, 2017 OWCP accepted appellant's claim for strain of muscle and tendon of lower back and contusion of unspecified part of the head.

Beginning on August 5, 2020, appellant filed claims for compensation (Form CA-7) for disability from work commencing July 15, 2020.

¹ The Board notes that, following the April 8, 2021 decision, OWCP received additional evidence. 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.*

By decision dated September 21, 2020, OWCP denied appellant's claims for a recurrence of disability as commencing July 15, 2020 as the medical evidence was insufficient to establish disability due to a material change/worsening of her accepted employment-related conditions.

On October 1, 2020 OWCP received duty status reports (Form CA-17) dated from January 6, 2018 from Dr. Cornelius Rogers, a Board-certified internist, wherein he related appellant's work restrictions.

On October 13, 2020 appellant filed a Form CA-7 for disability from work for the period September 26 through October 9, 2020. She continued to file CA-7 forms for disability through October 23, 2020.

On October 27, 2020 appellant requested reconsideration of OWCP's September 21, 2020 decision.

OWCP received CA-17 forms on January 14 and 29, 2021, from Dr. Rogers, dated through January 11, 2021 wherein he continued to relate appellant's work restrictions.

Appellant also submitted a medical report dated February 11, 2021 from Dr. Cornelius Rogers, a Board-certified internist. Dr. Rogers related that appellant complained of back pain, which began on December 15, 2017 as a result of a motor vehicle accident. He also stated that appellant had decreased straight leg raising and degenerative changes and diagnosed her with lumbar strain with lumbar radiculopathy. Dr. Rogers noted that appellant had not been able to work since June 26, 2020 and that her symptoms which were not present prior to the accident progressed while attempting to perform her job duties.

Appellant continued to file CA-7 forms for disability from work through February 26, 2021.

In a March 5, 2021 development letter, OWCP informed appellant of the deficiencies of her claims for disability commencing January 16, 2016, but noted that she had stopped work on January 2, 2021. It advised her of the type of evidence required and afforded her 30 days to respond.

In a medical report dated March 30, 2021, Dr. Rogers again diagnosed lumbar strain with lumbar radiculopathy. He explained that, as appellant was not given physical therapy and returned to work in a supervisory position, which entailed sitting and walking and overtime, the lack of therapy caused her condition to deteriorate. Dr. Rogers noted that the symptoms were not present prior to the accident and progressed while appellant was attempting to perform her job duties and not receiving therapy. He also noted that she had been unable to work since June 26, 2020. In a Form CA-17 dated March 30, 2021, Dr. Rogers concluded that appellant was totally disabled from returning to work.

By decision dated April 8, 2021, OWCP denied appellant's claim for disability commencing January 2, 2021. With regard to the evidence received, OWCP stated, "In response to, or since the issuance of, the development letter dated February 26, 2021, we have received: duplicate medical report from Dr. Cornelius Rogers dated February 11, 2021." It did not reference

the medical report dated March 30, 2021 from Dr. Rogers, or any of the CA-7 forms received since the September 21, 2020 decision.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that medical reports were not reviewed by OWCP in its April 8, 2021 decision.² OWCP only acknowledged receipt of Dr. Rogers' February 11, 2021 report. It provided no discussion of the other medical reports submitted to the record in support of appellant's CA-7 claims for compensation for the period January 2, 2021 and continuing received prior to and on the day of issuance of OWCP's April 8, 2021 decision.

Because Board decisions are final with regard to the subject matter appealed,³ it is crucial that OWCP consider all relevant evidence received prior to the issuance of its final decision.⁴ As OWCP did not consider relevant evidence, which was submitted prior to and on the day of OWCP's April 8, 2021 decision, the Board finds that this case is not in posture for decision.⁵ On remand OWCP shall review all relevant evidence that was of record at the time of the April 8, 2021 decision. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

² See *D.B.*, Docket No. 21-0984 (issued December 27, 2021); *T.G.*, Docket No. 19-1930 (issued January 8, 2021).

³ 20 C.F.R. § 501.6(d).

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). See also *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Linda Johnson*, 45 ECAB 439 (1994) (OWCP must review all evidence relevant to the subject matter and received by OWCP before issuance of its final decision including medical reports received on the same day it issues its decision); *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 April 8, 2021 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: February 8, 2022
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