

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

_____)	
J.K., Appellant)	
)	
and)	Docket No. 22-1300
)	Issued: January 25, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Fort Smith, AR, Employer)	
_____)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On September 1, 2022 appellant filed a timely appeal from a June 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 22-1300.

On May 12, 2022 appellant, then a 43-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on May 11, 2022 he sustained injuries to his left heel, ankle, and Achilles tendon when he was "charged at and had to evade a dog" while in the performance of duty. He stopped work on May 12, 2022.

In support of his claim, appellant submitted a May 11, 2022 narrative statement in which he described the incident in further detail. An attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), dated May 16, 2022 from a nurse

¹ The Board notes that following the June 21, 2022 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 caserecord 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.*

practitioner noted left ankle pain and a possible acute fracture on x-ray. OWCP also received an illegible medical record dated May 19, 2022.

In a May 19, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a May 23, 2022 response, appellant indicated that an x-ray of his left ankle showed a fracture and that his physician had referred him to an orthopedist specialist.

OWCP received a May 12, 2022 left ankle x-ray, which noted an impression of “arthritic change with calcification adjacent to lateral malleolus more likely from an old fracture superimposed acute injury not excluded”; as well as an undated x-ray with no identifying information.

On June 21, 2022 OWCP received a May 26, 2022 workers’ compensation verification intake form prepared by Dr. Tyler Carllee, an orthopedic surgeon. Dr. Carllee noted that on May 11, 2022 appellant was delivering mail when a dog ran toward him and he tried to get away twisting his ankle. OWCP also received a June 1, 2022 form report from Dr. Carllee, which diagnosed closed displaced fracture of lateral malleolus of left fibula, and ordered a short walking boot for appellant.

By decision dated June 21, 2022, OWCP accepted that the May 11, 2022 employment incident occurred as alleged. However, it denied appellant’s traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosis in connection with the accepted employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

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*,² the Board held that when adjudicating a claim, OWCP is obligated to consider and address 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, Dr. Carllee’s June 1, 2022 form report and his May 26, 2022 intake form were not considered or addressed by OWCP in its June 21, 2022 decision.³

It is crucial that OWCP review and address all 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 The Board finds that this case is not in posture for decision as OWCP did not consider and address

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

³ *See N.M.*, Docket No. 21-0357 (issued September 30, 2022); *C.D.*, Docket No. 20-0168 (issued March 5, 2020).

⁴ *N.M., id.*; *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.

the above-noted evidence in its June 21, 2022 decision.⁵ On remand, OWCP shall consider and address all evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.⁶ Accordingly,

IT IS HEREBY ORDERED THAT the June 21, 2022 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: January 25, 2023
Washington, DC

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

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

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

⁵ *N.M.*, *supra* note 3; *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

⁶ The Board also notes that the employing establishment issued a Form CA-16 authorization for examination or treatment of appellant's May 11, 2022 alleged injury. The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).