

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

B.H., Appellant)	
)	
and)	Docket No. 24-0163
)	Issued: February 29, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
FRANKLIN DELANO ROOSEVELT)	
HOSPITAL, Montrose, NY, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On December 12, 2023 appellant filed a timely appeal from an October 3, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0163.

On June 12, 2023 appellant, then a 36-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on June 1, 2023 he sustained an injury when he was grabbed, restrained, and forcefully pulled by a patient while in the performance of duty. He did not stop work.

In a letter dated June 16, 2023, the employing establishment challenged the claim asserting that there were factual inconsistencies with regard to the time, place, and manner of injury as described by appellant. It reported that the June 1, 2023 incident was captured on video, and according to its review of the video footage, the incident did not appear to cause any immediate harm to him as he continued all normal activities following the alleged attack. In a letter dated June 28, 2023, the employing establishment challenged the claim asserting that appellant's medical reports indicated treatment for a left arm injury, whereas further review of the June 1, 2023 video footage indicated that the patient only came into contact with appellant's right arm.

On July 17, 2023 the employing establishment provided OWCP an edited copy of the video footage in MP4 format.

By decision dated October 3, 2023, OWCP denied appellant's traumatic injury claim, finding that he had not submitted evidence to establish that the events occurred as alleged. It found that his claimed injury was in conflict with evidence received for his left shoulder sprain. OWCP reported that the video footage demonstrated that patient contact was only with the right arm of appellant which occurred at minute 2:40 when person-to-person contact could be seen. Consequently, it found 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

Upon review of the case record submitted by OWCP, the Board finds that the record before it is incomplete, because the video footage covering appellant's work area around 12:00 p.m. on June 1, 2023 that was furnished to OWCP by the employing establishment is not contained in the record presently before the Board. In light of OWCP's reliance on the video footage as evidence to deny his claim for fact of injury, the Board finds this case is not in posture for decision as the record before the Board is incomplete, and would not permit an informed adjudication of the case by the Board.² The case must therefore be remanded to OWCP to furnish a copy of the footage and for further reconstruction and assemblage deemed necessary.³ Following this and other such further development as deemed necessary, it shall issue an appropriate *de novo* decision.⁴ Accordingly,

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

² *Order Remanding Case, D.H.*, Docket No. 14-0244 (issued July 10, 2014).

³ *Order Remanding Case, D.H.*, Docket No. 15-1863 (issued January 20, 2016).

⁴ 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 October 3, 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 29, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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