

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

K.S., Appellant)	
)	
and)	
)	Docket No. 20-0251
)	Issued: March 3, 2021
DEPARTMENT OF TRANSPORTATION,)	
FEDERAL AVIATION ADMINISTRATION,)	
NORTHWEST MOUNTAIN AIRPORTS)	
DIVISION, Cedar City, Utah, Employer)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 13, 2019 appellant filed a timely appeal from an August 13, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-0251.

On August 16, 2011 appellant, then a 34-year-old airway transportation systems specialist, filed a traumatic injury claim (Form CA-1) alleging that on July 26, 2011 he injured his lower back and left leg when moving the outer dome of a satellite dish while in the performance of duty. OWCP accepted the claim for lumbar region intervertebral disc degeneration, lumbar region intervertebral disc displacement, lumbar region radiculopathy, displacement of lumbar intervertebral disc without myelopathy, degeneration of lumbar or lumbosacral intervertebral disc, and thoracic or lumbosacral neuritis or radiculitis.

On June 22, 2018 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits, finding that the weight of the medical evidence of record established that appellant no longer suffered from any residuals or continuing disability from work due to his July 26, 2011 employment injury. It afforded him 30 days to submit additional evidence to refute the proposed termination of benefits.

By decision dated August 1, 2018, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits, effective that date, finding that the weight of the medical evidence of record established that he no longer suffered from any residuals or continuing disability from work due to his July 26, 2011 employment injury.

On July 30, 2019 appellant requested reconsideration. In an attached statement dated July 29, 2019, he summarized the medical evidence of record and alleged that OWCP had engaged in physician shopping when it requested multiple second opinion evaluations prior to the termination of his compensation benefits.

Appellant submitted additional medical evidence, including July 26 and October 24, 2018 reports by Dayne Johnson, a physician assistant, a November 19, 2018 medical report by Dr. Allan Hillstead, a Board-certified anesthesiologist, and a November 26, 2019 laboratory report from Dr. Hillstead.

By decision dated August 13, 2019, OWCP denied appellant's reconsideration request, finding that the evidence of record was insufficient to warrant a review of its August 1, 2018 termination decision. The decision did not mention the July 26 and October 24, 2018 reports from Mr. Johnson, the November 19, 2018 medical report from Dr. Hillstead, or the November 26, 2018 laboratory report from Dr. Hillstead.

The Board has duly considered the matter and finds that the case is not in posture for a decision. 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.

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.² OWCP did not address the above-noted evidence in its August 13, 2019 decision and the Board cannot review that evidence for the first time on appeal.³

For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.⁴ Following this and other such further development as deemed necessary, OWCP shall issue an appropriate decision.

¹ 41 ECAB 548 (1990); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

² *See C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch, id.*

³ 20 C.F.R. § 501.2(c). *See also G.M.*, Docket No. 16-1766 (issued February 16, 2017).

⁴ *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

IT IS HEREBY ORDERED THAT the August 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: March 3, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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