

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

B.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
St. Louis, MO, Employer**

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**Docket No. 14-110
Issued: April 22, 2014**

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
ALEC J. KOROMILAS, Alternate Judge

On October 18, 2013 appellant filed an application for review of an Office of Workers' Compensation Programs' (OWCP) decision dated September 18, 2013, which denied his reconsideration request without reviewing the merits of the claim.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 it before the final decision is issued. In this case, in a decision dated June 7, 2013, OWCP denied modification of the December 11, 2012 decision, which denied authorization for a requested surgery. On August 13, 2013 appellant requested reconsideration

¹ On April 28, 2001 appellant, a letter carrier, filed a claim alleging an occupational disease involving his neck, right shoulder and possible carpal tunnel in the right wrist. OWCP accepted the claim for right carpal tunnel syndrome and cervical radiculitis. It received a request for authorization for neck spine fusion and removal, additional neck spine fusion, insertion of spine fixation device, application of a spine prosthetic device, removal of spinal lamina and removal of spinal lamina add on. On December 11, 2012 OWCP denied the request for surgery. On March 11, 2013 appellant requested reconsideration and submitted additional evidence. By decision dated June 7, 2013, OWCP denied modification of the December 11, 2012 decision.

² 41 ECAB 548 (1990).

and submitted additional medical evidence. This included reports dated July 24 and August 26, 2013 from Dr. Sarah K. Hwang, a Board-certified internist, who noted appellant's history of injury and treatment, examined appellant and provided findings. She provided an opinion with regard to appellant's care and treatment. Dr. Hwang also addressed the requested surgery and denial. These reports were received by OWCP on September 18, 2013. In its September 18, 2013 decision, OWCP denied appellant's reconsideration request on the grounds that he neither raised substantive legal questions nor submitted new and relevant evidence to warrant merit review. It did not note receipt or consideration of the July 24 and August 26, 2013 reports from Dr. Hwang.

The Board finds that OWCP, in its September 18, 2013 decision, did not review the July 24 and August 26, 2013 reports from Dr. Hwang and specifically found that no new medical evidence was submitted.³ 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 September 18, 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 September 18, 2013 decision of Office of Workers' Compensation Programs is set aside. The case recorded is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: April 22, 2014
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

³ 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 it prior to issuance of its final decision and noted that this principal applies with equal force when evidence is received by OWCP the same day a final decision is issued).