

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

_____	)	
<b>B.P., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 22-0851</b>
	)	<b>Issued: September 15, 2022</b>
<b>U.S. POSTAL SERVICE, CLEVELAND POST OFFICE, Cleveland, MS, Employer</b>	)	
_____	)	

*Appearances:*  
*Stephanie N. Leet, Esq.,* for the appellant<sup>1</sup>  
*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 May 12, 2022 appellant, through counsel, filed a timely appeal from an April 28, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0851.

On February 2, 2012 appellant, then a 37-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 24, 2012 she sustained a cervical injury when her employing establishment vehicle was rear ended by another vehicle, while in the performance of duty.

By decision dated March 13, 2012, OWCP accepted that the alleged incident occurred, but denied appellant's claim, finding that she had not established a diagnosed medical condition or

---

<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on an appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

injury in connection with the accepted January 24, 2012 employment incident. It concluded, therefore, that she had not met the requirements to establish an injury as defined by FECA.

On May 7, 2013 OWCP received appellant's May 4, 2013 request for reconsideration of the March 13, 2012 decision denying her claim. She indicated therein that the request was "in response" to OWCP's March 13, 2012 decision. Appellant added, "Since a timely claim for reconsideration was filed, I [am] including new evidence that should negate your denial decision." She submitted medical evidence in support of her claim.

On October 16, 2013 OWCP received a June 11, 2012 request for reconsideration from appellant's then-counsel.

By decision dated February 5, 2014, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

OWCP continued to receive medical evidence including progress notes dated September 22, 2014 from Dr. Michael H. Carter, Jr., an otolaryngologist, diagnosing dysphagia and nasal fracture; a January 26, 2015 order and referral for physical therapy from Dr. Mark D. Anderson, a Board-certified psychiatrist and neurologist; a February 26, 2015 physical therapy initial evaluation noting diagnoses of back and neck pain, cervical and lumbar radiculopathy, muscle spasms, and cervicgia and lumbago; and physical therapy notes dated from December 26, 2015.

On March 12, 2015 OWCP received an authorization for examination and/or treatment (Form CA-16) completed and signed by the postmaster on January 24, 2012.

In a May 11, 2015 report, Dr. Anderson noted that appellant had been evaluated for leg and left-sided arm pain following a 2012 motor vehicle accident (MVA). He reported that diagnostic tests demonstrated spinal nerve degenerative change, likely resulting in her pain.

On June 17, 2015 OWCP received appellant's undated request that her claim be "reopened."

In a February 1, 2021 report, Dr. John W. Ellis, a physician Board-certified in family medicine, noted appellant's history of injury and medical treatment. Appellant's physical examination findings were provided. Dr. Ellis diagnosed concussion, brain injury with complex integrated cerebral function, neck muscle tendon strain, deranged neck discs, bilateral brachial plexus impingement, bilateral cervical radiculopathy, right shoulder and deltoid muscle traumatic arthritis and tendinitis, resolved right forearm contusion, bilateral L4-5 and S1 nerve impingement into the legs, and deranged back discs, which he attributed to the accepted January 24, 2012 employment injury. He opined that appellant had been temporarily disabled since January 25, 2012 due to the January 24, 2012 MVA. Dr. Ellis noted that appellant attempted to return to work, but was not provided a job with any accommodations for her injuries. He concluded that the evidence established a causal relationship between her diagnosed conditions, the accepted January 24, 2012 employment injury and resulting disability.

On January 31, 2022 appellant, through counsel, requested reconsideration.

By decision dated April 28, 2022, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error. It explained that her counsel provided no cogent arguments establishing that the March 13, 2012 decision was erroneous based on the evidence of record at the time of the decision.

The Board has duly considered the matter and finds that the case is not in posture for decision. In the case of *William A. Couch*,<sup>2</sup> 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, on reconsideration appellant submitted additional evidence including medical evidence from Drs. Carter, Anderson, and Ellis, as well as physical therapy reports. OWCP, however, did not address and review this evidence in its April 28, 2022 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.<sup>3</sup>

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.<sup>4</sup> The Board finds that this case is not in posture for decision, as OWCP did not consider the above-noted evidence in its April 28, 2022 decision.<sup>5</sup> On remand following any further development as deemed necessary, OWCP shall issue an appropriate decision.<sup>6</sup>

---

<sup>2</sup> 41 ECAB 548, 553 (1990); see *Order Remanding Case, K.B.*, Docket No. 20-1320 (issued February 8, 2021); see also *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>3</sup> 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 2.1401.5b(2) (November 2012).

<sup>4</sup> *Order Remanding Case, E.D.*, Docket No. 20-0620 (issued November 18, 2020); see *Order Remanding Case, 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.

<sup>5</sup> *Order Remanding Case, D.S.*, Docket No. 20-0589 (issued November 10, 2020); see *Order Remanding Case, V.C.*, Docket No. 16-0694 (issued August 19, 2016).

<sup>6</sup> The employing establishment completed and signed a Form CA-16 on January 24, 2012. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. See 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**IT IS HEREBY ORDERED THAT** the April 28, 2022 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 15, 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