United States Department of Labor Employees' Compensation Appeals Board

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D.S., Appellant)
and) Docket No. 14-547 Issued: June 4, 2014
DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION,)
Washington, DC, Employer)
Appearances: J.C. Watson, Esq., for the appellant Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA HOWARD FITZGERALD, Acting Chief Judge COLLEEN DUFFY KIKO, Judge ALEC J. KOROMILAS, Alternate Judge

On January 13, 2014 appellant, through his attorney, filed an application for review of an Office of Workers' Compensation Programs' (OWCP) decision dated November 7, 2013, which denied his request for reconsideration without conducting a merit review.

The Board has duly considered the matter and finds that the case is not in posture for decision and must be remanded to OWCP. In the case of *William A. Couch*, the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by it before the final decision is issued. Following a September 10, 2012 decision that denied an increased schedule award for appellant's hearing loss, appellant requested reconsideration on August 9, 2013 and submitted additional medical evidence. This included a new audiological report, dated August 9, 2013, from Dr. Diane Markva, an audiologist. This report was received on August 12, 2013. In its November 7, 2013 decision, OWCP denied appellant's reconsideration request. It noted that appellant's request for reconsideration referenced an audiological report dated August 9, 2013, but stated that the report had not been enclosed and found that he had not submitted any new medical evidence or argument that had not been previously considered.

¹ 41 ECAB 548 (1990).

The Board finds that OWCP, in its November 7, 2013 decision, did not review the August 9, 2013 report from Dr. Markva that was received by OWCP on August 12, 2013.² For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the November 7, 2013 decision. Following such further development as OWCP deems necessary, it shall issue an appropriate merit decision on the claim.

IT IS HEREBY ORDERED THAT the November 7, 2013 decision of the Office of Workers' Compensation Programs be set aside and the case record remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 4, 2014 Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

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

² See Linda Johnson, 45 ECAB 439, 440 (1994) (where the Board held that it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision and noted that this principle applies with equal force when evidence is received by OWCP the same day a final decision is issued).