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W.W., Appellant)	
)	
and)	Docket No. 21-1432
)	Issued: February 23, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Los Angeles, CA, Employer)	
)	

Case Submitted on the Record

Before:
 JANICE B. ASKIN, Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge
 JAMES D. MCGINLEY, Alternate Judge

On July 9, 2021 appellant, then a 54-year-old city carrier assistant 1, filed an occupational disease claim (Form CA-2) alleging that he developed a right shoulder condition due to factors of his federal employment, including falling while delivering mail on October 3, 2020. He explained that he immediately reported his injury to his supervisor and was subsequently diagnosed with retracted full-thickness tears of the supraspinatus and infraspinatus tendons of the right shoulder *via* a December 30, 2020 magnetic resonance imaging (MRI) scan. On the reverse side of the claim form, appellant's supervisor noted that medical attention was offered on the date of the incident, but that appellant preferred to seek treatment from his medical provider. Appellant stopped work for three weeks following the October 3, 2020 fall.

¹ The Board notes that, following the August 12, 2021 decision, OWCP and the Board 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 additional evidence for the first time on appeal. *Id.*

Appellant provided a narrative statement and recounted that on October 3, 2020 he fell in the street while delivering mail and landed onto his outstretched right arm, injuring his right shoulder. He sought medical treatment on that date. Appellant alleged that his right shoulder injury prevented him from performing his regular job duties.

In an October 3, 2020 note, Deina Stewart, a physician assistant, reported examining appellant after he tripped and fell on concrete on that date and diagnosed a right elbow abrasion. She noted that he also reported right shoulder pain.

Dr. Kevin T. Lee, a family practitioner, diagnosed tear of the right rotator cuff on January 4, 2021.

In a note dated May 4, 2021, Dr. George Hatch, a Board-certified orthopedic surgeon, described the events of October 3, 2020 noting that appellant was delivering mail when appellant tripped and fell onto his outstretched right arm, injuring his face and damaging his glasses, and sustaining abrasions to his right arm. He also diagnosed right rotator cuff avulsion injury/proximal humerus fracture secondary to fall with retracted irreparable supraspinatus and infraspinatus and significant shoulder dysfunction. Dr. Hatch opined that these injuries were secondary to the October 3, 2020 fall and were work-related injuries.

In a July 12, 2021 development letter, OWCP informed appellant of the deficiencies in his claim. It requested additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond. No additional evidence was received.

By decision dated August 12, 2021, OWCP denied appellant's claim finding that he had not established that the injury or event(s) occurred, as alleged. It noted that he had not provided factual or medical documentation in support of his claim. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

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

Under FECA, although it is the employee's burden of proof to establish his or her claim, OWCP also has a responsibility in the development of the factual evidence.² It is the duty of the claims examiner to develop a claim based on the facts at hand and not solely on the basis of the type of claim form filed.³ The Federal (FECA) Procedure Manual provides that, if, upon review of the incorrect form, the actual benefits claimed by the claimant can be determined, OWCP should convert the claim to the correct type and notify the claimant and employing establishment *via* letter

² *T.V.*, Docket No. 20-1494 (issued June 22, 2022); *G.S.*, Docket No. 16-0908 (issued October 26, 2017); *Willie A. Dean*, 40 ECAB 1208, 1212 (1989); *Willie James Clark*, 39 ECAB 1311, 1318-19 (1988).

³ *Id.*

that the claim has been converted to a different type of injury than what was originally claimed and explain the reasons for the conversion.⁴

OWCP appears to have sought to develop appellant's claim as one for an occupational disease rather than one for a traumatic injury. Appellant indicated an occupational disease by filing a Form CA-2, but his description of the injury on his claim form, his narrative statement, his supervisor's statement, and the medical evidence of record provided establishes a claim for a traumatic injury. Consequently, OWCP should have converted the claim to a traumatic injury and then notified him and the employing establishment of the conversion.

Furthermore, in the case of *William A. Couch*,⁵ 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. While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that appellant's narrative statement and the medical reports from Drs. Hatch and Lee were not referenced or reviewed by OWCP in its August 12, 2021 decision.⁶ It is crucial that OWCP consider 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

Therefore, the case shall be remanded for conversion of the claim to one for a traumatic injury followed by appropriate notice provided to appellant. On remand, OWCP shall also consider and address all evidence of record and, following any further development as deemed necessary, it shall issue a *de novo* decision.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.3c(2)(a) (June 2011); *id.*

⁵ 41 ECAB 548 (1990); *see also* *M.M.*, Docket No. 22-0411 (issued October 7, 2022); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁶ *See M.M., id.*; *J.N.*, Docket No. 21-0086 (issued May 17, 2021); *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.

IT IS HEREBY ORDERED THAT the August 12, 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.

Issued: February 23, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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