

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

S.P., Appellant)	
)	
and)	Docket No. 21-0630
)	Issued: November 8, 2021
DEPARTMENT OF THE NAVY, NORFOLK)	
NAVAL SHIPYARD, Portsmouth, VA, 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 March 12, 2021 appellant filed a timely appeal from a February 17, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 21-0630.

On October 4, 2018 appellant, then a 55-year-old insulator, filed a traumatic injury claim (Form CA-1) alleging that on September 13, 2018 she sustained an injury to her left elbow and right kneecap when she tripped over sandbags stacked in front of a doorway while in the performance of duty. She stopped work on September 14, 2018, and returned to full-time work with restrictions on October 12, 2018. OWCP accepted the claim for open wound of the left elbow, left knee abrasion, right knee contusion, and olecranon (septic) bursitis of the left elbow. Appellant stopped work again on March 11, 2019 and returned to work on May 21, 2019, full time with restrictions.

By decision dated November 8, 2019, OWCP terminated appellant's medical benefits, effective that date. On December 9, 2019 appellant requested a hearing before a representative of

¹ The Board notes that OWCP received additional evidence following the February 17, 2021 decision. 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 additional evidence for the first time on appeal. *Id.*

OWCP's Branch of Hearings and Review, which was held on April 6, 2020. By decision dated June 5, 2020, OWCP's hearing representative affirmed the November 8, 2019 decision.

On December 2, 2020 appellant filed a notice of recurrence (Form CA-2a) of medical treatment and wage-loss alleging that on April 4, 2019, she sustained a recurrence of her September 13, 2018 employment injury. In response to the date and hour her pay stopped after the recurrence, appellant indicated "N/A." In response to the date stopped work after recurrence, the employing establishment indicated "N/A" and noted that appellant was "still working." It was also noted that appellant was placed on light duty until December 31, 2019. In a separate statement, appellant indicated that her recurrence occurred on April 4, 2019, and she alleged that due to the employing establishment's failure to pay her medical bills, she began seeing a therapist for depression.

Appellant submitted medical evidence which included reports dated December 9 and 29, 2020, from Dr. Arthur W. Wardell, a Board-certified orthopedic surgeon. In the December 9, 2020 report, Dr. Wardell diagnosed contusion of right knee and olecranon bursitis of the left elbow, and recommended full duty with no restrictions. In the December 29, 2020 report, Dr. Wardell advised that appellant continued to have pain over the hypertrophic scar at the left elbow resulting from her olecranon bursitis, stiffness and pain in the knee, a tender keloid over the left elbow, motion loss of the right knee, and anterior joint line tenderness consistent with her MRI scan. He noted that although appellant was working full duty, she still had pain, aching, and stiffness.

On February 17, 2021 OWCP received additional reports from Dr. Wardell. In a February 10, 2021 attending physician's report (Form CA-20), Dr. Wardell noted that the date of his first examination was March 11, 2019, and he diagnosed right knee contusion, right knee articular cartilage fracture, and left elbow septic olecranon bursitis. He responded "yes" in regard to whether the condition was caused or aggravated by an employment activity, and he indicated that appellant would remain partially disabled from February 11 through March 10, 2021. Dr. Wardell also completed a duty status report (Form CA-17) on February 10, 2021 wherein he listed appellant's work restrictions.

By decision dated February 17, 2021, OWCP denied appellant's recurrence claim, finding that the evidence of record was insufficient to establish that she was disabled from work due to a material change or worsening of her accepted work-related condition. It specifically noted receipt of Dr. Waddell's December 9 and 29, 2020 reports, but did not acknowledge receipt of his February 10, 2021 reports.

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*,² 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 February 17, 2021 OWCP received two reports from Dr. Wardell dated February 10, 2021. In these reports, he related a change in appellant's work restrictions. As

² 41 ECAB 548 (1990); see also *G.T.*, Docket No. 19-1619 (issued May 22, 2020), *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

OWCP did not consider the February 10, 2021 reports from Dr. Wardell, it failed to follow its procedures by properly discussing all of the relevant evidence of record.³

It is crucial that OWCP address 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.⁴ This principle applies with regard to evidence received by OWCP on the same day a final decision is issued.⁵ The Board finds that this case is not in posture for decision, as OWCP did not review the February 10, 2021 reports from Dr. Wardell in its February 17, 2021 merit decision.⁶ On remand, OWCP shall review all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the February 17, 2021 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: November 8, 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

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁴ See *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 2.

⁵ See *S.S.*, Docket No. 19-1737 (issued April 7, 2020); *J.S.*, Docket No. 16-0505 (issued July 18, 2016); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision must be reviewed).

⁶ See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).