

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

P.W., Appellant)
and) Docket No. 21-1101
U.S. POSTAL SERVICE, POST OFFICE,) Issued: March 30, 2023
Houston, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On July 15, 2021 appellant filed a timely appeal from a June 15, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-1101.

On October 15, 2018 appellant, then a 55-year-old postal carrier technician, filed an occupational disease claim (Form CA-2) alleging that she developed carpal tunnel syndrome (CTS) due to factors of her federal employment, including repetitive movement of her hands. She noted that she first became aware of her condition and its relationship to her federal employment on January 1, 2018. By letter October 20, 2022, the employing establishment controverted the claim. Appellant did not stop work.

By decision dated January 10, 2019, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received duty status reports (Form CA-17) dated November 16, 2018 through February 15, 2019 from unidentifiable healthcare providers reflecting diagnoses of CTS and cubital tunnel syndrome. It also received illegible medical reports.

On August 5, 2019 appellant requested reconsideration of OWCP's January 10, 2019 decision.

OWCP continued to receive evidence, including an initial medical evaluation report dated January 14, 2019 from Dr. Novarro Stafford, a Board-certified anesthesiologist, who indicated that appellant related complaints of pain, numbness, spasm, and weakness in her wrists and hands. Dr. Stafford noted that she attributed her symptoms to her employment duties for the past 31 years, including an incident on January 2, 2018 when she experienced acute muscle spasm in her wrists while casing mail and pushing a hamper full of parcels, followed by ongoing tightness and numbness every day that she worked thereafter. He opined that appellant had an acute exacerbation of a chronically occurring injurious event and that the recent episodes of muscle spasm, numbness, and tingling of her forearms, wrists, and hands was due to pushing hampers repetitively for the past 31 years. Dr. Stafford recommended magnetic resonance imaging scans of the hands, electromyography and nerve conduction velocity studies of the upper extremities, and physical therapy.

By decision dated October 18, 2019, OWCP modified its prior decision, finding that appellant had established a valid medical diagnosis. However, the claim remained denied, as the medical evidence of record was insufficient to establish causal relationship between her diagnosed medical conditions and the accepted employment factors.

On October 8, 2020 appellant requested reconsideration of OWCP's October 18, 2019 decision.

By decision dated November 4, 2020, OWCP denied appellant's request for reconsideration.¹

OWCP thereafter received additional medical evidence, including reports of Dr. Stafford dated November 4, 2019 through January 26, 2021 whereby he summarized appellant's medical treatment and opined that her diagnosed conditions of CTS and cubital tunnel syndrome were caused by her work duties.

In a medical report dated March 10, 2021, Dr. Charles E. Willis, II, a Board-certified anesthesiologist and pain management specialist, noted that appellant related complaints of pain and discomfort in her bilateral upper extremities, which she attributed to performing highly repetitive manual labor duties such as pushing, pulling, lifting, carrying, and manipulating medium to heavy loads. He opined that her diagnosed conditions were not age related.

On June 2, 2021 appellant again requested reconsideration.

In a follow-up report dated March 23, 2021, Dr. Willis reiterated appellant's upper extremity complaints. He reiterated his diagnoses and opinion regarding causal relationship as outlined in his March 10, 2021 report.

¹ Appellant appealed to the Board. However, she requested that the appeal be dismissed. By order dated May 7, 2021, the Board dismissed appellant's appeal. *Order Dismissing Appeal*, Docket No. 21-0532 (issued May 7, 2021).

By decision dated June 15, 2021, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board finds that this case is not in posture for decision.

OWCP summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.² Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.³ Its regulations at 20 C.F.R. § 10.126 provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.⁴ As well, OWCP's procedures provide that the reasoning behind its evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.⁵

In support of her request for reconsideration, appellant submitted medical reports from Dr. Stafford dated November 4, 2019 through January 26, 2021 and from Dr. Willis dated March 10 and 23, 2021. In denying her reconsideration request, OWCP failed to analyze whether this evidence was sufficient to demonstrate clear evidence of error. The June 15, 2021 decision simply noted: "We did consider your request under 20 C.F.R. [§] 10.607(b) to determine whether you presented clear evidence that [OWCP's] last merit decision was incorrect." OWCP did not address the evidence submitted in support of appellant's reconsideration request.⁶

The Board finds that OWCP failed to properly explain the findings with respect to the issue presented so that appellant could understand the basis for the decision, *i.e.*, whether she had demonstrated clear evidence that OWCP's last merit decision was incorrect.⁷ The Board will, therefore, set aside OWCP's June 15, 2021 decision and remand the case for findings of fact and a statement of reasons, to be followed by an appropriate decision regarding her reconsideration request.⁸ Accordingly,

² *D.R.*, Docket No. 21-1229 (issued July 6, 2022); *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also* 20 C.F.R. § 10.607.

³ 5 U.S.C. § 8124(a).

⁴ 20 C.F.R. § 10.126.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁶ *M.D.*, Docket No. 20-0868 (issued April 28, 2021); *see also Order Remanding Case*, *C.G.*, Docket No. 20-0051 (issued June 29, 2020); *R.T.*, Docket No. 19-0604 (issued September 13, 2019); *R.C.*, Docket No. 16-0563 (issued May 4, 2016).

⁷ OWCP's regulations and procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607(a), if the claimants request demonstrates clear evidence of error on the part of OWCP. *Supra* note 5 at Chapter 2.1602.5(a) (September 2020).

⁸ *See Order Remanding Case*, *D.R.*, *supra* note 2; *T.P.*, Docket No. 19-1533 (issued April 30, 2020); *see also id.* at § 10.607.

IT IS HEREBY ORDERED THAT the June 15, 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: March 30, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board