

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

N.M., Appellant)	
)	
and)	Docket No. 21-0357
)	Issued: September 30, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Katy, TX, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

On January 4, 2021 appellant filed a timely appeal from a November 17, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 21-0357.

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior order are incorporated herein by reference. The relevant facts are as follows.

On November 15, 2018 appellant, then a 29-year-old postal worker, filed a notice of recurrence of disability claim (Form CA-2a) alleging that on October 26, 2018 she felt pain in her lower back from pulling pallets of mail on a pallet jack and constantly bending, separating mail,

¹ The Board notes that following the November 17, 2020 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 evidence for the first time on appeal. *Id.*

² *Order Remanding Case*, Docket No. 19-1825 (issued May 15, 2020).

and dropping tubs of mail.³ She indicated that the date of her original injury was on June 23, 2017, and that her back pain had been “on and off” since she returned to work. Appellant also noted that she was in an off-duty car accident on October 27, 2018.

By decision dated April 5, 2019, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty on October 26, 2018, as alleged.

On April 29, 2019 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. In a June 10, 2019 letter, an OWCP hearing representative notified appellant that a telephonic hearing was scheduled for Friday, July 24, 2019 at 1:30 p.m. Eastern Standard Time (EST). Appellant did not appear for the hearing.

By decision dated August 5, 2019, OWCP determined that appellant had abandoned her request for an oral hearing.

Appellant filed an appeal with the Board on August 28, 2019. By order dated May 15, 2020, the Board set aside the April 5 and August 5, 2019 decisions and remanded the case to OWCP to administratively combine OWCP File Nos. xxxxxx309 and xxxxxx594 and explain to appellant why it converted her claim to a traumatic injury claim. Following other such development, OWCP was to issue a *de novo* decision.⁴

Upon return of the case record OWCP administratively combined OWCP File Nos. xxxxxx309 and xxxxxx594, with the former serving as the master file number.

In a July 27, 2020 development letter, OWCP advised appellant that her claim was converted into a new traumatic injury claim. In a July 28, 2020 development letter, it advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. OWCP afforded appellant 30 days to submit additional evidence and respond to its inquiries.

In an undated statement, appellant contended that supporting documents for her current claim were included under OWCP File No. xxxxxx309.

By decision dated November 17, 2020, OWCP denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between appellant’s diagnosed cervical and lumbar conditions and the accepted October 26, 2018 employment incident. It found that the relevant evidence from OWCP File No. xxxxxx309 consisted of an October 30, 2018 medical report from Dr. Novarro C. Stafford, a family medicine specialist. OWCP, however, did not reference the medical reports dated March 26, April 3 and

³ The notice of recurrence was originally filed under OWCP File No. xxxxxx309, which was a traumatic injury claim accepted by OWCP for a sprain of the ligaments of the lumbar spine. OWCP File No. xxxxxx309 has been administratively combined with the present claim, OWCP File No. xxxxxx594, with OWCP File No. xxxxxx309 serving as the master file.

⁴ *Id.*

24, and July 17, 2019 by Dr. Stafford, who reported that appellant sustained an acute injury to her lumbar back at work on October 26, 2018.

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*,⁵ 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.

While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that the medical reports dated March 26, April 3 and 24, and July 17, 2019 by Dr. Stafford were not referenced or reviewed by OWCP in its November 17, 2020 decision.⁶ OWCP's November 16, 2020 decision indicated that the relevant evidence from OWCP File No. xxxxxx309 consisted of the October 30, 2018 medical report from Dr. Stafford. It did not mention other reports from him.

It is crucial that OWCP review and address all evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.⁷ The Board finds that this case is not in posture for decision as OWCP did not review and address the above-noted evidence in its November 17, 2020 decision.⁸ On remand OWCP shall review and address all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.

⁵ 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁶ *See C.D.*, Docket No. 20-0168 (issued March 5, 2020).

⁷ *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 5.

⁸ *See V.C.*, Docket No. 16-0694 (issued August 19, 2016).

IT IS HEREBY ORDERED THAT the November 17, 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: September 30, 2022
Washington, DC

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

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

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