United States Department of Labor Employees' Compensation Appeals Board

R.E., Appellant and DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION, Vacaville, CA,))))))	Docket No. 13-309 Issued: April 25, 2013
Employer)	
Appearances: Appellant, pro se Office of Solicitor, for the Director		Case Submitted on the Record

ORDER REMANDING CASE

Before: RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On November 21, 2012 appellant filed a timely appeal from a July 30, 2012 Office of Workers' Compensation Programs (OWCP) merit decision denying his traumatic injury claim on the grounds that the medical component of fact of injury was not established. The Board assigned Docket No. 13-309.

The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP. Since the Board's jurisdiction of a case is limited to reviewing that evidence which is before OWCP at the time of its final decision, it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed by OWCP.

¹ See 20 C.F.R. § 501.2(c)(1).

² *Id.* at § 501.6(d).

³ William A. Couch, 41 ECAB 548, 553 (1990); B.B., Docket No. 12-657 (issued November 13, 2012).

The Board has held that this principal applies with equal force when evidence is received by OWCP the same day that a final decision is issued.⁴

On July 30, 2012 OWCP issued its decision denying appellant's claim on the ground that the medical component of fact of injury was not established. On July 30, 2012 OWCP also received July 20, 2012 physical therapy notes and a July 20, 2012 report from Dr. Sukriti Singhal, a general surgeon, who noted that appellant was seen for a follow-up for his work-related injury and diagnosed neck strain, sprain of lumbar region, thoracic or lumbosacral neuritis or radiculitis and back sprain. OWCP's July 30, 2012 decision did not review this evidence received on July 30, 2012. The Board, therefore, must set aside the July 30, 2012 decision of OWCP and remand the case so that OWCP may fully consider the evidence that was properly submitted by appellant prior to the issuance of this decision. Following such further consideration and after such further development as it deems necessary, OWCP shall issue an appropriate merit decision.

IT IS HEREBY ORDERED THAT the July 30, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 25, 2013 Washington, DC

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

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

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⁴ Linda Johnson, 45 ECAB 439 (1994).