

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

K.B., Appellant	)	
	)	
and	)	Docket No. 20-1320
	)	Issued: February 8, 2021
U.S. POSTAL SERVICE, NORTH TEXAS	)	
PROCESSING & DISTRIBUTION CENTER,	)	
Coppell, TX, 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 June 23, 2020 appellant filed a timely appeal from a May 28, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1320.<sup>1</sup>

On December 12, 2017 appellant, then a 53-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 6, 2017 he injured his right arm when he lifted a mail tray and his arm popped while in the performance of duty. He indicated that he subsequently experienced right arm swelling, pain, and numbness. On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on November 7, 2017. OWCP accepted the claim for a strain of an unspecified muscle, fascia, and tendon at the shoulder and upper arm level of the right arm, a strain of muscle and tendon of the wall of the thorax, and a

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<sup>1</sup> The Board notes that following the May 28, 2020 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 evidence for the first time on appeal. *Id.*

strain of muscle, fascia, and tendon of the long head of the right arm biceps, incomplete rotator cuff tear or rupture of the right shoulder, and right shoulder superior glenoid labrum lesion.

A February 3, 2020 report by Eric Naifeh, a nurse practitioner, reviewed appellant's history of injury and current symptoms. Mr. Naifeh conducted a physical examination, diagnosed a shoulder strain and a strain of the biceps brachii muscle and/or tendon, and listed work restrictions. Appellant submitted additional medical reports from Mr. Naifeh dated February 10, 24, and 27, March 2, 9, and 16, and April 2, 2020.

On February 4, 2020 appellant accepted an offer of a full-time modified-duty position from the employing establishment, effective on that date. A February 7, 2020 compensation termination sheet indicated that OWCP compensated appellant for February 2 through 3, 2020 and terminated appellant's compensation on February 4, 2020.

On February 18, 2020 appellant filed a claim for compensation (Form CA-7) for non-intermittent wage loss from February 1 through 14, 2020. On the reverse side of the claim form, the employing establishment indicated that he took intermittent leave without pay (LWOP) and worked intermittently from February 1 to 14, 2020.

In a development letter dated February 28, 2020, OWCP informed appellant that additional evidence was needed in support of his compensation claim. It advised of the factual and medical evidence necessary to establish his claim. OWCP afforded 30 days for appellant to submit the requested evidence.

On March 2, 2020 appellant filed a Form CA-7 for non-intermittent wage loss from February 17 through 28, 2020. On the reverse side of the claim form, the employing establishment indicated that he took continuous LWOP from February 17 to 28, 2020.

In a development letter dated March 4, 2020, OWCP informed appellant that additional evidence was needed in support of his compensation claim. It advised of the factual and medical evidence necessary to establish his claim. OWCP afforded 30 days for appellant to submit the requested evidence.

On March 11, 2020 OWCP received a February 3, 2020 work capacity evaluation (Form OWCP-5c) by Dr. Jelani Ingram, Board-certified in family medicine, who indicated that appellant could work medium duty and listed his work restrictions. Appellant submitted additional OWCP-5c forms from Dr. Ingram dated February 10, March 2, and April 2, 2020

OWCP received February 29 and March 29, 2020 nursing progress reports and an April 4, 2020 nurse closure report by Ms. Hippert.

On March 3, 2020 appellant accepted another full-time modified rural carrier assignment from the employing establishment.

In a time analysis form (Form CA-7a) dated March 16, 2020, appellant claimed compensation for the dates February 4, and 6 to 28, 2020 for 144 hours of LWOP. He stated that his physician modified his work restrictions.

By decision dated May 28, 2020, OWCP denied appellant's compensation claim, finding that the evidence of record was insufficient to establish that appellant was disabled from work during the period February 1 to 28, 2020 causally related to his accepted employment injuries. The decision indicated that OWCP did not receive any evidence to support appellant's claim. The decision also indicated that no evidence had been received in response to the development letter dated February 28, 2020 and no Form CA-7a had been provided to show dates and hours claimed after the job offer was signed on February 4, 2020.

The Board has duly considered the matter and finds that the case is not in posture for decision. In the case of *William A. Couch*,<sup>2</sup> 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.

In its May 28, 2020 decision, OWCP found that no evidence was submitted to support appellant's claim. However, as detailed above, appellant submitted OWCP-5c forms and medical reports dated from February 2 to April 2, 2020 and March 16, 2020, CA7a forms, and reports by the field nurse Ms. Hippert were also submitted. OWCP thus failed to follow its procedures by not considering all of the relevant evidence of record.<sup>3</sup>

It is crucial that OWCP addresses all relevant 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>4</sup> The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its May 28, 2020 decision.<sup>5</sup> On remand, following any further development as deemed necessary, OWCP shall issue an appropriate decision.

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<sup>2</sup> 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>3</sup> 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 2.1401.5(b)(2) (November 2012).

<sup>4</sup> *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 2.

<sup>5</sup> *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).

**IT IS HEREBY ORDERED THAT** the May 28, 2020 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 8, 2021  
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