

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

_____)	
T.B., Appellant)	
)	
and)	Docket No. 22-0816
)	Issued: October 10, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
City of Industry, CA, 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 May 3, 2022 appellant filed a timely appeal from an April 25, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0816.¹

On March 11, 2022 appellant, then a 24-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2022 she injured her neck, back, and right shoulder when unloading trucks while in the performance of duty. She explained that, while pulling and pushing over-the-road containers and all-purpose containers, she felt a pop in her arm and subsequently experienced difficulty performing her duties the following workday. Appellant stopped work on February 24, 2022 and returned to work on March 13, 2022.

In a development letter dated March 24, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to

¹ The Board notes that, following the April 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.*

establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received additional evidence.

An unsigned medical report dated February 10, 2022, indicated a diagnosis of back pain. In notes dated February 22 through April 17, 2022, Anahid Behzadzadeh, a nurse practitioner, diagnosed cervical radiculopathy and noted periods of total disability and releases to modified-duty work; and an undated medical note from an unidentifiable health care provider, which noted that appellant should be held off work from April 26 through May 9, 2022.

In a note dated March 11, 2022, appellant requested light-duty work within her work restrictions.

On March 12, 2022 the employing establishment offered appellant a temporary light-duty assignment with no lifting, carrying, pushing of more than 20 pounds and no more than eight hours per day.

OWCP also received further statements by appellant and two employing establishment supervisors.

On April 25, 2022 OWCP received additional medical evidence, including an April 22, 2022 report by Dr. Pamela Wei-Ying Law, a Board-certified physical medicine and rehabilitation specialist, who noted that appellant related complaints of right shoulder and back pain, which she attributed to unloading a truck at work on February 16, 2022. Dr. Law noted that appellant's right shoulder popped out of place, which caused a sharp, tearing pain. She performed a physical examination of the right shoulder and documented limited and painful range of motion and strength, palpable taut bands, and tenderness to palpation over the lateral subacromial space, right upper trapezius, and right rhomboid. On examination of the lower back, Dr. Law noted moderate tenderness and spasms in the right lumbar paraspinal musculature. She ordered x-rays and diagnosed a right rotator cuff injury, right trapezius strain, and lumbar muscle strain. Dr. Law opined that the diagnosed conditions were more likely than not caused by the February 16, 2022 employment incident. She prescribed pain medication, recommended that appellant remain off work from April 22 through 25, 2022, and released appellant to modified work with restrictions for the period April 26 through May 8, 2022.

By decision dated April 25, 2022, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted February 16, 2022 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

The Board has duly considered this matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,² the Board held that, when adjudicating a claim, OWCP

² 41 ECAB 548 (1990); *see also G.T.*, Docket No. 19-1619 (issued May 22, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

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.³ This principle applies with regard to evidence received by OWCP on the same day a final decision is issued.⁴ The Board finds that this case is not in posture for decision as OWCP did not consider and address the evidence received on April 25, 2022, including the April 22, 2022 report of Dr. Law, in its April 25, 2022 merit decision.⁵ On remand, OWCP shall consider and address the evidence of record. Following this and other such further development as it deems necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the April 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: October 10, 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

³ See *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *id.*

⁴ See *S.S.*, Docket No. 19-1737 (issued April 7, 2020); *J.S.*, Docket No. 16-0505 (issued July 18, 2016); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision must be reviewed).

⁵ See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).