

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

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S.F., Appellant)	
)	
and)	Docket No. 23-0047
)	Issued: August 4, 2023
DEPARTMENT OF THE ARMY, U.S. ARMY)	
INSTALLATION MANAGEMENT)	
COMMAND, YAKIMA TRAINING CENTER,)	
Yakima, WA, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 7, 2022 appellant filed a timely appeal from a September 13, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0047.¹

On June 15, 2022 appellant, then a 44-year-old electrical equipment repairer, filed a traumatic injury claim (Form CA-1) alleging that on June 2, 2022 he injured his right ankle, foot, and lower leg when he slipped off an ecology block while repairing targetry, and his ankle rolled in, popped, and made a crunching sound as he landed, while in the performance of duty.

¹ The Board notes that appellant submitted additional evidence on appeal to the Board. However, the Board's *Rules of Procedures* 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 medical evidence including a June 2, 2022 duty status report (Form CA-17) from a provider with an illegible signature; a June 2, 2022 work excuse signed by a nurse; and June 2, 2022 discharge instructions for an ankle sprain from an area hospital.

OWCP also received June 10 and 16, 2022 reports from a physician assistant; June 10 and 21, 2022 work restrictions from a physician assistant; an August 3, 2022 physical therapy evaluation; and a June 16, 2022 magnetic resonance imaging scan of the right ankle read by Dr. Gary A. Howell, a Board-certified diagnostic radiologist.

In a June 21, 2022 treatment note, Dr. Shyler Demill, an osteopathic physician Board-certified in orthopedic surgery, noted that appellant was under his care, could not return to work, was scheduled for ankle surgery on July 6, 2022 and would be out of work for four to six weeks following surgery.

In a June 29, 2022 form report, Dr. Terence M. Quigley, a Board-certified general and vascular surgeon, noted findings of acute deep venous thrombosis on the right popliteal and tibial veins, and no evidence of venous thrombosis in the left leg.

OWCP received an August 3, 2022 physical therapy initial examination report.

By decision dated August 12, 2022, OWCP denied appellant's claim. It found that he had not established that a medical condition was diagnosed in connection with the accepted June 2, 2022 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 8, 2022 appellant requested reconsideration and submitted additional evidence.

In a June 2, 2022 emergency department report, Dr. Brett Hayzen, Board-certified in emergency medicine, noted appellant's history of injury and treatment and his chief complaint of right ankle pain. He diagnosed a calcaneofibular ankle sprain with right ankle pain and swelling. In an attending physician's report, Part B of an authorization for examination and or treatment (Form CA-16), Dr. Hayzen noted the history of appellant's injury and diagnosis of sprain of right calcaneofibular ligament. He also indicated that appellant's diagnosed condition was causally related to the accepted June 2, 2022 employment incident. OWCP also received June 2, 2022 orders, diagnostic reports, and medication administration records from an area hospital.

OWCP received a June 22, 2022 Form CA-17 from Dr. Hayzen. It also received a presurgery appointment card and postoperative protocols.

By decision dated September 13, 2022, OWCP modified its August 12, 2022 decision to find that appellant had established a diagnosed condition in connection with the accepted employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed conditions and the accepted employment incident. It noted receipt of the June 22, 2022 duty status report, the presurgery appointment card, and the postoperative protocols.

The Board has duly considered the matter and finds that this 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 and address 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 record is clear that the evidence received before OWCP issued its September 13, 2022 decision includes the June 2, 2022 emergency report from Dr. Hayzen and Part B- of the Form CA-16, as well as the June 2, 2022 orders, diagnostic reports, and medication administration records from an area hospital. The Board notes that this additional evidence was not considered or addressed by OWCP in its September 13, 2022 decision.³

It is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.⁴ This principle applies with regard to evidence received by OWCP the same day a final decision is issued.⁵ As OWCP did not consider and address all of the evidence received on or before September 13, 2022, the Board finds that this case is not in posture for decision.⁶ On remand, it shall consider and address all evidence of record and, following any further development as deemed necessary, it shall issue a *de novo* decision.

² 41 ECAB 548 (1990).

³ OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should 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).

⁴ See *Order Remanding Case, N.W.*, Docket No. 21-0997 (issued November 15, 2022); *Order Remanding Case, J.N.*, Docket No. 21-0086 (issued May 17, 2021); *Order Remanding Case, C.D.*, Docket No. 20-0168 (issued March 5, 2020); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 2.

⁵ See *T.B.*, Docket No. 21-0448 (issued September 27, 2021); *Order Remanding Case, S.S.*, Docket No. 19-1737 (issued April 7, 2020); *Order Remanding Case, J.S.*, Docket No. 16-0505 (issued July 18, 2016); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of an OWCP decision must be reviewed).

⁶ See *Order Remanding Case, V.C.*, Docket No. 16-0694 (issued August 19, 2016).

IT IS HEREBY ORDERED THAT the September 13, 2022 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: August 4, 2023
Washington, DC

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

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

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