

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

<p><b>S.W., Appellant</b></p> <p><b>and</b></p> <p><b>DEPARTMENT OF ENERGY, SAVANNAH RIVER OPERATIONS OFFICE, Aiken, SC, Employer</b></p>	<p>) ) ) ) ) ) ) ) ) )</p>	<p><b>Docket No. 11-1797 Issued: February 15, 2012</b></p>
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<p><i>Appearances:</i> <i>Ronald S. Webster, Esq., for the appellant</i> <i>Office of Solicitor, for the Director</i></p>	<p><i>Case Submitted on the Record</i></p>
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**ORDER REMANDING CASE**

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

On August 1, 2011 appellant, through his attorney, filed a timely appeal of the May 23, 2011 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP) denying his request for reconsideration.<sup>1</sup> On appeal, counsel contends that OWCP erred in failing to consider new evidence, a May 2, 2011 medical report, from Dr. Christopher R. Edwards, an attending Board-certified orthopedic surgeon, submitted by appellant and received by OWCP prior to the issuance of the May 23, 2011 reconsideration decision. In the May 2, 2011 report, Dr. Edwards listed findings on previous examinations of appellant and advised that his continuing back symptoms were causally related to his “[w]orkers’ [c]ompensation injury.” As OWCP failed to consider this evidence, counsel contends that the May 23, 2011 decision should be reversed and the case remanded to OWCP to reinstate appellant’s compensation benefits.

The Board has duly considered the matter and finds that this case is not in posture for decision. The Board notes that when OWCP issued its reconsideration decision on May 23,

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<sup>1</sup> The Board notes that appellant sought reconsideration of an OWCP hearing representative’s May 4, 2010 decision which affirmed the termination of his medical benefits effective October 2, 2009 on the grounds that he no longer had any residuals or disability causally related to his accepted September 2, 2003 employment-related lumbar conditions. OWCP never paid appellant wage-loss compensation for total disability.

2011 it found that appellant's attorney had submitted "essentially the same arguments he presented during the oral hearing."<sup>2</sup> The evidence was sent as 'Hearing Exhibits' and was received by the Branch of Hearings and Review on February 24, 2010. Therefore, the Branch of Hearings and Review has already reviewed the evidence." OWCP determined that appellant's request for reconsideration was duplicative and repetitious in nature and, thus, insufficient to warrant a merit review of his claim. However, on May 6, 2011 OWCP received Dr. Edwards' May 2, 2011 report which contained an opinion addressing the causal relationship between appellant's continuing symptoms and the accepted injuries.

As the Board's jurisdiction of a case is limited to reviewing that evidence which is before OWCP at the time of its final decision,<sup>3</sup> it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision.<sup>4</sup> Since the Board's decisions are final as to the subject matter appealed,<sup>5</sup> it is crucial that all evidence which was properly submitted to OWCP prior to the time of issuance of its final decision be addressed.<sup>6</sup> Board precedent requires OWCP to review all evidence submitted by a claimant and received by OWCP prior to the issuance of its final decision, including evidence received on the date of the decision.<sup>7</sup> This is particularly important in this appeal where, as noted above, appellant submitted medical evidence contending that he continued to have residuals of his accepted employment injuries, but there is no indication that this was considered by OWCP before issuing its final decision. OWCP stated that the evidence submitted on reconsideration by appellant was duplicative of evidence he previously submitted at the February 24, 2010 hearing. However, Dr. Edwards' May 2, 2011 report was not submitted at the hearing. As OWCP did not consider the evidence that it received on May 6, 2011 in reaching its May 23, 2011 decision, the Board cannot review such evidence for the first time on appeal.<sup>8</sup> The Board finds that the case must be remanded for OWCP to consider Dr. Edwards' May 2, 2011 report. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision.

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<sup>2</sup> The Board notes that appellant was represented by Bryan K. Webb, Esquire and not by Mr. Webster at the February 24, 2010 hearing as noted by OWCP.

<sup>3</sup> 20 C.F.R. § 501.2(c).

<sup>4</sup> *William A. Couch*, 41 ECAB 548 (1990) (OWCP did not consider new evidence four days prior to the date its decision was issued).

<sup>5</sup> 20 C.F.R. § 501.6(d).

<sup>6</sup> *See William A. Couch*, *supra* note 4; *see also Linda Johnson*, 45 ECAB 439 (1994) (applying *Couch* where OWCP did not consider a medical report received on the date of issuance of its decision).

<sup>7</sup> *Id.*

<sup>8</sup> *Supra* note 3.

**IT IS HEREBY ORDERED THAT** the May 23, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: February 15, 2012  
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