

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

K.W., Appellant)

and)

U.S. POSTAL SERVICE, WEST AVENUE)
CARRIER ANNEX, Stamford, CT, Employer)
-----)

**Docket No. 24-0049
Issued: February 27, 2024**

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
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 23, 2023 appellant filed a timely appeal from an August 15, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0049.

On July 24, 2019 appellant, then a 56-year-old delivery clerk, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained an injury to her left shoulder when another employee hit her with a postal container while in the performance of duty. She stopped work that day. OWCP accepted the claim for aggravation of spinal stenosis of the cervical region, and aggravation of cervical disc degeneration. It expanded acceptance of the claim to include incomplete lesion of the spinal cord at C4. OWCP paid appellant wage-loss compensation on the periodic rolls beginning September 14, 2019. Appellant accepted a modified lead customer service clerk position on August 18, 2022.

¹ The Board notes that, following the August 15, 2023 decision, OWCP received additional evidence. 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.*

On July 13, 2023 appellant filed a claim for compensation (Form CA-7) requesting 2.67 hours of disability from work on July 12, 2023.

In a July 14, 2023 development letter, OWCP informed appellant of the deficiencies of her disability claim. It advised her of the type of medical evidence needed and afforded her 30 days to respond. Appellant provided medical evidence.

By decision dated August 15, 2023, OWCP denied appellant's claim for compensation for disability on July 12, 2023 as the medical evidence did not "establish that the time was lost to obtain medical care" for her accepted employment-related injury.

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

Section 10.121 of OWCP's regulations provides that if a claimant submits factual evidence, medical evidence, or both in support of his or her claim, but OWCP determines that this evidence is not sufficient to meet the burden of proof, it will inform the claimant of the additional evidence needed and provide the claimant at least 60 days to submit the evidence required.²

The 60th day following the July 14, 2023 development letter was September 12, 2023. Therefore, OWCP should have afforded appellant until September 12, 2023 to submit the additional evidence. It, however, issued its decision denying appellant's claim on August 15, 2023. OWCP, therefore, did not fulfill its responsibility under its procedures.³

Thus, the Board finds that this case must be remanded for proper application of OWCP's procedures, allowing appellant 60 days to respond to the request for additional evidence, to be followed by a *de novo* decision. Accordingly,

² 20 C.F.R. § 10.121. Effective March 7, 2023, 20 C.F.R. § 10.121 was amended to allow a claimant 60 days, increased from the prior 30-day period, to submit supporting evidence on an initial claim. *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.0800.4c(2) (November 2023).

³ *See Order Remanding Case, V.H.*, Docket No. 23-1013 (issued February 15, 2024); *Order Remanding Case, D.H.*, Docket No. 23-0954 (issued January 22, 2024).

IT IS HEREBY ORDERED THAT the August 15, 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 27, 2024
Washington, DC

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

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

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