United States Department of Labor
Employees' Compensation Appeals Board

K.P., Appellant	)	
and	)	**Docket No. 21-1065**
	)	**Issued: March 30, 2022**
DEPARTMENT OF VETERANS AFFAIRS, SAN DIEGO VA MEDICAL CENTER, San Diego, CA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 9, 2021 appellant filed a timely appeal from a May 3, 2021 merit decision and a July 1, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 21-1065.

On August 6, 2008 appellant, then a 31-year-old vocational nurse, filed an occupational disease claim (Form CA-2) alleging that she sustained right upper extremity injuries as a result of factors of her federal employment including repetitive use of a computer, keyboarding, and extensive dressing changes for patients. She indicated that she first became aware of her condition and its relationship to her federal employment on March 3, 2008. OWCP accepted the claim for right-sided thoracic outlet syndrome, also known as brachial plexus lesions.

On November 18, 2009 appellant underwent a right first rib resection with right anterior scalenectomy to treat her diagnosed right thoracic outlet syndrome.

In a report dated May 8, 2010, Dr. Christopher Chisholm, a pain medicine specialist, diagnosed reflex sympathetic dystrophy (RSD), also known as complex regional pain syndrome (CRPS), of the upper right limb, and myofascial myalgia and myositis.

In a report dated October 11, 2010, Dr. Marilyn Carlin, an internist, diagnosed RSD secondary to thoracic outlet syndrome despite surgical intervention.

Dr. Carlin, in a report dated April 4, 2011, diagnosed thoracic outlet syndrome with failed response to surgery, right upper extremity chronic pain syndrome, possibly RSD, and right hemidiaphragm paralysis as a complication of thoracic outlet syndrome, causing dyspnea on exertion.

In a report dated October 10, 2011, Dr. Carlin diagnosed thoracic outlet syndrome, myofascial pain syndrome *versus* RSD secondary to thoracic outlet syndrome and right diaphragmatic paralysis secondary to thoracic outlet surgery.

In a report dated June 10, 2013, Dr. Carlin diagnosed thoracic outlet syndrome with increasing pain following surgical intervention, RSD, myofascial pain syndrome, diaphragmatic paralysis causing dyspnea on exertion, and recurrent major depression exacerbated by chronic pain. She opined that factors of appellant's federal employment caused appellant's increased pain. Dr. Carlin recommended work restrictions.

In a report dated June 25, 2014, Dr. Carlin diagnosed cervicalgia, diaphragmatic paralysis, myofascial pain syndrome, recurrent major depression in full remission, RSD of the right upper extremity, and thoracic outlet syndrome. In a report dated September 22, 2014, she diagnosed thoracic outlet syndrome with poor results after surgical intervention, flare-up of chronic cervicalgia and myofascial pain syndrome, RSD of the right upper extremity, also in flare-up, and recurrent major depression in remission. Dr. Carlin again diagnosed these conditions in progress notes dated August 22, 2014.

In a letter dated February 2, 2015, Dr. Carlin requested that the acceptance of appellant's claim be expanded to include fibromyalgia. She explained that it had developed as a result of appellant's chronic neck, chest wall, and right arm pain, secondary to failed surgery for thoracic outlet syndrome and secondary RSD.

In a report dated June 25, 2015, Dr. Carlin explained that appellant continued to suffer from thoracic outlet syndrome with increased pain following failed surgical intervention, along with RSD and a postsurgical right partially paralyzed diaphragm. She noted that appellant had been diagnosed with fibromyalgia as a result of her chronic myofascial pain. Dr. Carlin stated that appellant's conditions continued to be medically present and disabling and that appellant was permanently disabled from all work. She reiterated appellant's diagnoses and disability status in narrative medical reports dated June 27, 2016 and July 17, 2017.

In progress notes dated August 24, 2016, Dr. Carlin noted, as part of appellant's history of present illness, that appellant had been diagnosed with fibromyalgia, failed surgery for thoracic outlet syndrome, and development of RSD of the right upper extremity.

In a report dated July 13, 2018, Dr. Carlin again diagnosed thoracic outlet syndrome with increased pain following surgical intervention, RSD of the right upper extremity, which began after the failed surgery, fibromyalgia, secondary to chronic pain, diaphragmatic paralysis causing some dyspnea on exertion, also a result of the failed surgery, and recurrent major depression exacerbated by her chronic pain syndromes. She stated that appellant's conditions continued to be

medically present and disabling, noting that appellant's physical restrictions were extensive and unlikely to allow her to work effectively in any job. Dr. Carlin reiterated these diagnoses and opinions in a letter dated August 20, 2019.

In progress notes dated February 10, 2021, Dr. Peter Weis, a Board-certified rheumatologist, examined appellant to evaluate her for fibromyalgia. He diagnosed left hip trochanteric bursitis, pain syndrome related to complications of thoracic outlet surgery with chronic neck pain, and CRPS of the right upper extremity, refractory to surgery.

In a development letter dated March 24, 2021, OWCP advised appellant that it had received notification of a possible consequential condition of CRPS of the right upper extremity. It noted receipt of Dr. Weis' February 10, 2021 report, but indicated that it required a detailed description of the newly diagnosed condition. OWCP afforded appellant 30 days to submit additional medical evidence. No additional evidence was received by OWCP.

By decision dated May 3, 2021, OWCP denied appellant's request to expand the acceptance of her claim to include CRPS of the right upper extremity. It again referenced Dr. Weis' February 10, 2021 report. By appeal request form dated June 2, 2021, postmarked on June 3, 2021 and received by OWCP on June 9, 2021, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated July 1, 2021, OWCP denied her request for an oral hearing, as the request was untimely filed. It noted that appellant's case had been considered in relation to the issues involved and that the issues could be equally well addressed by requesting reconsideration and submitting evidence not previously considered establishing that she sustained a consequential injury due to her accepted injury of March 3, 2008.

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*,[1] 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. As detailed above, OWCP received a report from Dr. Chisholm dated May 8, 2010, containing a diagnosis of RSD, also known as CRPS. It also received numerous reports, letters, and progress notes from Dr. Carlin beginning October 11, 2010 containing diagnoses of RSD. OWCP, however, did not review this evidence in its May 3, 2021 merit decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.[2]

[1] 41 ECAB 548 (1990); *see also K.B.*, Docket No. 20-1320 (issued February 8, 2021); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

[2] 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).

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.[3] On remand shall review and consider all evidence properly submitted by appellant prior to the issuance of the May 3, 2021 OWCP decision. Following other such further development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the May 3, 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.[4]

Issued: March 30, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[3] *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see also L.B.*, Docket No. 21-0140 (issued August 25, 2021); *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, *supra* note 1.

[4] As this case is remanded for further proceedings, the July 1, 2021 denial of appellant's request for an oral hearing before an OWCP hearing representative is rendered moot.