

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

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**L.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Auburn, CA, Employer**

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**Docket No. 22-1235  
Issued: March 15, 2023**

*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  
JAMES D. MCGINLEY, Alternate Judge

On August 8, 2022 appellant filed a timely appeal from a July 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1235.<sup>2</sup>

On November 3, 2021 appellant, then a 56-year-old postal support employee, filed a traumatic injury claim (Form CA-1) alleging that on October 19, 2021 she felt pain in her low back and the middle of her left gluteus maximus while lifting and catching a heavy bundle in the performance of duty. She stopped work on the date of injury and returned to work on

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<sup>1</sup> The Board notes that during the pendency of this appeal, OWCP issued a n October 3 and December 1, 2022 decisions which denied payment of compensation from May 12 through June 20, 2022. As the Board and OWCP may not simultaneously have jurisdiction over the same issue, the October 3, 2022 OWCP decision is null and void. *See L.F.*, Docket No. 19-1275 (issued October 29, 2020); *Terry L. Smith*, 51 ECAB 182 (1999); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>2</sup> The Board notes that following the July 25, 2022 decision, OWCP 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.*

October 26, 2021. OWCP accepted the claim for lumbar muscle strain. Appellant stopped work again on May 12, 2022.

On May 6, 2022 Dr. Jessica Possehn, Board-certified in emergency medicine, noted that appellant's hip and leg pain first presented when she overextended at work in October 2021. A computerized tomography (CT) scan performed that day showed no evidence of discrete left hip fracture or soft tissue hematoma within the pelvis. Degenerative narrowing was noted at L5-S1 with disc and facet degenerative changes combining to cause neuroforaminal narrowing. Dr. Possehn noted that she would order a magnetic resonance imaging (MRI) scan. She diagnosed hip pain and held appellant off work from May 6 through 9, 2022.

On May 11, 2022 Dr. Daniel E. Carter, an emergency medicine specialist, diagnosed left-side sciatica, noting that appellant's ongoing left-sided low back pain for the last month was somewhat worse that day after working.

On May 25, 2022 appellant was provided a bursal corticosteroid injection. On May 26, 2022 she underwent an L5-S1 interlaminar epidural steroid injection.

Work status reports of record signed by Dr. Akhila Pamula, an emergency medicine specialist; Dr. Jessica P. Cadogan, an emergency medicine specialist; Dr. Christopher T. Lee, Board-certified in diagnostic radiology; Dr. T. Yoon, Board-certified in pain medicine; and Dr. Casey M. Roche, Board-certified in emergency medicine, placed appellant off work.

On June 20, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period May 12 through June 20, 2022.

In a June 1, 2022 report, Dr. Timothy Yoon, a Board-certified physiatrist, reported that appellant had chronic pain due to injury and that she was not working. He noted the results of a February 20, 2022 MRI scan of lumbar spine revealed multilevel degenerative disc disease with high-grade spinal canal stenosis, moderate bilateral L5-S1 stenosis with impingement of the bilateral L5 exiting nerve roots. Dr. Yoon opined that appellant was unable to work and extended her disability status to June 30, 2022, noting that she had exhausted all conservative treatment options and was being scheduled for lumbar surgery.

In a development letter dated June 29, 2022, OWCP informed appellant of the deficiencies of the claim for compensation. It advised her of the type of medical evidence needed and afforded her 30 days to submit the necessary evidence.

OWCP continued to receive evidence, including a June 6, 2022 physical therapy note; multiple work status notes from physicians before and during period claimed;<sup>3</sup> a June 18, 2022 lumbar spine x-ray; and a July 1, 2022 report from Dr. Yoon, which extended appellant's disability status to July 30, 2022.

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<sup>3</sup> This includes, but is not limited to, an April 29, 2022 work status report from Dr. Pamula; a December 12, 2022 work status note by Dr. Dinesh K. Pokharel, a Board-certified internist; May 18 and July 1, 2022 work excuses note by Dr. Yoon; a July 9, 2022 work status note by Dr. Carl H. Shin, a physiatrist; and a May 6, 2022 work status note by Dr. Cadogan.

By decision dated July 25, 2022, OWCP denied appellant's claim for compensation. It noted that it had not received any evidence prior to the development letter dated June 29, 2022. OWCP further noted that it had received a July 1, 2022 report from Dr. Yoon, work status certificates, work status reports, and modified activity forms.

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

In the case of *William A. Couch*,<sup>4</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.

The Board finds that the evidence OWCP received prior to the June 29, 2022 development letter, including Dr. Yoon's June 1, 2022 report, which is relevant to the disability claim, was not reviewed by OWCP prior to its final decision.<sup>5</sup>

As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.<sup>6</sup> As OWCP did not consider the medical evidence received prior to the June 29, 2022 development letter, the Board cannot review such evidence for the first time on appeal.<sup>7</sup>

For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.<sup>8</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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<sup>4</sup> 41 ECAB 548 (1990).

<sup>5</sup> See *T.G.*, Docket No. 19-1930 (issued January 8, 2021).

<sup>6</sup> *J.H.*, Docket No. 22-1202 (issued November 30, 2022); 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.

<sup>7</sup> 20 C.F.R. § 501.2(c). See also *J.H.*, *id.*; *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

<sup>8</sup> *J.H.*, *supra* note 6; *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

**IT IS HEREBY ORDERED THAT** the July 25, 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: March 15, 2023  
Washington, DC

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

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

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