

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

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J.C., Appellant)	
)	
and)	Docket No. 23-0429
)	Issued: January 4, 2024
DEPARTMENT OF AGRICULTURE,)	
NATURAL RESOURCE CONSERVATION)	
SERVICE, Crookston, MN, Employer)	
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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
VALERIE D. EVANS-HARRELL, Alternate Judge

On February 8, 2023 appellant filed a timely appeal from a November 22, 2022 merit decision and a January 24, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0429.

On June 21, 2022, appellant, then a 40-year-old engineering technician, filed a traumatic injury claim (Form CA-1) alleging that on June 8, 2022 he slipped and fell, striking his head, back, and shoulders while in the performance of duty. He related that he developed a headache behind his eyes, a sore neck and shoulders, limited range of motion in his head and neck, and pain that traveled across his spine whenever he moved his neck. Appellant did not stop work.

In support of his claim, appellant submitted medical evidence, including an August 17, 2022 visit note from Dr. David Saxon, a Board-certified family practitioner. Dr. Saxon related that appellant reported that on June 8, 2022 he was surveying land when he stepped on a slippery

¹ The Board notes that, following the January 24, 2023 decision, OWCP received additional evidence. 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.*

spot and fell. He diagnosed cervical disc disorder at C4-5 level with radiculopathy and pain in the left shoulder and elbow. Dr. Saxon found that appellant could perform regular duty.

On September 26, 2022 Dr. Michael Kruger, a Board-certified family practitioner, diagnosed a left shoulder ganglion and other specified joint disorders of the left shoulder, and noted an impression of left shoulder pain and labral tear. He discussed appellant's history of a shoulder dislocation in 2005 and a June 2022 work injury when he fell 16 feet down a ravine, causing pain in his back, neck, and shoulder.

In an October 11, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical evidence necessary to establish his claim and afforded him 30 days to respond.

Appellant submitted additional medical evidence.

By decision dated November 22, 2022, OWCP accepted that the June 8, 2022 employment incident occurred, as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted June 8, 2022 employment incident.

On January 12, 2023 appellant requested reconsideration of the November 22, 2022 decision and submitted additional evidence.

By decision dated January 24, 2023, OWCP denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

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

In the case of *William A. Couch*,² the Board held that when adjudicating a claim OWCP is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, OWCP received an August 17, 2022 visit note from Dr. Saxon containing a diagnosis of cervical disc disorder at C4-5 level with radiculopathy and pain in the left shoulder and elbow. It also received a September 26, 2022 report from Dr. Kruger diagnosing left shoulder ganglion and other specified joint disorders of the left shoulder. OWCP, however, did not review this evidence in its November 22, 2022 merit decision. It, thus, failed to follow its procedures.³

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

³ 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).

As Board decisions are final as to the subject matter appealed, it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.⁴ On remand, it shall consider and address all evidence submitted by appellant. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the November 22, 2022 and January 24, 2023 and decisions of the Office of Workers' Compensation are set aside, and the case is remanded for further proceedings consistent with this order of the Board.

Issued: January 4, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁴ See *Order Remanding Case, T.M.*, Docket No. 23-0265 (issued August 7, 2023); *Order Remanding Case, E.D.*, Docket No. 20-0620 (issued November 18, 2020); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch*, *supra* note 2.