

A.B., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Keyser, WV, Employer**

Case Submitted on the Record

¹ The Board notes that, following the November 10, 2021 decision, appellant submitted additional evidence to the Board. 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.*

She related that appellant's symptoms had resolved. Dr. Gross diagnosed low back pain and sprain of ligaments of lumbar spine, indicating that both conditions had resolved. She advised that appellant could return to full-duty work. In a duty status form of even date, Dr. Gross released appellant to return to work without restrictions beginning August 18, 2021.

In an August 22, 2021 report, Dr. Gross related that appellant attempted to resume full-duty work, but developed debilitating back pain and spasm three hours into his shift, and was unable to complete the shift. She diagnosed sprain of ligaments in lumbar spine, low back pain, and muscle spasm, and recommended that he follow up with an orthopedist for further evaluation. Dr. Gross advised no heavy lifting. In a duty status form of even date, she recommended modified duty beginning August 23, 2021 with restrictions including working only three to four hours per day and lifting and carrying no more than 50 pounds.

On August 26, 2021 appellant accepted a part-time, limited-duty job offer for a rural carrier associate (RCA) position, working four hours per day. The duties of the assignment required carrying mail and packages up to 50 pounds for up to four hours per day. The physical requirements of the position involved lifting up to 50 pounds for 30 minutes, delivering mail for three and a half hours, and driving a vehicle for three and a half hours.

On September 7, 2021 OWCP accepted appellant's claim for sprain of the lumbar spine.

In a September 8, 2021 duty status form, Dr. Gross diagnosed sprain of ligaments of lumbar spine, low back pain, muscle spasm, and lumbosacral radiculopathy and recommended modified duty beginning on September 9, 2021 with restrictions including only four hours of work per day and lifting and carrying no more than 20 pounds.

On September 9, 2021 appellant accepted a part-time, limited-duty job offer for an RCA position identical to the August 26, 2021 offer, with the exception that he would only be required to lift up to 20 pounds.

On September 9, 2021 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period August 14 through 27, 2021.

By decision dated November 10, 2021, OWCP denied appellant's claim for wage-loss compensation, finding that he had not established disability from work for the period August 19, 2021 and continuing causally related to the accepted June 1, 2021 employment injury.

The Board has duly considered this 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.

² 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).

In its November 10, 2021 decision, OWCP failed to address the August 22, 2021 report and duty status form from Dr. Gross. As such, it failed to follow its procedures by properly discussing all of the evidence of record.³ It is crucial that OWCP address all evidence relevant to the subject matter properly submitted 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 thus finds that this case is not in posture for decision, as OWCP did not address the evidence submitted by appellant in support of his claim for compensation.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 November 10, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 28, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

A handwritten signature in black ink, appearing to read "J. D. McGinley", written in a cursive style.

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

³ "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).

⁴ 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 2.

⁵ See *S.H.*, *supra* note 2; *V.C.*, Docket No. 16-0694 (issued August 19, 2016).