

On May 23, 2022 appellant filed a claim for compensation (Form CA-7) for disability from work for the period May 7 through 20, 2022. He noted that on May 8, 10, and 15, 2022 he worked as a sales agent at a realty company. Appellant continued to file CA-7 forms for wage-loss compensation through January 13, 2023.

OWCP thereafter received medical evidence, including numerous reports dated from May 4, 2022 by Dr. Angela Darcus, an attending chiropractor. Dr. Darcus noted a history of the December 27, 2021 employment injury. She diagnosed disc herniation at L5-S1 and subluxation of the thoracic and lumbar spines and pelvis due to injury. Dr. Darcus opined that appellant was unable to resume his regular work. In response to OWCP's July 20, 2022 letter requesting further information, she noted, *inter alia*, that appellant's disability from work was due to an exacerbation of pain, which limited his movements including bending, walking, and standing. Dr. Darcus noted that x-rays performed on December 27, 2021 and a magnetic resonance imaging scan on April 14, 2022 confirmed disc degeneration at L5-S1, paracentral disc bulge at L5-S1, and mild canal stenosis impinging S1 nerve root, and segmental dysfunction involving the lumbar, sacrum, and pelvic regions. She also explained that appellant had been advised to remain off work. However, due to lack of pay, appellant requested a note permitting him to return to light/sedentary work. In an August 10, 2022 attending physician's report (Form CA-20), Dr. Darcus reiterated appellant's history of injury on December 27, 2021 and her prior lumbar diagnoses. She checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the December 27, 2021 employment activity because bending and lifting was the most compromising position for the discs in the lumbar spine. Dr. Darcus advised that appellant was totally disabled from April 30, 2022 to the present.

OWCP continued to receive multiple progress notes from additional medical providers, including Dr. Karen Donaldson, a Board-certified family practitioner, Dr. Michael A. Dorn, Jr, a chiropractor, and Dr. Wilbur Roese, an internist. These reports noted appellant's diagnoses and medical course.

OWCP, by decision dated August 22, 2022, denied appellant's claims for compensation for disability from work commencing May 7, 2022 and continuing, finding that he had not submitted a rationalized medical opinion from a qualified physician to establish total disability during the claimed period due to his accepted December 27, 2021 employment injury.

OWCP subsequently received additional medical evidence from Dr. Dorn. In an undated letter, Dr. Dorn provided the definition of the term subluxation, and essentially reiterated the findings set forth in his July 12, 2022 letter. He also opined that appellant was unable to work due to his pain and symptoms from his December 27, 2021 employment injury.

OWCP also received progress reports from Dr. Sang Lee, a chiropractor, Dr. Monique Samuel, a family practitioner, and Dr. Katina N. Fox, a family practitioner, which noted appellant's continuing diagnoses.

On September 14, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review regarding the August 22, 2022 decision.

On November 10, 2022 OWCP referred appellant, along with a statement of accepted facts (SOAF), the case record, and a series of questions, to Dr. Randy F. Davis, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature of his December 27, 2021 employment-related conditions, extent of his disability, and treatment recommendations.

In a December 20, 2022 report, Dr. Davis noted his review of the SOAF and medical record. On physical examination, he observed tenderness in the low back on the right posterior superior iliac spine region, a positive straight leg raising on the right side at 40 degrees, symmetric lower extremity reflexes, and fairly diffuse giveaway weakness in the entire right leg in a nonanatomic distribution. Dr. Davis reviewed diagnostic test results, including an April 14, 2022 MRI scan which showed degenerative change at a number of levels in the lumbar spine, greatest at L5-S1, a right paracentral disc bulge which suggested some impingement upon the right S1 nerve root, and a recent MRI scan performed on November 8, 2022 which showed similar findings, moderate right L5-S1 subarticular disc herniation extending into the right lateral recess. He diagnosed lumbar degenerative spondylosis with right paracentral disc herniation. Dr. Davis advised that appellant's subjective complaints corresponded with the objective findings on the diagnostic studies, although the physical examination was not completely anatomic. He further advised that appellant's work-related condition had not resolved as appellant still demonstrated persistent findings associated with radiculopathy. Dr. Davis addressed his treatment plan. He did opine that appellant was not currently capable of returning to his date-of-injury job as a distribution sales and service associate based on the amount of required lifting and walking. Dr. Davis further opined, however, that he was not totally disabled from work, noting that he was able to perform sedentary light-duty work. In an accompanying work capacity evaluation (Form OWCP-5c) of even date, he opined that appellant could not perform his usual job, but he could work eight hours per day with work restrictions.

By decision dated January 20, 2023, OWCP's hearing representative affirmed the August 22, 2022 decision. The hearing representative did not note receipt of the report from Dr. Davis dated December 20, 2022.

The Board finds that the case is not in posture for decision.

In the case of *William A. Couch*,² the Board held that, when adjudicating a claim, OWCP is obligated to consider 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, the Board notes that the December 20, 2022 report from Dr. Davis, OWCP's second opinion physician, was not considered or addressed by OWCP in its January 20, 2023 decision.³

Because Board decisions are final with regard to the subject matter appealed,⁴ it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final

² 41 ECAB 548 (1990); *see J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

³ *See C.D.*, Docket No. 20-0168 (issued March 5, 2020).

⁴ 20 C.F.R. § 501.6(d).

decision.⁵ As OWCP did not consider and address all evidence submitted prior to its January 20, 2023 decision, the Board finds that this case is not in posture for decision.⁶

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.

IT IS HEREBY ORDERED THAT the January 20, 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: January 24, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

⁵ 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 2.1401.5(b)(2) (November 2012). *See also E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Linda Johnson*, 45 ECAB 439 (1994) (OWCP must review all evidence relevant to the subject matter and received by OWCP before issuance of its final decision, including medical reports received on the same day it issues its decision); *William A. Couch*, 41 ECAB 548, 553 (1990).

⁶ *See M.N.*, Docket No. 20-0110 (issued July 7, 2020); *Y.B.*, Docket No. 20-0205 (issued July 7, 2020); *H.H.*, Docket No. 14-1985 (issued June 26, 2015).