

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

K.S., Appellant	)	
	)	
and	)	Docket No. 23-1085
	)	Issued: February 22, 2024
U.S. POSTAL SERVICE, POST OFFICE,	)	
New Orleans, LA, 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  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 31, 2023 appellant filed a timely appeal from a February 9, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1085.

On November 21, 1989 appellant, then a 32-year-old federal employee, sustained a traumatic injury while in the performance of duty. OWCP accepted the claim for neck sprain, intervertebral disc disorder with myelopathy of the cervical region, and tension headache.

By letter dated May 16, 2022, Optum, OWCP's pharmacy benefits manager (PBM), advised appellant that it was managing pharmacy benefits for injured employees covered under the Federal Employees' Compensation Act<sup>1</sup> (FECA). It noted that a drug formulary, or list of medications that a claimant was eligible to receive under FECA, had gone into effect on December 9, 2021. The PBM informed appellant that his currently prescribed drug Esgic Tablets was not allowed under its formulary. It requested that he notify his physician to determine if there was an alternative medication available or, if not, to have his physician complete a Prior

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

Authorization Request Form (PARF) to request continued use of the nonformulary medicine. The PBM indicated that it would allow the Esgic Tablets until December 8, 2022.

On December 29, 2022 OWCP again notified appellant that he was receiving medication for his employment injury through its PBM. It indicated that it now used a drug formulary, or list of medications covered by FECA, to ensure the safe and effective use of medication. OWCP asserted that its PBM had notified appellant and his provider on May 16, July 6, and October 14, 2022 that Esgic Tablets were not covered under the formulary, and had requested a PARF if there were no appropriate alternative medications. It informed him that this was his final notice to allow time for his prescriber to transition him to an alternative medication covered by the formulary or submit a PARF if his prescriber believed that the medication was currently necessary. OWCP indicated that coverage for Esgic Tablets would continue until March 8, 2023.

On February 6, 2023 Dr. James N. Domingue, a Board-certified clinical neurophysiologist, submitted a PARF, completed on January 23, 2023, and attached documentation, including a February 6, 2023 report, requesting use of the brand name prescription, Esgic Tablets. He explained that Esgic Tablets had been effective in treating appellant's symptoms. Moreover, appellant tried a generic brand, but the medication failed to treat his symptoms and tension-related migraines.

By decision dated February 9, 2023, OWCP denied authorization for the medication Esgic Tablets, effective March 9, 2023, finding that it was not covered by the FECA Drug Formulary effective November 23, 2021, and that all prescriptions were required to comply with FECA's formulary by December 9, 2022. It noted that it had afforded appellant 30 days to respond or have his prescriber submit a PARF, however, he failed to submit any additional evidence in response to the December 29, 2022 development letter.

The Board, having duly considered this matter, finds that the case is not in posture for decision.<sup>2</sup>

In the case of *William A. Couch*,<sup>3</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that the submitted documents of Dr. Domingue, including a request for medication authorization and a February 6, 2023 report, were not reviewed by OWCP in its February 9, 2023 decision.<sup>4</sup> As it did not consider and address these medical reports, it failed to follow its own procedures.<sup>5</sup>

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<sup>2</sup> *Order Remanding Case, K.Y.*, Docket No. 22-0743 (issued December 1, 2022).

<sup>3</sup> 41 ECAB 548 (1990); *see Order Remanding Case, J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>4</sup> *See Order Remanding Case, J.N.*, Docket No. 21-0086 (issued May 17, 2021); *Order Remanding Case, C.D.*, Docket No. 20-0168 (issued March 5, 2020).

<sup>5</sup> *E.P.*, Docket No. 20-0655 (issued March 17, 2021).

As the Board's decisions are final as to the subject matter appealed, 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.<sup>6</sup> The Board finds that this case is not in posture for decision as OWCP did not review the above-noted evidence in its February 9, 2023 decision.<sup>7</sup> On remand, OWCP shall review all evidence of record. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.<sup>8</sup> Accordingly,

**IT IS HEREBY ORDERED THAT** the February 9, 2023 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: February 22, 2024  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> See *Order Remanding Case, C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 3.

<sup>7</sup> See *Order Remanding Case, V.C.*, Docket No. 16-0694 (issued August 19, 2016).

<sup>8</sup> See *Order Remanding Case, K.P.*, Docket No. 21-1065 (issued March 30, 2022); *B.N.*, Docket No. 17-0787 (issued July 6, 2018).