

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

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D.M., Appellant)	
)	
and)	Docket No. 20-0099
)	Issued: July 16, 2020
DEPARTMENT OF THE ARMY,)	
DIRECTORATE OF EMERGENCY SERVICES,)	
Fort Myer, VA, Employer)	
_____)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
 ALEC J. KOROMILAS, Chief Judge
 JANICE B. ASKIN, Judge
 PATRICIA H. FITZGERALD, Alternate Judge

On October 16, 2019 appellant filed a timely appeal from a July 16, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Board's docketed the appeal as No. 20-0099.

The Board finds that the case is not in posture for decision and must be remanded to OWCP. In the case of *William A. Couch*,¹ the Board 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.

On March 1, 2018 appellant, then a 59-year-old security officer, filed a traumatic injury claim (Form CA-1) alleging that on February 18, 2018 he twisted his right ankle when he attempted to exit the narrow cage sitting compartment of a police car while in the performance of duty. He stopped work on February 20, 2018.

By decision dated April 16, 2018, OWCP accepted that the alleged incident occurred, but denied appellant's claim, finding that he had not established a diagnosed medical condition in

¹ 41 ECAB 548 (1990).

connection with the February 18, 2018 incident. It noted that he had not submitted medical evidence containing a firm diagnosis. OWCP further explained that, even if appellant submitted medical evidence containing a firm diagnosis, the medical evidence must also establish with rationalized medical opinion that the diagnosed condition was causally related to the accepted employment incident.

OWCP continued to receive medical evidence. A note with an illegible signature dated February 20, 2018 requested that appellant be excused from work on that date.

In an attending physician's report (Form CA-20) dated March 8, 2018, Dr. John Miller, a podiatrist, diagnosed right ankle sprain with tibia and Achilles conditions. He checked a box "Yes" indicating his belief that the condition was caused or aggravated by the incident of February 18, 2018, explaining that it occurred while in the line of duty. Dr. Miller recommended light-work restrictions until April 16, 2018.

In a letter dated April 11, 2018, Dr. Tanya Judd, a podiatrist, noted that appellant was being treated for a right ankle fracture and Achilles tendinitis. She observed that his most recent magnetic resonance imaging (MRI) scan demonstrated interval healing of the right ankle fracture and she recommended work restrictions.

In memoranda dated April 18 and May 22, 2018, Dr. Kimberly Beck, Board-certified in occupational medicine, recommended that appellant return to work with temporary restrictions.

A disability certificate, dated May 14, 2018, contained diagnoses of a right ankle fracture and left ankle sprain with a torn ligament. The signature was illegible. In a disability certificate dated July 10, 2018, Dr. Miller diagnosed lateral ankle pain/instability and recommended work restrictions. In a disability certificate dated August 15, 2018, Dr. Judd noted that appellant had been treated between February 22 and June 10, 2018 for a right foot stable longitudinal split partial tear of the peroneus longus with ankle instability and a two centimeter calcaneus ganglion cyst, as well as left foot peroneus longus tendonitis, a chronic complete tear of the anterior talofibular ligament, a nondisplaced fracture of the distal tibia, and Achilles tendinitis. She stated that his initial visit was on February 22, 2018 for consultation regarding an injury that occurred on February 18, 2018 when he exited a car at work and his foot twisted inward as it hit the ground. Disability certificates dated August 21 and November 20, 2018 contained diagnoses of right peroneal tendon tear and left sprained ligaments. The signatures were illegible.

In a letter dated February 26, 2019, Dr. Judd stated that appellant had been treated for diagnoses of right foot stable longitudinal split partial tear of the peroneus longus with ankle instability and a two centimeter calcaneus ganglion cyst, as well as left foot peroneus longus tendonitis, a chronic complete tear of the anterior talofibular ligament, a nondisplaced fracture of the distal tibia, and Achilles tendinitis.

In a memorandum dated March 7, 2019, Dr. Beck recommended continuation of current work restrictions.

On April 18, 2019 OWCP received appellant's request for reconsideration of its April 16, 2018 decision. On even date it received appellant's February 1, 2019 response to OWCP's development questionnaire in which he provided a narrative account of the February 18, 2018

incident. On April 18, 2019 OWCP also received non-scannable physical evidence consisting of three CDs. On April 26, 2019 it received a DVD.

By decision dated July 16, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

Appellant had one year from that decision, until Friday, April 16, 2019, to timely request reconsideration of the merits of his claim. As OWCP received his request for reconsideration on April 18, 2019, more than one year after the April 16, 2018 decision, his request was untimely filed. Consequently, appellant must demonstrate clear evidence of error by OWCP in denying his claim for compensation.²

The Board finds that the case is not in posture for decision because OWCP did not review all of the evidence submitted with appellant's untimely request for reconsideration. OWCP, in its July 16, 2019 decision, did not review the reports from Dr. Miller dated March 8, 2018, the April 18 and May 22, 2018, and March 7, 2019 reports from Dr. Beck, the February 26, 2019 report from Dr. Judd, the CDs received on April 18, 2019, or the DVD received on April 26, 2019 to determine whether appellant had established clear evidence of error in the denial of his claim. For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the July 16, 2019 decision.³ Following such further development as OWCP deems necessary, it shall issue an appropriate decision.

² *Id.*

³ *See I.L.*, Docket No. 19-0077 (issued July 26, 2019).

IT IS HEREBY ORDERED THAT the July 16, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: July 16, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board