

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

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<b>W.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0231</b>
	)	<b>Issued: November 1, 2019</b>
<b>DEPARTMENT OF THE NAVY, NAVAL</b>	)	
<b>WEAPONS STATION, Yorktown, VA, Employer</b>	)	
_____	)	

*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 13, 2017 appellant filed a timely appeal from a July 21, 2017 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 18-0231.<sup>1</sup>

On April 28, 2015 appellant, then a 59-year-old material handler inspector, filed a traumatic injury claim (Form CA-1) alleging that on April 27, 2015, she sustained a contusion on the right side of her head (eye brow) when she slipped and fell exiting her truck while in the performance of duty. She explained that she hit her head on the concrete. Treatment records dated April 27, 2015 from an emergency department included a diagnosis of facial contusion. Appellant was placed on light duty for the next 10 days to avoid further head trauma. It was anticipated that she would resume her regular duties on or after May 6, 2015.

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<sup>1</sup> The Board notes that following the July 21, 2017 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.*

On June 29, 2015 appellant filed a notice of recurrence (Form CA-2a) for medical treatment only. She alleged that she injured her arm during the April 27, 2015 employment incident and required additional medical treatment. Appellant continued to work.

After further development of the case record, OWCP accepted appellant's traumatic injury claim for right-side facial contusion. By decision dated October 22, 2015, it denied her June 29, 2015 recurrence claim finding that she had not met her burden of proof to establish that her diagnosed upper extremity condition was causally related to the accepted April 27, 2015 employment incident. By decision dated August 2, 2016, a representative of OWCP's Branch of Hearings and Review affirmed the October 22, 2015 decision. By decision dated November 1, 2016, OWCP denied modification of its prior decision, finding that appellant had not met her burden of proof to establish causal relationship between her right shoulder condition and the April 27, 2015 employment incident.

On May 30, 2017 OWCP received a May 22, 2017 narrative report and treatment notes from appellant's treating physician, Dr. Daniel R. Cavazos, a Board-certified orthopedic surgeon. He diagnosed right shoulder impingement and rotator cuff tear with an April 27, 2015 date of injury. The treatment notes indicated that appellant was injured coming down from a five-ton truck, when she slipped and fell on concrete on her right side. Dr. Cavazos recommended surgery and advised that appellant could work with restrictions.

On July 10, 2017 appellant requested reconsideration, utilizing the appeal request form that accompanied OWCP's November 1, 2016 decision.

By decision dated July 21, 2017, OWCP denied appellant's request for reconsideration.

The Board has duly considered the matter and notes that in the case of *William A. Couch*<sup>2</sup> it 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 the instant case, OWCP did not specifically address Dr. Cavazos' May 22, 2017 opinion, which it received after the November 1, 2016 merit decision, but prior to appellant's July 10, 2017 request for reconsideration. 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.<sup>3</sup> Accordingly,

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<sup>2</sup> 41 ECAB 548 (1990).

<sup>3</sup> *S.M.*, Docket No. 19-0124 (issued August 1, 2019); *T.J.*, Docket No. 14-1854 (issued February 3, 2015); *Yvette N. Davis*, 55 ECAB 475 (2004).

**IT IS HEREBY ORDERED THAT** the July 21, 2017 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: November 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