

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

M.M., Appellant)	
)	
and)	Docket No. 23-0549
)	Issued: October 16, 2023
U.S. POSTAL SERVICE, SHELBY TOWNSHIP)	
POST OFFICE, Shelby Township, MI, 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 March 13, 2023 appellant filed a timely appeal from a March 1, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0549.

On December 22, 2022 appellant, then a 30-year-old passport and visa examiner, filed a traumatic injury claim (Form CA-1) alleging that on December 21, 2022 she sustained a right shoulder muscle strain when a former employee pulled a space heater from her arms several times while in the performance of duty. She stopped work on December 22, 2022.

In support of her claim, appellant submitted December 22 and 27, 2022 reports from James Gentile, a physician assistant, documenting his treatment for right shoulder strain. The December 22, 2022 report noted that she complained of shoulder pain after a coworker tried to rip a space heater out of her hands.

In a January 25, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information pertaining to the December 21, 2022 employment incident. It afforded both parties 30 days to respond.

On February 18, 2023 OWCP received a January 20, 2023 assault and threat specialty report, produced by the Postal Inspection Service of the employing establishment, which summarized the events involving appellant at work on December 21, 2022. The investigative report provided detailed accounts and findings from various parties addressing appellant's allegation of a physical altercation with a former employee on that date.

By decision dated March 1, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the December 21, 2022 employment incident occurred as alleged. It noted that she had not provided a response to its development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

The Board, having duly considered this matter, finds that this case is not in posture for decision.¹

In the case of *William A. Couch*,² the Board held that, when adjudicating a claim, OWCP is obligated to review 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, the record is clear that the January 23, 2023 assault and threat specialty report of the Postal Inspection Service detailing the events surrounding the claimed December 21, 2022 employment incident was not referenced or reviewed by OWCP in its March 1, 2023 decision.³ As it did not consider or address this factual evidence of record, it failed to follow its own procedures by not considering all relevant factual reports of record.⁴

As the Board's decisions are final as to the subject matter appealed, it is crucial that OWCP reviews all evidence received prior to the issuance of its final decision.⁵ The Board finds that this case is not in posture for decision as OWCP did not review the above-noted evidence in its March 1, 2023 decision.⁶

On remand, OWCP shall consider and address all evidence of record. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.⁷ Accordingly,

¹ See *K.Y.*, Docket No. 22-0743 (issued December 1, 2022).

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

³ *W.W.*, Docket No. 21-1432 (issued February 23, 2023); *J.N.*, Docket No. 21-0086 (issued May 17, 2021); *C.D.*, Docket No. 20-0168 (issued March 5, 2020).

⁴ *G.A.*, Docket No. 21-0862 (issued June 8, 2022); *E.P.*, Docket No. 20-0655 (issued March 17, 2021).

⁵ 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.

⁶ See *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

⁷ See *K.P.*, Docket No. 21-1065 (issued March 30, 2022); *B.N.*, Docket No. 17-0787 (issued July 6, 2018).

IT IS HEREBY ORDERED THAT the March 1, 2023 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: October 16, 2023
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