

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

| | | |
|---|---|--------------------------|
| D.H., Appellant |) | |
| |) | |
| and |) | Docket No. 23-0954 |
| |) | Issued: January 22, 2024 |
| U.S. POSTAL SERVICE, JACKSONVILLE |) | |
| POST OFFICE, Jacksonville, FL, Employer |) | |
| |) | |

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On July 10, 2023 appellant filed a timely appeal from a June 23, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0954.¹

On April 7, 2023 appellant, then a 19-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that, on March 24, 2023, he sustained a concussion when he stumbled, struck his head on a shelf inside a delivery vehicle that lurched forward as its driver shifted into park unexpectedly as he retrieved a parcel while in the performance of duty. He continued working until March 26, 2023, and returned to work on March 29, 2023.

¹ The Board notes that, following the June 23, 2023 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.*

OWCP received a March 26, 2023 work slip by Dr. Christopher L. Singley, a Board-certified family practitioner, holding appellant off work through March 28, 2023. It also received a patient information sheet of even date indicating diagnoses of concussion and head injury.

In a development letter dated April 26, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In response, appellant submitted a March 26, 2023 hospital emergency department visit report by Dr. Singley, recounting that appellant struck his head, with the onset of symptoms on March 26, 2023. He diagnosed a concussion and head injury.

In a development letter dated May 17, 2023, OWCP informed appellant of the deficiencies of his claim, noting that Dr. Singley's reports did not address causal relationship. It noted that appellant had 60 days from the date of the April 26, 2023 development letter to submit the necessary evidence.

In response, appellant submitted a complete copy of the March 26, 2023 hospital emergency department report. Dr. Singley recounted that on March 24, 2023, appellant sustained blunt head trauma while at work, with the onset of symptoms indicative of a concussion. A computerized tomography (CT) scan of appellant's head and brain demonstrated no acute intracranial abnormalities. Dr. Singley diagnosed concussion and head injury. He held appellant off work through March 28, 2023.

By decision dated June 23, 2023, OWCP accepted that the March 24, 2023 employment incident occurred as alleged, and that a medical condition was diagnosed in connection with the incident. However, it denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed concussion and head injury and the accepted March 24, 2023 employment incident. OWCP therefore found that appellant had not established an injury as defined by the Federal Employees' Compensation Act (FECA).²

The Board, having duly considered the matter, finds that this 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.³

² 5 U.S.C. § 8101 *et seq.*

³ 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).

The 60th day following April 26, 2023 was Sunday, June 25, 2023. The Board has held that, in computing a time period, the date of the event from which the designated period of time begins to run shall not be included while the last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a federal holiday.⁴ As the 60-day period expired on a Sunday, appellant should have been afforded until the following business day, Monday, June 26, 2023, to submit the requested evidence.⁵ However, OWCP issued its decision denying appellant's claim on June 23, 2023. OWCP, therefore, did not fulfill its responsibility under section 10.121 of its regulations.⁶

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,

IT IS HEREBY ORDERED THAT the June 23, 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 22, 2024
Washington, DC

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

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

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

⁴ See *M.R.*, Docket No. 19-1697 (issued March 26, 2020); *D.M.*, Docket No. 19-0686 (issued November 13, 2019); *Order Remanding Case, B.W.*, Docket No. 16-1860, (issued May 4, 2017); *Rosemarie T. Thompson*, Docket No. 00-2719 (issued March 4, 2002); *Robert E. Kennedy*, 20 ECAB 349, 350 (1969) (quoting *Wirtz v. Local Union 169*, 246 F. Supp. 741 (D.C. Nev. 1965)).

⁵ *Id.*

⁶ *Supra* note 3. See also *Order Remanding Case, L.C.*, Docket No. 22-1341 (issued January 26, 2023).