

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

T.E., Appellant)	
)	
and)	Docket No. 24-0085
)	Issued: February 29, 2024
U.S. POSTAL SERVICE, JAMES A. FARLEY)	
BUILDING, New York, NY, 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
JAMES D. MCGINLEY, Alternate Judge

On November 8, 2023 appellant filed a timely appeal from a November 8, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0085.

On May 19, 2023 appellant, then a 36-year-old clerk stenographer, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2023 she sustained a muscle strain and lower back injury when she was picking up a tray of mail and felt a pop in her back, causing her to drop the tray while in the performance of duty. She stopped work on the date of injury and did not return.

On May 19 and 22, 2023 OWCP received illegible cellphone screenshots of a document from Mount Sinai Hospital.

In a June 15, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the requested evidence.

Appellant submitted a June 1, 2023 report wherein Dr. Albert Villafuerte, a Board-certified psychiatrist, evaluated her for a May 17, 2023 injury when she picked up a heavy tray of mail and injured her low back. She underwent a lumbar spine magnetic resonance imaging (MRI) scan. Dr. Villafuerte opined that there was a direct causal relationship between the May 17, 2023

employment incident and the pathological findings. He diagnosed status post work-related lumbar spine injury on May 17, 2023 and determined that appellant was temporarily totally disabled.

In a July 17, 2023 report, Dr. Gautam Khakhar, a Board-certified physiatrist, noted examination findings and diagnosed lumbar myofascial derangement post a May 17, 2023 work-related injury. He recommended physical therapy and determined that appellant was temporarily totally disabled.

In an August 15, 2023 letter, the employing establishment controverted the claim, asserting that the medical evidence failed to establish that appellant sustained a work-related injury resulting in disability.

In an August 24, 2023 report, Dr. Lyle Posecion, a Board-certified physiatrist, diagnosed lumbar myofascial derangement status post a May 17, 2023 work-related injury.

In an attending physician's report (Form CA-20) dated September 15, 2023, Dr. Steven Ross, an osteopathic physician Board-certified in physiatry, reported that appellant lifted a tray full of mail weighing approximately 45 pounds and felt a sudden sharp pain in her back. He noted physical examination findings, diagnosed lumbar myofascial derangement and radiculopathy, and opined that the lumbar spine condition was causally related to the May 17, 2023 employment incident resulting in temporary total disability.

In a September 15, 2023 report, Dr. Ross reported that appellant had been off work since the May 17, 2023 injury due to temporary total disability. He opined that there was a direct causal relationship between the employment injury and her pathological findings.

In an October 27, 2023 disability certificate received by OWCP on October 28, 2023, Dr. Ross noted a May 17, 2023 date of injury and reported that appellant was unable to work due to temporary total disability. He diagnosed L4-5 disc bulge with bilateral foraminal impingement, L5-S1 central herniation with annular tear abutting the bilateral S1 nerve roots, and bilateral foraminal impingement, more prominent on the right than the left.

By decision dated November 8, 2023, OWCP accepted that the May 17, 2023 employment incident occurred as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted May 17, 2023 employment incident. Thus, appellant had not met the requirements to establish an injury as defined by FECA.

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

In the case of *William A. Couch*,¹ 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.

¹ 41 ECAB 548 (1990); *see also Order Remanding Case, A.D.*, Docket No. 22-0519 (issued January 11, 2023); *Order Remanding Case, A.B.*, Docket No. 22-0179 (issued June 28, 2022); *Order Remanding Case, S.H.*, Docket No. 19-1582 (issued May 26, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

In its November 8, 2023 decision, OWCP failed to consider and address Dr. Ross' October 27, 2023 disability certificate, received on October 28, 2023 which listed medical diagnoses. As such, it failed to follow its procedures by properly reviewing and discussing all of the evidence of record.² It is crucial that OWCP consider and address all evidence relevant to the subject matter properly submitted prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.³

The Board thus finds that this case is not in posture for a decision as OWCP did not consider and address evidence submitted by appellant in support of her claim for compensation.⁴ On remand, the Board shall review all evidence of record and, following any further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the November 8, 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 29, 2024
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

² OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012).

³ See *A.D.*, *supra* note 1; *A.B.*, *supra* note 1; *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 1.

⁴ See *A.B.*, *supra* note 1; *S.H.* *supra* note 1; *V.C.*, Docket No. 16-0694 (issued August 19, 2016).