

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

S.M., Appellant)	
)	
and)	Docket No. 19-0124
)	Issued: August 1, 2019
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PROTECTION,)	
Pembina, ND, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On October 22, 2018 appellant filed a timely appeal from an August 16, 2018 decision of the Office of Workers’ Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned this case Docket No. 19-0124.

By decision dated August 16, 2018, an OWCP hearing representative reviewed the merits of appellant’s claim and affirmed OWCP’s March 9, 2018 initial denial of her traumatic injury claim. She found that appellant had not met her burden of proof to establish the medical component of fact of injury because the medical evidence of record did not provide a diagnosis from a qualified “physician” as defined by the Federal Employees’ Compensation Act (FECA)¹.

The Board has duly considered the matter and notes that in the case of *William A. Couch*² it 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.

¹ 5 U.S.C. § 8101 *et seq.*

² 41 ECAB 548 (1990).

OWCP received several reports dated January 29, 2018 from Dr. Sheila Swenson, a chiropractor. In a report dated January 29, 2018, received by OWCP on March 20, 2018, Dr. Swenson related that she performed x-rays on January 29, 2018 of appellant's thoracic region, lumbar region, and cervical region and made several diagnoses. This report was received by OWCP before its August 16, 2018 decision.

In its August 16, 2018 decision, OWCP noted, "The medical evidence of record does not provide a diagnosis from a 'physician' as that term is defined in [FECA]. FECA provides that the term 'physician' as used therein 'includes chiropractors to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.'³ Dr. Swenson diagnosed [appellant] with spinal subluxations. However, the treatment notes make no mention of an x-ray having been performed. Since Dr. Swenson did not take x-rays showing a subluxation to exist, she cannot be considered a 'physician' under FECA and her report has no probative value under FECA."

It is clear that Dr. Swenson's January 29, 2018 report contained findings based on completed x-rays of appellant's thoracic, lumbar, and cervical spine. OWCP specifically indicated in its August 16, 2018 decision that it had not received evidence of x-rays taken on appellant's spine. However, Dr. Swenson's January 29, 2018 report was received well in advance of OWCP's August 16, 2018 decision. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim properly submitted to OWCP be reviewed and addressed.⁴ Accordingly,

³ 5 U.S.C. § 8101(2).

⁴ *T.J.*, Docket No. 14-1854 (issued February 3, 2015); see *Yvette N. Davis*, 55 ECAB 475 (2004).

IT IS HEREBY ORDERED THAT the August 16, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 1, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board