

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

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W.H., Appellant)	
)	
and)	Docket No. 19-0346
)	Issued: November 26, 2019
DEPARTMENT OF THE AIR FORCE, AIR)	
NATIONAL GUARD, Schenectady, NY,)	
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 December 3, 2018 appellant filed a timely appeal from an October 30, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as 19-0346.

This case has previously been before the Board.¹ The facts and circumstances as set forth in the prior Board decisions are incorporated herein by reference. The relevant facts are as follows.

On January 3, 1996 appellant, then a 46-year-old aircraft mechanic foreman, filed a notice of traumatic injury (Form CA-1) alleging that he sustained a back injury while moving lockers while in the performance of duty. He stopped work on January 8, 1996 and worked intermittently before returning to full duty work on October 5, 1998. OWCP initially accepted lumbosacral strain and subsequently accepted displacement of a lumbar intervertebral disc without myelopathy and other acquired deformities of the ankle and foot, bilateral. On August 14, 1996 appellant underwent a hemilaminotomy and microdiscectomy at L4-5.² By decision dated September 9,

¹ Docket No. 16-0715 (issued August 11, 2016); Docket No. 17-1390 (issued April 23, 2018).

² Appellant was suspended without pay effective April 21, 2002 and terminated for cause effective September 12, 2002.

2019, OWCP denied appellant's claim for a recurrence of disability, commencing September 20, 2006. Appellant requested reconsideration and by decision dated June 15, 2011, OWCP vacated the prior decision and accepted appellant's recurrence claim. On October 8, 2014, OWCP proposed to rescind the June 15, 2011 acceptance of the recurrence claim. OWCP finalized the rescission by decision dated May 15, 2015. Appellant requested reconsideration, but by decision dated February 9, 2016, OWCP denied modification of its prior decision. On February 29, 2016, appellant appealed to the Board. By decision dated August 11, 2016, the Board found that OWCP improperly rescinded its acceptance of appellant's recurrence claim.³

On November 18, 2016 OWCP again accepted appellant's claim for a recurrence of disability commencing September 20, 2006. However, on March 15, 2017, it again proposed to rescind its acceptance of appellant's recurrence claim. By decision dated April 28, 2017, OWCP finalized that rescission and by decision dated May 1, 2017 it denied appellant's recurrence claim. On June 8, 2017 appellant appealed the April 28 and May 1, 2017 decisions to the Board. By decision dated April 23, 2018, the Board found that OWCP had met its burden of proof to rescind its acceptance of the September 20, 2006 recurrence claim. The Board further found that appellant had not met his burden of proof to establish a recurrence of total disability commencing September 20, 2006 and that appellant had not met his burden of proof to establish a recurrence of total disability commencing April 8, 2002 causally related to his January 3, 1996 employment injury.⁴

In a letter dated July 13, 2017, which was during the pendency of appellant's prior appeal to the Board, OWCP provided Dr. Kevin Scott, a Board-certified orthopedic surgeon who had provided a January 18, 2017 second-opinion evaluation, with an updated statement of accepted facts (SOAF). In the letter accompanying, the SOAF it asked that he provide a supplemental report regarding appellant's lumbar condition. On July 27, 2017 OWCP received a July 18, 2017 addendum report from Dr. Scott in which he noted appellant's 1996 employment injury and indicated that it had been his most significant injury.

On August 17, 2018 appellant, through his then-representative, requested reconsideration and submitted additional medical evidence including several treatment notes from Dr. Paul Salerno, Board-certified in physical medicine and rehabilitation, dated May 1, 2017 to October 18, 2018.

By decision dated October 30, 2018, OWCP denied modification of its April 28 and May 1, 2017 decisions. It noted medical evidence submitted, but did not reference the July 18, 2017 report from Dr. Scott which was new evidence not previously considered by OWCP or the Board.

The Board has duly considered the matter and finds that this case is not in posture for a decision. In the case of *William A. Couch*, 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. While OWCP is not required to list every piece of evidence submitted to the record, the record is clear that Dr. Scott's July 18, 2017 report was received, but not reviewed

³ Docket No. 16-0715, *supra* note 1.

⁴ Docket No. 17-1390, *supra* note 1.

by OWCP, prior to the issuance of its October 30, 2018 decision.⁵ 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.⁶

The case must, therefore, be remanded for proper review of the all the evidence of record. Following any necessary further development, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the October 30, 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: November 26, 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 In the October 30, 2018 decision, OWCP merely noted that Dr. Scott had submitted a January 18, 2017 report that had previously been reviewed by the Board.

⁶ *S.D.*, Docket No. 18-1507 (issued June 21, 2019).