

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

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T.B., Appellant)	
)	
and)	Docket No. 19-0323
)	Issued: August 23, 2019
DEPARTMENT OF THE NAVY,)	
GUANTANAMO BAY FIRE DEPARTMENT,)	
Guantanamo Bay, Cuba, 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 November 26, 2018 appellant filed a timely appeal from an October 22, 2018 decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 19-0323.

On September 17, 2018 appellant, then a 48-year-old fire fighter captain, filed a traumatic injury claim (Form CA-1) alleging that on September 1, 2001 he injured his lower back when he picked up a three-inch diameter hose while in the performance of duty. On the claim form the employing establishment advised that appellant stopped work on August 13, 2018 and that it

¹ The Board notes that, following the October 22, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

received notice of the alleged injury on September 17, 2018. It controverted the claim indicating that it was untimely filed and that appellant was a foreign national.²

In a development letter dated September 18, 2018, OWCP advised appellant that the evidence submitted was insufficient to establish that he provided timely notice of his alleged September 1, 2001 employment injury, that he was a Federal Civil Employee, or that he sustained an injury in the performance of duty. On the same letter it advised the employing establishment that “if the employee was treated at an agency medical facility for this injury, the employing [establishment] must provide the treatment notes directly to OWCP.”

Appellant submitted medical evidence to the record from 2018. In an October 21, 2018 supplemental statement, he related that he was transported to and received treatment at the U.S. Naval Hospital at the time of his September 1, 2001 back injury. Appellant noted that he received medical treatment from the U.S. Naval Hospital periodically over the years for his back condition. He advised that he filed the claim now as his back condition had worsened to the point where immediate surgery was necessary.

By decision dated October 22, 2018, OWCP denied appellant’s traumatic injury claim, finding that it was untimely filed pursuant to 5 U.S.C. § 8122.

The Board finds that this case is not in posture for decision. In his October 21, 2018 statement, appellant related that he was transported to the U.S. Naval Hospital at the time of his September 1, 2001 back injury. FECA provides an exception to the three-year time limitation for filing a claim, indicating that a claim will be considered timely if a claimant’s immediate supervisor had actual knowledge of the injury within 30 days such that he or she was reasonably put on notice of an on-the-job injury or death. The Board has held that, when a claimant seeks treatment from the employing establishment’s health unit for a claimed condition, his or her supervisor is deemed to have actual knowledge of the claimed injury as of the date of the treatment.³ Although OWCP had requested that the employing establishment submit all records regarding appellant’s medical treatment at its employing establishment medical facilities to the record, at the time of the decision, the employing establishment had not submitted any evidence regarding appellant’s medical treatment at its facility for the alleged September 1, 2001 injury.

Although it is a claimant’s burden of proof to establish his or her claim, OWCP is not a disinterested arbiter, but rather shares responsibility in the development of the evidence, particularly when such evidence is of the character normally obtained from the employing establishment or other government source.⁴ Since appellant’s allegations indicate that the employing establishment would have in its possession evidence relevant to timely notice of the

² 5 U.S.C. § 8137 provides compensation to an employee or dependent who is neither a citizen nor a resident of the United States or Canada.

³ *C.C.*, Docket No. 18-0912 (issued July 11, 2019); *J.T.*, Docket No. 18-0220 (issued July 27, 2018); *Robert E. Kimzey*, 40 ECAB 762, 766 (1989).

⁴ *See R.V.*, Docket 18-0268 (issued October 17, 2018).

alleged injury, it should obtain a response from the employing establishment regarding appellant's medical records which are in its possession.⁵

The case will therefore be remanded to OWCP to obtain all medical records in the possession of the employing establishment pertaining to appellant's alleged September 1, 2001 employment injury. After such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the October 22, 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 23, 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

⁵ See 20 C.F.R. § 10.117(a), which provides that an employing establishment that has reason to disagree with an aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employing establishment may include supporting documents such as witness statements, medical reports or records, or other relevant information.