

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

_____)	
R.A., Appellant)	
)	
and)	Docket No. 22-0204
)	Issued: July 28, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
AUDIE MURPHY MEMORIAL VETERANS)	
HOSPITAL, San Antonio, TX, Employer)	
_____)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

On November 18, 2021 appellant filed a timely appeal from a September 10, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 22-0204.¹

On July 26, 2021 appellant, then a 62-year-old supply clerk and technician, filed a traumatic injury claim (Form CA-1) alleging that on June 29, 2021 he sustained a pulled muscle when moving a bed and had to stop quickly while in the performance of duty. He did not stop work. On the reverse side of the claim form appellant's supervisor, T.B., noted that there were no witnesses or medical documentation to the alleged incident.

In an August 3, 2021 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

¹ The Board notes that, following the September 10, 2021 decision, appellant submitted additional evidence to OWCP. 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.*

In response, appellant submitted a July 28, 2021 disability certificate by Dr. Daniel Beltran, a chiropractor, who held appellant off work through August 4, 2021.

In an August 5, 2021 duty status report (Form CA-17), Dr. Beltran diagnosed a lumbar injury and held appellant off work. In a disability certificate of even date, he held appellant off work through August 19, 2021.²

In an August 11, 2021 report, Dr. Melissa Kempf, a Board-certified family practitioner, noted that on June 29, 2021 while at work, appellant experienced the onset of acute lower thoracic and left side pain when he stopped short while pushing a hospital bed to avoid hitting someone. She related that he had similar symptoms two years prior, fully and resolved after physical therapy. Dr. Kempf noted appellant was currently participating in physical therapy treatments. On examination, she noted slightly decreased range of spinal motion due to pain, with tenderness in the left upper and lower thoracic spine. Dr. Kempf diagnosed a sprain of lumbar spine ligaments “most likely due to pushing a hospital bed” while at work “and having to stop suddenly to avoid hitting someone.” She prescribed medication.

By decision dated September 10, 2021, OWCP denied appellant’s traumatic injury claim, finding that he had not submitted medical evidence containing a medical diagnosis in connection with the employment incident. It noted its receipt only of a chiropractor’s report, a Form CA-17 duty status report, a disability certificate, and x-ray reports. OWCP further specified that the medical evidence in appellant’s case was from a chiropractor who had not diagnosed a spinal subluxation by x-ray and was, therefore, not considered a physician under FECA. It thus concluded that the requirements had not been met to establish that appellant sustained an injury as defined by FECA.

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

In the case of *William A. Couch*,³ 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. While OWCP is not required to list every piece of evidence submitted to the record, there is no indication that Dr. Kempf’s August 11, 2021 report, which included a diagnosis of sprain of lumbar spine ligaments, was reviewed by OWCP in its September 10, 2021 decision.⁴

As the Board’s decisions are final with regard to the subject matter appealed,⁵ it is crucial that all evidence relevant to the subject matter of the claim, which was properly submitted to

² Dr. Beltran ordered spinal x-rays. In an August 9, 2021 report, Dr. Marie Perusek, a Board-certified diagnostic radiologist, opined that lumbar x-rays demonstrated mild osteoarthritic changes and narrowing of the L5-S1 disc space.

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

⁴ *See T.G.*, Docket No. 19-1930 (issued January 8, 2021).

⁵ *See* 20 C.F.R. § 501.6(d).

OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.⁶ Because OWCP failed to consider all of the medical evidence submitted by appellant, the Board cannot review such evidence for the first time on appeal.⁷

For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.⁸ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁹ Accordingly,

IT IS HEREBY ORDERED THAT the September 10, 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: July 28, 2022
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board



⁶ See *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *supra* note 3.

⁷ 20 C.F.R. § 501.2(c)(1). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

⁸ *Order Remanding Case, D.B.*, Docket No. 21-0984 (issued December 27, 2021); see *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

⁹ *B.N.*, Docket No. 17-0787 (issued July 6, 2018).