

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

E.R., Appellant)	
)	
and)	Docket No. 23-0164
)	Issued: July 11, 2023
U.S. POSTAL SERVICE, EDEN PRAIRIE POST)	
OFFICE, Eden Prairie, MN, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 16, 2022 appellant filed a timely appeal from a November 2, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0164.²

On February 14, 2022 appellant, then a 57-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed pain in her shoulder and arm and was unable to lift her arm due to factors of her federal employment, including repetitive motion,

¹ 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 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.

² The Board notes that, following the November 2, 2022 decision, appellant submitted 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.*

delivering mail, reaching, and lifting. She noted that she first became aware of her condition and realized its relation to her federal employment on January 31, 2022. Appellant did not stop work.³

By decision dated April 20, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence submitted was insufficient to establish causal relationship between her diagnosed condition and the accepted factors of her federal employment.

On August 4, 2022 appellant, through counsel, requested reconsideration, and submitted additional evidence.

In a March 30, 2022 report, Dr. Gregory Lervick, a Board-certified orthopedic surgeon, related that appellant was seen for a follow up regarding her right shoulder. On examination, he found no muscle atrophy in the shoulders, prior arthroscopic incisions bilaterally and active range of motion with pain bilaterally. Dr. Lervick reviewed a January 31, 2022 x-ray scan and March 19, 2022 right shoulder magnetic resonance imaging scan. He diagnosed status post right arthroscopic subacromial decompression/rotator cuff repair/distal clavicle resection/long head biceps tenotomy in the remote past, and evidence of progressive right rotator cuff tear arthropathy with pseudo paralysis. Dr. Lervick held appellant off work until June 30, 2022. Appellant submitted additional reports from his dated April 19, May 2, and June 27, 2022, a narrative medical report dated May 19, 2022, and work excuse notes dated August 15 and October 17, 2022.

By decision dated November 2, 2022, OWCP denied modification of its prior decision. It only referenced the May 19, 2022 narrative medical report from Dr. Lervick.

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*,⁴ 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 the March 30, April 19, May 2, and June 27, 2022 reports from Dr. Lervick, and August 15 and October 17, 2022 work excuse notes from him were not considered and addressed by OWCP in its November 2, 2022 decision.⁵

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.⁶

³ Appellant previously filed an occupational disease claim for a June 1, 2013 left shoulder condition under OWCP File No. xxxxxx751, which OWCP denied. OWCP has not administratively combined her claims.

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

⁵ *See J.N.*, Docket No. 21-0086 (issued May 17, 2021); *C.D.*, Docket No. 20-0168 (issued March 5, 2020).

⁶ *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 4.

The Board finds that this case is not in posture for decision as OWCP did not consider and address the above-noted evidence in its November 2, 2022 decision.⁷

On remand, OWCP shall consider and address all evidence of record and, following this and any other such further development as deemed necessary, it shall issue a *de novo* decision.⁸ Accordingly,

IT IS HEREBY ORDERED THAT the November 2, 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: July 11, 2023
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

⁷ See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

⁸ *B.N.*, Docket No. 17-0787 (issued July 6, 2018).