

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

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K.W., Appellant)	
)	
and)	Docket No. 24-0130
)	Issued: February 20, 2024
PEACE CORPS, PEACE CORPS VOLUNTEER)	
SERVICES, Managua, Nicaragua, Employer)	
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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
VALERIE D. EVANS-HARRELL, Alternate Judge

On November 27, 2023 appellant filed a timely appeal from a May 31, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0130.

On July 23, 2020 appellant filed an occupational disease claim (Form CA-2) alleging that she sustained chronic Lyme disease due to factors of her federal employment, including being bitten by an insect in May 2013 while working as a Peace Corps volunteer. She first became aware of her condition and its relationship to her federal employment on May 1, 2013. OWCP accepted appellant's claim for neurological disorders from Lyme disease.

On July 19, 2020 OWCP received progress reports from a medical provider dated from January 1, 2015 through December 31, 2020. It also received a neuropsychological assessment report dated January 10, 2020.

In an attending physician's report (Form CA-20) dated December 22, 2020, Dr. Vishaal Veerula, a Board-certified internist, related that appellant had been totally disabled as of May 1, 2013. In a narrative report dated July 23, 2021, he related that appellant required regular periods of rest to function throughout the day. Dr. Veerula explained that she was only able to perform physical or cognitive activity for very limited periods of continuous time, one hour maximum, she then required two to four hours of rest before being able to resume function at her

previously debilitated baseline level. He further explained that, if appellant was not able to rest immediately following her threshold, it may take 12 to 24 hours to recover from exhaustion and overexertion.

On February 14, 2022 appellant submitted a claim for compensation (Form CA-7) for disability from work from September 1, 2013 through January 31, 2022.

In a development letter dated February 10, 2023, OWCP requested that appellant submit medical evidence to support disability during the period September 1, 2013 through January 31, 2022. It noted that it had not received any evidence to support her claim and afforded her 30 days to submit additional evidence.

By decision dated May 31, 2023, OWCP denied appellant's claim for compensation, finding that she had not established disability from work commencing September 1, 2013. It noted that it had not received any evidence to support her claim. OWCP further noted that the first medical evidence of record was dated May 8, 2020.

The Board, having duly considered this matter, finds that the 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. However, the Board notes that the case record contains medical evidence beginning January 1, 2015. The record also contains several reports from Dr. Veerula dated December 22, 2020 and July 23, 2021, in which he discusses appellant's disability status. As such, there is medical evidence of record with dates coinciding with appellant's claimed period of compensation from September 1, 2013 through January 31, 2022. OWCP, however, did not review this evidence in its May 31, 2023 merit decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.²

As the Board's decisions are final with regard to the subject matter appealed,³ 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 considered and addressed by OWCP.⁴ Because OWCP failed to consider the medical evidence of record in its May 31, 2023 decision,

¹ 41 ECAB 548 (1990); *see also* *K.B.*, Docket No. 20-1320 (issued February 8, 2021); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

² OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012).

³ *See* 20 C.F.R. § 501.6(d).

⁴ *See Order Remanding Case, R.A.*, Docket No. 22-0204 (issued July 28, 2022); *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, 41 ECAB 548 (1990).

the Board cannot review such evidence for the first time on appeal.⁵ For this reason, the case will be remanded to OWCP to properly review all of the evidence of record.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁷ Accordingly,

IT IS HEREBY ORDERED THAT the May 31, 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 20, 2024
Washington, DC

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

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

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

⁵ 20 C.F.R. § 501.2(c)(1). *See also G.M.*, Docket No. 16-1766 (issued February 16, 2017).

⁶ *Order Remanding Case, D.B.*, Docket No. 21-0984 (issued December 27, 2021); *see M.J.*, Docket No. 18-0605 (issued April 12, 2019).

⁷ *B.N.*, Docket No. 17-0787 (issued July 6, 2018).