

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

R.P., Appellant

and

**DEPARTMENT OF AGRICULTURE, OFFICE
OF THE SECRETARY, Washington, DC,
Employer**

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**Docket No. 18-0909
Issued: October 28, 2019**

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
ALEC J. KOROMILAS, Alternate Judge

On March 26, 2018 appellant filed a timely appeal from December 28, 2017 and March 6, 2018 decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 18-0909.

On October 23, 2017 appellant, then a 27-year-old advanced lead, filed a traumatic injury claim (Form CA-1) alleging that on September 21, 2017 he sustained whiplash and light bruising to his arms and torso as a result of a motor vehicle accident. On the reverse side of the claim form dated October 20, 2017, appellant's supervisor reported that appellant was injured in the performance of duty and agreed with the statement surrounding the employment incident. Appellant did not stop work and first received medical care on September 21, 2017.

On November 22, 2017 appellant submitted an October 19, 2017 witness statement from the Assistant Special Agent-in-Charge, M.S., setting forth his account of the September 21, 2017 employment incident.

In a development letter dated November 27, 2017, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days. OWCP requested that

he attach a complete copy of any investigation made by the State Highway Patrol, law enforcement officers, or his agency.

By decision dated December 28, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the September 21, 2017 employment incident occurred as alleged. It noted that he failed to provide a copy of an investigation made by the State Highway Patrol or other law enforcement officers as requested in its November 27, 2017 development letter.¹

On January 25, 2018 the U.S. Postal Service returned both OWCP's November 27, 2017 development letter and December 28, 2017 decision as undeliverable.

On February 22, 2018 following a February 13, 2018 telephone call with the claims examiner, appellant requested reconsideration of OWCP's December 28, 2017 decision. The appeal request form noted a change of address.

By decision dated March 6, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim.²

The Board finds that OWCP did not properly evaluate the evidence that was of record at the time of the December 28, 2017 merit decision. The decision failed to address or discuss M.S.'s October 17, 2017 witness statement which detailed the events surrounding the September 21, 2017 motor vehicle accident. 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 which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.³

Thus, the Board finds that this case is not in posture for a decision. For the reasons set forth herein, the case will be remanded to OWCP for such further development as deemed appropriate followed by proper issuance of a *de novo* decision.⁴ Accordingly,

¹ *Id.*

² This decision was incorrectly addressed to appellant's prior address of record.

³ *See Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, 41 ECAB 548 (1990).

⁴ The Board notes that OWCP's November 27, 2017 development letter specifically requested that appellant provide a copy of an investigatory report by a law enforcement organization. However, the record reflects that the development letter was returned to OWCP as undeliverable and thus appellant should be afforded the opportunity to submit evidence needed to establish his claim.

IT IS HEREBY ORDERED THAT the March 6, 2018 and December 28, 2017 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further development consistent with this order of the Board.

Issued: October 28, 2019
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board