

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

---

**J.H., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
WESTERN NEW YORK HEALTHCARE  
SYSTEM, BUFFALO VA MEDICAL CENTER,  
Buffalo, NY, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 23-0082  
Issued: January 19, 2023**

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On October 26, 2022 appellant filed a timely appeal from an August 2, 2022 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0082.

This case was previously before the Board.<sup>1</sup> The facts and circumstances as set forth in the Board’s prior decision is incorporated herein by reference. The relevant facts are as follows.

On March 21, 2019 appellant, then a 48-year-old psychiatric nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2019 she sustained a back injury when an uncooperative patient she was escorting to a seclusion room attempted to pull her to the ground while kicking and swinging his body and arms while in the performance of duty. She stopped work on the date of injury.

By decision dated May 2, 2019, OWCP accepted that the March 15, 2019 employment incident occurred. However, it denied appellant’s traumatic injury claim, finding that she had not

---

<sup>1</sup> Docket No. 20-1414 (issued April 5, 2022).

submitted evidence containing a medical diagnosis in connection with the injury and/or events. Thus, OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence.

On October 21, 2019 appellant requested reconsideration.

By decision dated January 23, 2020, OWCP modified the May 2, 2019 decision, finding that a valid diagnosis of mid-to-lower back strain, cervical disc displacement at C5-6, and spondylosis with radiculopathy of the cervical region. However, the claim remained denied as the medical evidence of record was insufficient to establish a causal relationship between the diagnosed conditions and the accepted March 15, 2019 employment incident.

On May 13, 2020 appellant requested reconsideration of the January 23, 2020 decision and submitted additional evidence.

By decision dated May 20, 2020, OWCP denied modification of the January 23, 2020 decision.

On July 22, 2020 appellant filed a timely appeal with the Board. By decision dated April 5, 2022,<sup>2</sup> the Board affirmed the May 20, 2020 decision.

OWCP received additional evidence following the May 20, 2020 decision, including a June 25, 2020 narrative report by Dr. John Fahrbach, a Board-certified neurosurgeon, who noted that he performed surgery on appellant's neck, including a posterior cervical lamina foraminotomy. Dr. Fahrbach included the history of the accepted March 15, 2019 employment incident and diagnosed left C6 radiculopathy, resolved, and right lateral epicondylitis. He opined that appellant's left upper extremity pain was caused by the employment incident and further indicated that her right elbow complaints occurred during postoperative physical therapy.

OWCP also received a November 4, 2020 report by Dr. Robert Roche, a Board-certified family physician, who examined appellant on October 27, 2020 and reviewed her treatment with Dr. Fahrbach. Dr. Roche opined that she had permanent deficits in range of motion and strength in the left upper extremity.

Additionally, OWCP received a December 9, 2020 report by Dr. Thomas J. Pfiffner, a Board-certified neurologist, and a January 18, 2021 report by Carrie A. Fox, a nurse practitioner. This evidence pertained to treatment of migraines and cervicgia.

On May 24, 2022 appellant requested reconsideration and enclosed an additional copy of Dr. Fahrbach's June 25, 2020 report.

By decision dated August 2, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), finding that her request for

---

<sup>2</sup> *Id.*

reconsideration neither raised a specific legal argument not previously considered, nor included relevant new evidence. It noted that the evidence on reconsideration included the May 24, 2022 request for reconsideration and the first page of Dr. Fahrbach's June 25, 2020 report, which "was previously submitted and specifically reviewed in the April 5, 2022 decision."

The Board, having duly considered the matter, finds that this case is not in posture for 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.

While OWCP is not required to list every piece of evidence submitted, the record is clear that OWCP denied reconsideration without reviewing the evidence submitted after the May 20, 2020 merit decision, including the June 25, 2020 report of Dr. Fahrbach, the November 4, 2020 report by Dr. Roche, the December 9, 2020 report by Dr. Pfiffner, and the January 18, 2021 report by Ms. Fox. As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.<sup>4</sup> As OWCP did not consider all of the evidence received following the May 20, 2020 decision, the Board cannot review such evidence for the first time on appeal.<sup>5</sup>

For this reason, the case will be remanded to OWCP to properly consider all of the evidence of record.<sup>6</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

---

<sup>3</sup> 41 ECAB 548 (1990).

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

<sup>5</sup> 20 C.F.R. § 501.2(c). See also *Order Remanding Case, G.M.*, Docket No. 16-1766 (issued February 16, 2017).

<sup>6</sup> *Order Remanding Case, J.H.*, Docket No. 22-1202 (issued November 30, 2022).

**IT IS HEREBY ORDERED THAT** the August 2, 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 19, 2023  
Washington, DC

Alec J. Koromilas, 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