

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

N.S., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PATROL,)
College Park, GA, Employer)

Docket No. 21-1102
Issued: February 7, 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 July 14, 2021 appellant filed a timely appeal from a July 9, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 21-1102.¹

On November 22, 2010 appellant, then a 48-year-old mission support specialist, filed a traumatic injury claim (Form CA-1) alleging that on October 27, 2010 she sustained stiffness and pain in the right side of her neck and shoulder over a two-week period of copying and cleaning up files while in the performance of duty. By decision dated January 6, 2011, OWCP accepted the claim for brachial neuritis or radiculitis, not otherwise specified, right-side sprain of neck, and disorder of bursae and tendons in shoulder region, unspecified, right.

On February 4, 2021 Dr. Rajiv Pandya, a Board-certified orthopedic surgeon, diagnosed right shoulder pain and a full thickness right rotator cuff tear with impingement. He recommended

¹ The Board notes that, following the July 9, 2021 OWCP decision, appellant submitted additional evidence on appeal. 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.*

surgical intervention in the form of arthroscopy with a rotator cuff repair, subacromial decompression, and addressing any biceps pathology as appropriate.

By decision dated March 15, 2021, OWCP denied expansion of the acceptance of the claim to include the conditions of complete rotator cuff tear, rupture of the right shoulder, or primary osteoarthritis as a consequential injury.

On March 16, 2021 OWCP received a statement from appellant dated January 15, 2021 describing her job duties.

In an April 12, 2021 report, Dr. Pandya related that appellant's right shoulder bursitis was more likely than not the direct result of her repetitive work activities. He also explained that appellant's right shoulder impingement syndrome was a typical progression over time of enlarging subacromial space bone spurs, resulting in increased narrowing of the subacromial space and long-term wear and tear of the rotator cuff musculature.

OWCP continued to receive evidence. In a March 4, 2021 report Dr. Pandya opined that her injuries were all secondary to a work-related injury that she sustained on October 27, 2010. Dr. Pandya explained that appellant related that two weeks prior to her injury, she photocopied printed matter using a photocopier, filed the papers, and also had to use a sharpie to block out social security information. He further noted that appellant related that she went through this repetitive type of work over a two-week period on a daily basis and progressively developed pain in the right side of her neck radiating down to the right trapezial area. Dr. Pandya noted that appellant denied these symptoms prior to October 27, 2010. He diagnosed full thickness rotator cuff tear, shoulder pain, and impingement syndrome of the right shoulder. Dr. Pandya explained that, due to the presentation of her right shoulder symptoms on October 27, 2010 and lack of prior symptoms, "we can confidently say with highest medical confidence that there is a causal relationship between her current issues with her right shoulder and her injury on October 27, 2010 while working."

On April 30, 2021 appellant requested reconsideration.²

OWCP received reports from Dr. James E. Ellner, a specialist in interventional pain medicine, dated December 20, 2019, January 15, February 10, April 14, May 5, and June 25, 2020, February 1 and 18, March 30, April 15, and May 5, 2021. It also received a May 21, 2021 report from a physician assistant.

By decision dated July 9, 2021, OWCP denied modification of its March 15, 2021 decision. It indicated that the evidence reviewed in support of appellant's reconsideration request included the January 15, 2021 statement from appellant received on March 16, 2019, and the April 12, 2021 report from Dr. Pandya.

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*,³ the Board held that, when adjudicating a claim, OWCP

² Appellant initially timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. However, on April 30, 2021 appellant withdrew her hearing request and requested reconsideration.

³ 41 ECAB 548 (1990); see *P.K.*, Docket No. 20-0940 (issued June 1, 2020); *D.M.*, Docket No. 20-0099 (issued July 16, 2020); see also *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

While the July 9, 2021 decision addressed appellant's January 15, 2021 statement and the April 12, 2021 report from Dr. Pandya, OWCP did not review the March 4, 2021 report from Dr. Pandya, the medical reports from Dr. Ellner dated December 20, 2019 to May 17, 2021, and the notes from the physician assistant.

It is crucial that OWCP review 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.⁴ The Board finds that this case is not in posture for decision, as OWCP did not review the above-noted evidence in its July 9, 2021 decision.⁵ 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.

IT IS HEREBY ORDERED THAT the July 9, 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 7, 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

⁴ See *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *id.*

⁵ *Supra* note 2; see also *V.C.*, Docket No. 16-0694 (issued August 19, 2016).