

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

J.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Buffalo, NY, Employer**

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**Docket No. 11-1038
Issued: January 25, 2012**

Appearances:
Coby Jones, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On March 17, 2011 appellant, through his representative, filed an application for review of an Office of Workers' Compensation Programs' (OWCP) decision dated December 29, 2010 which denied appellant's reconsideration request on the grounds that the evidence submitted was repetitious and insufficient to warrant review of its July 29, 2010 decision.¹

The Board has duly considered the matter and finds that the case is not in posture for a decision and must be remanded to OWCP. In the case of *William A. Couch*,² the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. Following OWCP's July 29, 2010 merit decision, appellant requested reconsideration on November 22, 2010. Appellant also submitted additional evidence. This included a report dated September 16, 2010 from Dr. Mathew J. Fleig, appellant's treating physician, who addressed the cause of appellant's conditions. This document was received by OWCP on November 30, 2010. In its December 29, 2010 decision, OWCP denied appellant's reconsideration request on the grounds that the

¹ Appellant was injured when he fell on January 24, 2000 while delivering mail. OWCP accepted the claim for right shoulder strain and bursitis and authorized arthroscopic surgery. On July 25, 2003 appellant filed a claim for a recurrence of disability beginning June 11, 2003. OWCP's July 29, 2010 decision denied modification of its prior denial of her claim for a recurrence of disability beginning June 11, 2003.

² 41 ECAB 548 (1990).

evidence submitted in support of his request was repetitious in nature and insufficient to warrant review of its prior decision. It did not note receipt or consideration of the September 16, 2010 report. Instead, OWCP advised that no new evidence was submitted with the reconsideration request and that all evidence submitted on reconsideration was previously of record.

The Board finds that OWCP, in its December 29, 2010 decision, did not review the September 16, 2010 report from Dr. Fleig that was received by OWCP on November 30, 2010. 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 December 29, 2010 decision. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on the claim.

IT IS HEREBY ORDERED THAT the December 29, 2010 decision of the Office of Workers' Compensation Programs set aside. The case recorded is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 25, 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