

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

F.A., Appellant

and

**DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
BROWN FIELD STATION, San Diego, CA,
Employer**

)
)
)
) **Docket No. 24-0626**
) **Issued: June 3, 2025**
)
)
)

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 May 22, 2024 appellant filed a timely appeal from a January 10, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0626.¹

On November 8, 2022 appellant, then a 39-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his neck, back, and left leg and arm when involved in a rear-end motor vehicle accident (MVA) while in the performance of duty. He stopped work on November 9, 2022 and returned to full-time modified-duty work on March 4, 2023. OWCP initially accepted appellant's claim for sprain of the ligaments of the cervical and lumbar spine and lumbar radiculopathy. It subsequently expanded the acceptance of the claim to include myalgia, unspecified head injury, dizziness and giddiness, post-traumatic headaches, and tinnitus in both ears.

¹ The Board notes that, following the January 10, 2024 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.*

Appellant subsequently submitted additional medical evidence in support of further expansion of the accepted claim. OWCP received a November 20, 2023 medical report, wherein Dr. Kolodge again noted physical examination findings of positive Phalen's and Tinel's signs at the left carpal tunnel. He reiterated his diagnoses, including left hand numbness due to CTS. Dr. Kolodge opined that appellant's left CTS was likely exacerbated by the MVA and explained that the symptoms of left-hand numbness, tingling, and weakness had been reported since the time of the injury. In a January 2, 2024 medical report, Dr. Kolodge reiterated his diagnoses, including left hand numbness due to CTS and opined that appellant's left CTS was likely exacerbated by the MVA.

Following further development, by decision dated January 10, 2024, OWCP denied expansion of the acceptance of appellant's claim to include additional conditions as causally related to the accepted November 8, 2022 employment injury.

The Board 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 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, the Board notes that OWCP did not consider and address Dr. Kolodge's November 20, 2023 and January 2, 2024 medical reports in its January 10, 2024 decision.³ As such, it failed to follow its procedures.⁴

It is crucial that OWCP consider and address all evidence relevant to the subject matter received prior to the issuance of its final decision, as Board decisions are final with regard to the subject matter appealed.⁵ As OWCP did not consider and address the above-noted evidence in its January 10, 2024 decision, the Board finds that this case is not in posture for decision.⁶ On remand, OWCP shall review all of the evidence of record and, following any further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

² 41 ECAB 548 (1990); *see also Order Remanding Case J.R.*, Docket No. 21-1421 (issued April 20, 2022); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

³ *See Order Remanding Case, C.D.*, Docket No. 20-0168 (issued March 5, 2020).

⁴ OWCP's procedures provide that 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 2.1401.5b(2) (November 2012).

⁵ *See Order Remanding Case, 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 Order Remanding Case, L.G.*, Docket No. 23-0637 (issued September 15, 2023).

IT IS HEREBY ORDERED THAT the January 10, 2024 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: June 3, 2025
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