

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

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D.B., Appellant)	
)	
and)	Docket No. 21-0693
)	Issued: November 9, 2021
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Orlando, FL, Employer)	
_____)	

Appearances:
Wayne Johnson, Esq., for the appellant
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 March 29, 2021 appellant filed a timely appeal from a September 29, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0693.

On April 16, 2013 appellant, then a 32-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on April 12, 2013, while rushing to clock out, she tripped over a carpet and injured her right foot while in the performance of duty. She did not immediately stop work.

On April 30, 2013 OWCP accepted appellant's claim for right ankle sprain and right foot sprain.

On June 8, 2017 appellant filed a claim for compensation (Form CA-7) for work-related disability for the period commencing April 18, 2017.

OWCP received a notice of recurrence (Form CA-2a) dated August 11, 2016. Appellant indicated that the recurrence occurred in May 2016 as a result of a prior surgery in which her physician informed her that she would develop swelling, pain, and arthritis.

Appellant was treated by Dr. Mark D. Borstein, a podiatrist, on April 18, 2017 for a right ankle injury that occurred at work on April 12, 2013.

On July 18, 2017 appellant filed a notice of recurrence (Form CA-2a). She did not provide a date of recurrence, but indicated that prolonged standing required in her position caused her right foot to relapse into the same painful condition.

By decision dated August 8, 2017, OWCP denied appellant's recurrence claim, finding that she had not established that she was disabled from work due to a material change or worsening of her accepted right foot condition.

OWCP received additional medical evidence.

On August 8, 2018 appellant, through counsel, requested reconsideration of OWCP's August 8, 2017 decision that denied her recurrence claim.

By decision dated August 29, 2018, OWCP denied modification of its August 8, 2017 decision.

OWCP received additional medical evidence.

On August 29, 2019 appellant, through counsel, requested reconsideration.

By decision dated September 24, 2019, OWCP denied modification of the August 29, 2018 decision.

On September 24, 2020 appellant, through counsel, requested reconsideration. She noted that conservative treatment failed and she had right foot surgery and remained disabled from work. Appellant indicated that her job as a transportation security officer required her to stand and walk all day, which aggravated her condition, accelerated her arthritis, and led to surgery and subsequent disability.

OWCP received a January 2, 2020 report from Dr. Bornstein who noted that appellant was 60 days post right foot surgery and was progressing well without complications. Physical examination revealed the surgery site was healing well with no infection, drainage, or dehiscence. Dr. Bornstein noted mild edema, pulses were normal, no sensory deficit, motor or muscle abnormalities. He noted the sutures were removed, appellant would continue weight-bearing status, use of a surgical boot, and ambulation assistive device. Dr. Bornstein noted that she was unable to work in any capacity and would be seen in follow-up in three weeks. Also received were an x-ray report and emergency room notes dated August 23, 2019.

Appellant also resubmitted reports from Dr. Bornstein dated January 5 and May 9 and 20, 2019 that were previously of record.

By decision dated September 29, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). It noted evidence received in support of her reconsideration request consisted of a September 24, 2020 letter from counsel.

The Board has duly considered the matter and finds that this case is not in posture for decision. In the case of *William A. Couch*,¹ the Board held that when adjudicating a claim, OWCP

¹ 41 ECAB 548 (1990); *see K.B.*, Docket No. 20-1320 (issued February 8, 2021); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, on reconsideration appellant submitted reports from Dr. Bornstein dated January 5 and May 9 and 20, 2019 previously of record. She also submitted additional evidence including medical evidence from Dr. Bornstein dated January 2, 2020, and an x-ray report and emergency room notes dated August 23, 2019. OWCP, however, did not review this additional evidence in its September 29, 2020 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.²

As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.³ The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its September 29, 2020 decision.⁴ On remand, following any further development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the September 29, 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: November 9, 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

² OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

³ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *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 1.

⁴ *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).