

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

O.T., Appellant)	
)	
and)	Docket No. 19-1932
)	Issued: May 21, 2020
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF INVESTIGATION,)	
Washington, DC, Employer)	
)	

Appearances: *Case Submitted on the Record*
Erik B. Blowers, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 18, 2019 appellant, through counsel, filed a timely appeal from a June 13, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-1932.²

On May 17, 2018 appellant, then a 56-year-old retired agent, filed an occupational disease claim (Form CA-2) alleging that he sustained aggravation and or acceleration of right hip osteoarthritis due to factors of his federal employment.³ Appellant indicated that he had a right

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Appellant timely requested oral argument before the Board. In light of the disposition of the appeal, the oral argument request is denied.

³ Appellant provided a May 31, 2018 statement in which he related that he sustained an injury to his left hip at work on June 29, 2017, and had thereafter undergone a left hip replacement.

hip replacement in 2011 and injured his left hip in 2017 resulting in replacement. He noted that on March 19, 2018, his physician informed him that his right hip condition was caused by work activities.

By decision dated July 3, 2018, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that a diagnosed medical condition was causally related to accepted factors of appellant's federal employment.

On July 23, 2018 appellant's counsel requested reconsideration and submitted additional evidence.

In an August 2, 2018 decision, OWCP modified its July 3, 2018 decision. It found that a March 19, 2018 report from Dr. Stephen Candela, an orthopedic surgeon, diagnosed primary osteoarthritis and degenerative joint disease of the right hip; however, the medical evidence did not establish a causal relationship between the right hip condition and factors of appellant's federal employment.

On October 18, 2018 counsel requested reconsideration and submitted additional evidence. In a January 16, 2019 decision, OWCP denied modification of the August 2, 2018 decision.

On April 18, 2019 counsel requested reconsideration and submitted new evidence. The medical evidence included reports from Dr. Candela dated March 19, 2018, and additional reports dated June 16, August 24, September 1 and 28, November 11, and December 9, 2011.

By decision dated June 13, 2019, OWCP denied modification of its prior decision. It listed the evidence it received in support of the request for reconsideration. However, OWCP did not address or acknowledge the medical reports dated June 16, August 24, September 1 and 28, November 11, and December 9, 2011.

The Board has duly considered the matter and notes that in the case of *William A. Couch*⁴ it 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.

The Board finds that the June 13, 2019 OWCP decision did not review the above-noted medical evidence. Whether OWCP receives relevant evidence on the date of the decision or days before, such evidence must be considered.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 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 June 13, 2019

⁴ 41 ECAB 548 (1990).

⁵ See *G.A.*, Docket No. 19-1080 (issued January 2, 2020); *T.J.*, Docket No. 14-1854 (issued February 3, 2015); *J.J.*, Docket No. 12-1062 (issued December 12, 2012); *William McKennon*, 51 ECAB 145 (1999).

⁶ *Id.*; see *Yvette N. Davis*, 55 ECAB 475 (2004).

decision. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on the claim. Accordingly,

IT IS HEREBY ORDERED THAT the June 13, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 21, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board