

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

B.M., Appellant

and

**DEPARTMENT OF THE ARMY, U.S. ARMY
WAR COLLEGE, Carlisle Barracks, PA,
Employer**

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**Docket No. 13-1948
Issued: March 5, 2014**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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 August 23, 2013 appellant filed an application for review of an Office of Workers' Compensation Programs (OWCP) decision dated July 22, 2013, which denied his request for reconsideration as it was untimely filed and did not establish clear evidence of error.

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*,¹ 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 a November 30, 2011 decision that denied appellant's claim for an occupational disease on the grounds that he failed to submit medical evidence establishing a causal relationship between the accepted work events and his diagnosed condition, appellant, through counsel, requested reconsideration on July 15, 2013. Appellant also submitted a new February 11, 2013 medical report from Dr. Michael E. Darowish, an orthopedist. This report was received by OWCP on July 17, 2013. In its July 22, 2013 decision, OWCP denied appellant's reconsideration request on the grounds that it was untimely filed and did not establish clear evidence of error. OWCP specifically noted

¹ 41 ECAB 548 (1990).

receipt of appellant's reconsideration request and each piece of newly submitted evidence but it did not reference the February 11, 2013 report from Dr. Darowish.

The Board finds that as OWCP, in its July 22, 2013 decision, did not properly review all the evidence in the record prior to its July 22, 2013 decision, the case will be remanded to OWCP to enable it to properly consider all the evidence in the record at the time of the July 22, 2013 decision.² Following such review, OWCP shall issue an appropriate decision on the reconsideration request.

IT IS HEREBY ORDERED THAT the July 22, 2013 decision of the 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: March 5, 2014
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

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).