

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

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<b>M.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 24-0107</b>
	)	<b>Issued: February 23, 2024</b>
<b>DEPARTMENT OF TREASURY, BUREAU OF</b>	)	
<b>ENGRAVING &amp; PRINTING, Fort Worth, TX,</b>	)	
<b>Employer</b>	)	
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*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  
JANICE B. ASKIN, Judge

On November 17, 2023 appellant filed a timely appeal from a November 16, 2023 merit decision of the Office of Workers' Compensation Programs OWCP).<sup>1</sup> The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0107.

On August 26, 2021 appellant, then a 50-year-old police officer, filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2021 he stepped on a rock the size of a baseball and rolled his left ankle when conducting a perimeter check while in the performance of duty.

In a December 2, 2021 report, Dr. Carl Solomon, a podiatrist, diagnosed left ankle tendinitis/nonspecific soft tissue sprain, no acute rupture or osseous path, and chronic pes planovalgus. He advised that appellant could work light duty.

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<sup>1</sup> The Board notes that, following the November 30, 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 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.*

On December 23, 2022 OWCP accepted the claim for sprain of calcaneal ligament of left ankle and posterior tibial tendinitis, left leg.

On February 27, 2023 appellant filed a claim for compensation (Form CA-7) for disability from work during the period November 29, 2021 through February 24, 2023.

On June 2, 2023 OWCP expanded the acceptance of the claim to include osteochondritis desiccans of the left ankle and foot and aggravation of preexisting left ankle and foot osteoarthritis.

By decision dated September 21, 2023, OWCP denied appellant's claim for disability from work during the period November 29, 2021 through January 11, 2022. It noted that the report from Dr. Solomon indicated that appellant could work light duty; however, OWCP found that a January 12, 2022 report from Dr. Dalton Ryba, Board-certified in podiatric orthopedics and primary podiatric medicine, supported taking appellant off work from that date and continuing. OWCP paid appellant intermittent compensation on the supplemental rolls from January 12, 2022 through June 2, 2023.

On September 26, 2023 appellant requested a review of the written record. He provided additional evidence and explained that he was off work until February 2022 because there was no light duty available, and he used leave without pay and sick leave.

OWCP received additional medical evidence included a December 3, 2021 work excuse note from Dr. Soloman, who requested that appellant be excused from work for his appointment on that date and indicated that appellant was able to return to work with light duty; a January 14, 2022 report from Dr. Thomas Buehler, a podiatry specialist, who advised that appellant could work with light duty and avoid long standing and walking; a November 15, 2022 magnetic resonance image scan of the lower left ankle; and treatment notes from Dr. Ryba dating from November 16, 2022 to November 15, 2023.

By decision dated November 16, 2023, an OWCP hearing representative denied appellant's claim for compensation for wage loss for the period November 29, 2021 to January 11, 2022. The decision did not review the above-noted additional medical evidence.

In the case of *William A. Couch*,<sup>2</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 its final decision is issued. While OWCP is not required to list every piece of evidence submitted, the Board notes that it did not consider the medical evidence submitted with his request for review of the written record.<sup>3</sup>

Because Board decisions are final with regard to the subject matter appealed,<sup>4</sup> it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final

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<sup>2</sup> 141 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).

<sup>3</sup> *See C.D.*, Docket No. 20-0168 (issued March 5, 2020).

<sup>4</sup> 20 C.F.R. § 501.6(d).

decision.<sup>5</sup> As OWCP did not consider and address all of the relevant evidence submitted prior to its November 16, 2023 decision, as such, the Board finds that this case is not in posture for decision.<sup>6</sup>

On remand, OWCP shall review all relevant evidence of record and following any further development as deemed necessary, OWCP shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the November 16, 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: February 23, 2024  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>5</sup> All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012). *See also E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Linda Johnson*, 45 ECAB 439 (1994) (OWCP must review all evidence relevant to the subject matter and received by OWCP before issuance of its final decision, including medical reports received on the same day it issues its decision); *William A. Couch*, 41 ECAB 548, 553 (1990).

<sup>6</sup> *See M.N.*, Docket No. 20-0110 (issued July 7, 2020); *Y.B.*, Docket No. 20-0205 (issued July 7, 2020); *H.H.*, Docket No. 14-1985 (issued June 26, 2015).