

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

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| <b>E.T., Appellant</b>                       | ) |                             |
|  | ) |                             |
| <b>and</b>                                   | ) | <b>Docket No. 20-1302</b>   |
|  | ) | <b>Issued: May 10, 2021</b> |
|  | ) |                             |
| <b>DEPARTMENT OF THE AIR FORCE,</b>          | ) |                             |
| <b>McCONNELL AIR FORCE BASE,KS, Employer</b> | ) |                             |
| _____  | ) |                             |

*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 June 15, 2020 appellant filed a timely appeal from a May 14, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Board assigned Docket No. 20-1302.<sup>1</sup>

This case has previously been before the Board.<sup>2</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

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<sup>1</sup> The Board notes that, following the May 14, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

<sup>2</sup> Docket No. 13-1299 (issued October 29, 2013); *Order Dismissing Appeal*, Docket No. 08-546 (issued December 11, 2008); Docket No 05-359 (issued May 18, 2005); Docket No. 03-1178 (issued July 21, 2004); Docket No. 01-2218 (issued September 17, 2002); *Order Denying Petition for Reconsideration*. Docket No. 92-1175 (issued August 26, 1993); Docket No. 92-1175 (issued April 12, 1993); Docket No. 87-811 (issued August 31, 1987); *Order Dismissing Appeal*; Docket No. 86-814 (issued July 2, 1986); Docket No. 85-843 (issued July 22, 1985).

On January 13, 1972 appellant, then a 20-year-old warehouseman, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his neck and back when pushing a forklift, which jerked and pulled him forward while in the performance of duty. OWCP accepted the claim for closed dislocation of lumbar vertebra, displacement of lumbar intervertebral disc without myelopathy, and degeneration of lumbar or lumbosacral intervertebral disc. Appellant stopped work on January 13, 1972. The record reflects that OWCP paid appellant wage-loss compensation on the periodic rolls as of June 16, 2002.

In a July 1, 2015 note, Dr. Alan Albarracin, a geriatric medicine specialist, prescribed a residential gelcoat bathtub and listed appellant's diagnoses as chronic lower back pain, lumbar and cervical disc degeneration, and right shoulder joint degeneration.

In a letter dated August 1, 2015, appellant requested a walk-in tub. He indicated that he needed the walk-in tub due to his medical conditions involving his back, hip, and shoulder, and he attached information regarding the type of tub he wanted.

A May 5, 2016 letter from appellant indicated that he was providing information regarding his requested walk-in tub, and he attached a proposal from Premier Care.

In a development letter dated September 12, 2016, OWCP informed appellant that additional evidence was needed to support his request for authorization of a walk-in tub. It advised appellant of the type of medical evidence necessary to support his request.

In an October 13, 2016 letter, Dr. Albarracin requested a walk-in tub for appellant. He indicated that this equipment was necessary for appellant's failed low back syndrome, cervical disc disease with myelopathy, bilateral shoulder degenerative disc disease, and obesity. Dr. Albarracin stated that appellant would benefit from a walk-in tub because he had difficulty supporting himself using his arms, hips, and legs to get in and out of his regular tub, and because it would increase his safety. He contended that appellant would use the equipment daily for the rest of his life, and that no other different or alternative treatment or equipment would provide the same benefit.

An October 18, 2017 letter from Dr. Albarracin recommended a walk-in tub for appellant because his mobility and activities of daily living were restricted due to his health conditions. He additionally recommended the walk-in tub in order to prevent further injuries. Dr. Albarracin listed appellant's diagnoses as failed low back syndrome, lumbar and cervical spine degenerative disc and joint disease, right shoulder degenerative joint disease, and obesity. He opined that appellant's mobility in terms of getting up from a low position was very restricted due to his diagnosed conditions, and he related that appellant could not use his arms to lift himself up.

In a November 20, 2019 note, Dr. Baoluan Nguyen, Board-certified in internal medicine, prescribed a walk-in tub.

Appellant also submitted many additional medical reports and work capacity evaluations dated 2016 through 2020 regarding the effects of his accepted medical conditions.

On May 14, 2020 Dr. Kenechukwu Ugokwe, a Board-certified neurosurgeon serving as OWCP's district medical adviser (DMA), indicated that he reviewed the statement of accepted

facts (SOAF) and appellant's medical records. He opined that appellant's requested walk-in tub was not causally related to his accepted medical conditions and was more of a luxury than a medical necessity.

By decision dated May 14, 2020, OWCP denied authorization of the walk-in tub, finding that the evidence of record was insufficient to establish that this equipment was medically necessary to address the effects of appellant's accepted work-related conditions. It stated that, in support of the authorization request, it received two letters from Dr. Albarracin dated October 13, 2016 and October 18, 2017.

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*<sup>3</sup> 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.

In its May 14, 2020 decision, OWCP indicated that it received the following evidence in support of the authorization request: two letters from Dr. Albarracin dated October 13, 2016 and October 18, 2017. However, appellant also submitted additional medical evidence in support of the authorization, including the July 1, 2015 prescription from Dr. Albarracin that prescribed a residential gelcoat bathtub and listed his diagnoses, a November 20, 2019 prescription from Dr. Nguyen that prescribed a walk-in tub, and many additional medical reports and work capacity evaluations from 2016 through 2020 that addressed the effects of appellant's accepted medical conditions.

It is crucial that OWCP reviews all relevant evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.<sup>4</sup> The Board finds that this case is not in posture for decision, as OWCP did not review the above-noted evidence in its May 14, 2020 decision.<sup>5</sup> On remand, following any further development as deemed necessary, OWCP shall issue an appropriate decision.

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

<sup>4</sup> *See C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch, id.*

<sup>5</sup> *See V.C.*, Docket No. 16-0694 (issued August 19, 2016).

**IT IS HEREBY ORDERED THAT** the May 14, 2020 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 10, 2021  
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