

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

S.A., Appellant

and

**DEPARTMENT OF DEFENSE, YUMA
PROVING GROUND, Yuma, AZ, Employer**

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**Docket No. 13-117
Issued: April 25, 2013**

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 October 19, 2012 appellant filed a timely appeal of a September 14, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying his traumatic injury claim. By that decision, OWCP denied his claim on the grounds that he failed to establish that the April 5, 2012 incident occurred as alleged and, thus, fact of injury was not established.¹

The Board, having duly considered the matter, concludes that the case is not in posture for decision. In correspondence dated August 16, 2012, OWCP informed appellant that the evidence currently of record was insufficient to establish his claim. It advised as to the type of factual and medical evidence necessary to establish his claim and allotted him 30 days within which to submit the requested information. On September 14, 2012 OWCP received medical and factual evidence from appellant as set forth below. The evidence submitted included an April 19, 2012 certificate of medical examination, an April 19, 2012 report by Dr. Tamra L. Barker, an employing establishment physician, the second page of a traumatic injury claim form indicating an injury date of April 5, 2012 and date of notice as April 9, 2012, and an April 9,

¹ On July 30, 2012 appellant, then a 33-year-old heavy mobile equipment mechanic, alleged that he injured his lower back in the performance of duty on April 5, 2012 while working on the hull of a tank lifting fire bottles.

2012 report from Kurt Fossum² and appellant's statement regarding the April 5, 2012 incident and actions he took following the incident.

By decision dated September 14, 2012, OWCP denied appellant's claim on the grounds that he did not establish that the injury occurred as alleged. It found the evidence was insufficient to show that the claimed event occurred due to discrepancies in the evidence as to how and when the incident occurred. OWCP also found that appellant had not responded to the August 16, 2012 development letter.³

In *William A. Couch*, the Board explained that its jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision.⁴ The Board found that, as its decisions are final with regard to the subject matter appealed, it is crucial that OWCP consider all evidence relevant to the subject matter that was properly submitted to OWCP prior to the issuance of its final decision is addressed by OWCP,⁵ even if received the same day of issuance.⁶

On September 14, 2012 the same day OWCP issued its decision rejecting appellant's claim on the basis that the incident did not occur as alleged, it received appellant's April 5, 2012 statement detailing the incident and actions he took following the incident and medical evidence dated April 19, 2012. By finding that no evidence was received in response to its August 16, 2012 inquiry, OWCP's September 14, 2012 decision makes clear that this evidence was not reviewed. Because this evidence was received but not reviewed by OWCP in rejecting appellant's claim, the Board concludes that the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's entitlement to compensation.⁷

² The record is unclear whether Mr. Fossum is a physician, nurse, physician's assistant or other medical professional.

³ The claims examiner mistakenly noted the date of the letter as September 16, 2012.

⁴ 41 ECAB 548 (1990); 20 C.F.R. § 501.2(c)(1).

⁵ See *William A. Couch*, *supra* note 4; see also *Kenneth R. Love*, 50 ECAB 193 (1998).

⁶ See *Linda Johnson*, 45 ECAB 439 (1994).

⁷ See *M.B.*, Docket No. 09-17 (issued September 23, 2009); *Yvette N. Davis*, 55 ECAB 475 (2004); *Linda Johnson*, *supra* note 6 (evidence received the same day as the issuance of OWCP's decision).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 14, 2012 is set aside and the case remanded for further proceedings consistent with this decision 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