

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

K.W., Appellant)	
)	
and)	Docket No. 22-1258
)	Issued: March 14, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Tampa, FL, 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
JAMES D. MCGINLEY, Alternate Judge

On August 29, 2022 appellant filed a timely appeal from an August 16, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1258.

On June 27, 2022 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 1, 2022 she injured her lower back while team lifting heavy boxes and dog food while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In an April 7, 2022 work restriction note, Brittany Bandy, a physician assistant, noted that appellant was seen on that date. She released appellant for work with a restriction on lifting or carrying items over 20 pounds.

¹ The Board notes that, following the August 16, 2022 decision, appellant submitted additional evidence to OWCP. 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." 20C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

In a development letter dated July 13, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant subsequently submitted a July 21, 2022 duty status report (Form CA-17) from Patricia Hill, an advanced practice registered nurse (APRN), indicating clinical findings of decreased range of motion (ROM), back pain, and muscle spasm. Ms. Hill diagnosed lumbago and muscle spasm and advised that appellant could return to work the following day with restrictions, including no lifting over 10 pounds. In a state workers' compensation form of even date, she indicated that appellant had sustained a work-related injury on April 1, 2022. Ms. Hill diagnosed muscle spasm and lumbago and released appellant for work with restrictions, including no lifting over ten pounds.

On July 21, 2022 appellant underwent thoracic and lumbar spine x-rays, which revealed no abnormalities.

In an August 5, 2022 report, Ms. Taylor, a nurse practitioner, related that appellant reported pain radiating down her left side, numbness in her lower back, a burning sensation behind her shoulder blade, constant muscle spasms, and pressure in her lower back. Examination of the back demonstrated increased pain with sitting, standing, and bending and pain radiating down the left leg. Ms. Taylor diagnosed acute low back pain without sciatica and muscle spasm. She advised that appellant should return to light-duty work with restrictions. In a state workers' compensation form of even date,² Ms. Taylor noted that appellant sustained a work-related injury on April 1, 2022 and checked boxes indicating that she did not have any contributory preexisting conditions or relevant comorbidities. She diagnosed low back pain and muscle spasm and advised that appellant should not lift, push, or pull more than ten pounds, bend, or climb.

By decision dated August 16, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the April 1, 2022 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA. In its decision, OWCP only referenced the July 21, 2022 x-ray report and July 21 and August 11, 2022 Florida Workers' Compensation forms.

The Board has duly considered this matter and finds that this 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 all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, OWCP received an April 7, 2022 work restriction note signed by Ms. Bandy noting that appellant sought medical treatment on that date, a July 21, 2022 Form CA-17 signed by Ms. Hill diagnosing lumbago and muscle spasm, and an August 5,

² While the form is dated August 5, 2022, the case record indicates the author date as August 11, 2022.

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).

2022 report signed by Ms. Taylor. indicating that appellant sustained a work-related injury on April 1, 2022 and diagnosing low back pain and sciatica. OWCP, however, did not review this evidence in its August 16, 2022 merit decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.⁴

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP review and consider all relevant evidence received prior to the issuance of its final decision.⁵ On remand, OWCP shall review and consider all evidence properly submitted by appellant prior to the issuance of the August 16, 2022 OWCP decision. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the August 16, 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 14, 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

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 2.1401.5(b)(2) (November 2012).

⁵ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see also L.B.*, Docket No. 21-0140 (issued August 25, 2021); *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, *supra* note 4.