

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

C.H., Appellant)	
)	
and)	Docket No. 22-1292
)	Issued: May 19, 2023
U.S. POSTAL SERVICE, FORT WORTH POST)	
OFFICE, Fort Worth, TX, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On September 8, 2022 appellant filed a timely appeal from an August 17, 2022 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 22-1292.

On April 29, 2020 appellant, then a 38-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 17, 2020 he strained his left wrist when picking up a catalog while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that he was injured in the performance of duty. Appellant returned to work on April 18, 2020.

In support of his claim, appellant submitted reports dated May 5 through November 12, 2020 from Dr. Christopher Glock, a Board-certified orthopedic surgeon. Dr. Glock related that appellant injured his left wrist on April 17, 2020 when he picked up a magazine and his wrist

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 an 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.

popped. He diagnosed tear of TFCC of left wrist, ulnocarpal impaction syndrome, left wrist pain with de Quervain's tenosynovitis, which were work related.

In a development letter dated September 13, 2021, OWCP informed appellant of the deficiencies of his claim. It explained the type of additional evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

Appellant responded to OWCP's development questionnaire on September 27, 2021, reporting that he was in the postal vehicle when a catalogue was picking up slipped and fell behind a tub. He reached to pick it up with his left hand and felt a sharp pain in his wrist. Appellant further alleged that there was a sharp pain in his wrist every time he tried to pick up mail from his mail tray, so he used his right hand to grab mail for the rest of his route.

By decision dated October 20, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted April 17, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted a July 29, 2021 report from Dr. Glock, in which he diagnosed left wrist ulnocarpal impaction syndrome with TFCC tear secondary to work activity.

On June 14, 2022 appellant, through counsel, requested reconsideration. In support of his request, appellant submitted a March 22, 2022 letter from Dr. Glock reporting that appellant had increased left wrist pain due to a flare up of left wrist ulnocarpal impaction syndrome due to factors of his federal employment, including grasping bundles of mail. He noted that this sometimes included heavier objects, such as magazines, which required more forceful grip with awkward hand posture and rotation of the wrist in order to secure the bundle. Dr. Glock opined that this caused progressively worsening irritation of the TFCC in patients, like appellant, with an ulnar positive configuration to their wrist bones. He explained that this aggravation led to tearing of the TFCC and progressively worsening pain on the ulnar aspect of the wrist. Dr. Glock diagnosed left ulnocarpal impaction syndrome and left TFCC tear and opined, based on appellant's history, physical examination, and the consistency of both over time, that appellant had a preexisting condition which was made worse by the described work activities.

In a June 17, 2022 development letter, OWCP requested that appellant clarify whether he was claiming a traumatic injury or an occupational disease.² It subsequently received an undated attending physician's report (Form CA-20) from Dr. Glock diagnosing persistent left wrist ulnocarpal impaction syndrome and TFCC tear. Dr. Glock indicated that appellant's condition was caused or aggravated by his employment activity, noting that it worsened with gripping and grasping and was worst with any grip that forced him into ulnar deviation, followed by twisting with resistance.

By decision dated August 17, 2022, OWCP affirmed its October 20, 2021 decision.

² The development letter was returned to OWCP as undeliverable.

OWCP's procedures provide that, if the actual benefits claimed by the claimant cannot be determined from review of the form, OWCP should develop the claim based upon the claim form filed and direct questions to the claimant to determine the type of benefits claimed.³ Based upon the response to the development letter, OWCP should then make a determination as to whether the correct claim was established and, if not, OWCP should convert the claim to the proper type of claim and notify the claimant and the employing agency (any representative, if applicable) of the conversion.⁴ In this case, it failed to follow its procedures to determine what type of injury was being claimed. OWCP issued a June 17, 2022 development letter, wherein it requested that appellant clarify whether he was claiming a traumatic injury or an occupational disease development letter. However, that development letter was returned as undeliverable, and OWCP did not receive clarification from appellant regarding whether he was claiming a traumatic injury or an occupational disease. For this reason, the Board finds that the case must be remanded for further development of the factual evidence regarding whether he has alleged a traumatic injury or an occupational disease in the performance of duty.⁵

It is well established that, proceedings under FECA are not adversarial in nature, and while the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment.⁶ OWCP has an obligation to see that justice is done.⁷

On remand OWCP shall obtain a detailed statement from appellant indicating whether his symptoms developed over a period longer than one workday or shift or on the specific April 17, 2020 date of injury only. Based upon appellant's response, OWCP shall then make a determination as to whether he filed the correct claim and, if not, it shall convert the claim to the proper type of claim. After this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.3c(2)(b) (June 2011).

⁴ *Id.*

⁵ See *G.H.*, Docket No. 19-1141 (issued January 2, 2020).

⁶ *D.O.*, Docket No. 20-0006 (issued September 9, 2020); *R.A.*, Docket No. 17-1030 (issued April 16, 2018); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

⁷ *S.S.*, Docket No. 18-0397 (issued January 15, 2019); *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

IT IS HEREBY ORDERED THAT the August 17, 2022 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order of the Board.

Issued: May 19, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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