

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

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D.Q., Appellant)	
)	
and)	Docket No. 22-0528
)	Issued: March 21, 2023
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL)	
CORRECTIONAL INSTITUTION PHOENIX,)	
Phoenix, AZ, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On February 25, 2022 appellant filed a timely appeal from a September 2, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-0528.

On November 27, 2018 appellant, then a 45-year-old lieutenant, filed a traumatic injury claim (Form CA-1) alleging that on July 25, 2018 he sustained an injury to his right knee responding to an institutional emergency involving an assault in the performance of duty. He reported that his right leg buckled, he almost fell, but regained his balance and continued to respond to the emergency. On the reverse side of the claim form, appellant's supervisor, A.K., acknowledged that appellant was injured in the performance of duty. Appellant did not stop work.

After initial development, by decision dated April 22, 2021, OWCP denied appellant's traumatic injury claim. It found that the July 25, 2018 employment incident had been established. However, the claim was denied because the medical evidence of record was insufficient to establish a medical condition causally related to the accepted work incident.

On June 23, 2021 appellant requested reconsideration.

Appellant also submitted a report dated July 25, 2018 from Wayne Weissinger, a nurse practitioner. Mr. Weissinger noted that appellant twisted his right knee while running to an incident on the employing establishment premises. He indicated that appellant had sustained slight swelling of the right knee and a right knee strain.

OWCP also received a May 18, 2021 report from Dr. Sumit Dewanjee, a Board-certified orthopedic surgeon. Dr. Dewanjee related that appellant was seen for bilateral knee pain related to an injury at work on July 25, 2018. He diagnosed chondromalacia of the right knee, and a complex tear of the left knee medial meniscus.

By decision dated September 2, 2021, OWCP denied appellant's request for reconsideration.

The Board, having duly considered this matter, 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 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 Board notes that the May 18, 2021 report from Dr. Dewanjee and the July 25, 2018 report from the nurse practitioner were not considered or addressed by OWCP in its September 2, 2021 decision.²

It is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision, as Board decisions are final with regard to the subject matter appealed.³ The Board finds that this case is not in posture for decision as OWCP did not consider or address the above-noted evidence in its September 2, 2021 decision.⁴ On remand, OWCP shall review all of the evidence submitted on reconsideration. Following this and other such further development as deemed necessary, it shall issue an appropriate decision. Accordingly,

¹ 41 ECAB 548 (1990); *see J.R.*, Docket No. 21-1421 (issued April 20, 2022); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

² *See C.D.*, Docket No. 20-0168 (issued March 5, 2020).

³ *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 *See V.C.*, Docket No. 16-0694 (issued August 19, 2016).

IT IS HEREBY ORDERED THAT the September 2, 2021 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: March 21, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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