United States Department of Labor Employees' Compensation Appeals Board

J.W., Appellant)	
and	,	No. 10-1292
DEPARTMENT OF THE AIR FORCE, MacDILL AIR FORCE BASE, FL, Employer) Issued:)))	April 7, 2011
Appearances: Alan J. Shapiro, Esq., for the appellant Office of Solicitor, for the Director	Case Submitte	ed on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On April 6, 2010 appellant, through her representative, filed an application for review of an Office of Workers' Compensation Programs' decision dated December 30, 2009 which denied modification of a decision denying her request for an additional schedule award.

The Board has duly considered the matter and finds that the case is not in posture for a decision and must be remanded to the Office. In the case of *William A. Couch*, the Board held that, when adjudicating a claim, the Office is obligated to consider all evidence properly submitted by a claimant and received by the Office before the final decision is issued. On October 21, 2008 the Office granted appellant a schedule award for three percent impairment of the left arm. In a letter dated October 19, 2009, appellant requested reconsideration. The record indicates that, after the October 21, 2008 decision, appellant submitted additional evidence. This included reports dated October 19 and 22, 2009 from Dr. Feroze A. Yusufji, appellant's treating physician. These documents were received by the Office on October 29 and 30, 2009 respectively. In its December 30, 2009 decision, the Office denied modification of the October 21, 2008 decision and referenced the October 19, 2009 report from Dr. Yusufji but did not note receipt or consideration of the October 22, 2009 report. The Office noted that "Dr. Yusufji did not indicate that you had sustained a degree of impairment greater than the percent of the left arm previously awarded." However, Dr. Yusufji's October 22, 2009 report opined that

¹ 41 ECAB 548 (1990).

appellant sustained six percent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.

The Board finds that the Office, in its December 30, 2009 decision, did not review the October 22, 2009 report from Dr. Yusufji that was received by the Office on October 30, 2009. For this reason, the case will be remanded to the Office to enable it to properly consider all the evidence submitted at the time of the December 30, 2009 decision. Following such further development as the Office deems necessary, it shall issue an appropriate decision on the merits of the claim.

IT IS HEREBY ORDERED THAT the December 30, 2009 decision of Office of Workers' Compensation Programs be set aside. The case is remanded to the Office for further proceedings consistent with this order of the Board.

Issued: April 7, 2011 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

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

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board