

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

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| M.A., Appellant |) | |
| |) | |
| and |) | Docket No. 23-0813 |
| |) | Issued: December 11, 2023 |
| U.S. POSTAL SERVICE, DETROIT |) | |
| PROCESSING & DISTRIBUTION CENTER, |) | |
| Detroit, MI, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On May 19, 2023 appellant filed a timely appeal from an April 18, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0813.

This case has previously been before the Board on a different issue.¹ The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 13, 2013 appellant, then a 48-year-old general clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2013 she injured her shoulders and left hip when she fell from her chair while in the performance of duty. By decision dated April 15, 2013, OWCP accepted the claim for a partial tear of the right rotator cuff. It paid appellant wage-loss compensation on the supplemental rolls, effective April 1, 2013, and on the periodic rolls, effective June 2, 2013.

¹ Docket No. 20-0317 (issued October 9, 2020).

On March 5, 2023 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated March 14, 2023, OWCP requested that appellant submit a detailed medical report from her physician addressing the permanent impairment due to her accepted employment injury in accordance the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).² It afforded her 30 days to submit the requested information. OWCP advised appellant that, if her physician was unable to provide such a report, appellant should notify them in writing, and if the evidence showed a work-related permanent impairment of a scheduled member that, was insufficient to determine the extent of permanent impairment, it would refer her for a second opinion examination.

Appellant subsequently submitted a February 6, 2023 note from Dr. Kanwar V. Mendiratta, a Board-certified pulmonologist, relating that she fell at work in February 2013, and sustained injuries to her chest wall, lungs, and ribs. Dr. Mendiratta noted that he had examined her at the time and diagnosed pulmonary contusion and chest wall contusion. He related that appellant had been treated by other physicians for her ongoing complaints of pain and difficulty breathing. Dr. Mendiratta advised that she was completely disabled.

OWCP also received copies of medical reports previously of record, as well as diagnostic testing results not previously submitted, including a magnetic resonance imaging scan of the right shoulder.

By decision dated April 18, 2023, OWCP denied appellant's schedule award claim. In its decision, it noted that it had not received any evidence in response to its development letter.

The Board has duly considered this matter and finds that the case is not in posture for decision.

In the case of *William A. Couch*,³ the Board held that when adjudicating a claim OWCP is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, OWCP received medical evidence, including a February 6, 2023 note from Dr. Mendiratta relating appellant's history of injury and advising that she was totally disabled from work. It, however, did not review this evidence in its April 18, 2023 merit decision. OWCP, thus, failed to follow its procedures by not considering all of the relevant evidence of record.⁴

² A.M.A., *Guides* (6th ed. 2009).

³ 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).

⁴ 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).

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.⁵ On remand, OWCP shall consider and address all evidence properly submitted by appellant prior to the issuance of the April 18, 2023 OWCP decision. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the April 18, 2023 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: December 11, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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

⁵ *Order Remanding Case, E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see also Order Remanding Case, L.B.*, Docket No. 21-0140 (issued August 25, 2021); *Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, *supra* note 3.