

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Appellant indicated that oral argument would allow her to address expansion of the accepted conditions in her claim and the denial of right shoulder surgery. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the Board lacks jurisdiction over the merits of this case and, thus, the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

This case has previously been before the Board on different issues.² The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On May 31, 1994 appellant, then a 34-year-old city carrier, filed a claim for traumatic injury (Form CA-1) alleging that on that date she sustained injury to her upper chest and back in the performance of duty while "pulling down her route."³ OWCP accepted the claim for right shoulder strain, right shoulder impingement, and cervical spine strain.

In an April 7, 1995 report, Dr. R. Thomas Grotz, an orthopedic surgeon, requested that OWCP authorize right shoulder surgery. OWCP subsequently obtained a June 5, 1995 second opinion examination report by Dr. David Lowenberg, a Board-certified orthopedic surgeon, wherein he attributed appellant's symptoms to her cervical spine.

OWCP subsequently found a conflict of medical opinion between Dr. Grotz, for appellant, and Dr. Lowenberg, for the government, regarding the necessity of the proposed right shoulder surgery. It selected Dr. Robert I. Branick, a Board-certified orthopedic surgeon, as impartial medical examiner (IME). Dr. Branick provided an October 17, 1995 report wherein he attributed appellant's symptoms to cervical disc herniation without involvement of the right shoulder.

By decision dated December 19, 1995, OWCP denied authorization for right shoulder surgery, finding that the medical evidence was insufficient to establish that the requested procedure was medically necessary and causally related to the accepted employment injury. It accorded the special weight of the medical evidence to Dr. Branick's opinion.

In a letter postmarked January 26, 1996, appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated March 8, 1996, OWCP denied appellant's January 26, 1996 request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b). It further exercised its discretion

² Docket No. 23-0117 (issued August 15, 2024), *denying petition for recon.*, Docket No. 23-0117 (issued June 11, 2025); *Order Remanding Case*, Docket No. 22-0558 (issued September 14, 2022); Docket No. 21-0253 (issued January 26, 2022); Docket No. 12-640 (issued October 22, 2012), *denying petition for recon.*, Docket No. 12-640 (issued March 14, 2013); Docket No. 10-318 (issued September 8, 2010); Docket No. 08-1843 (issued June 15, 2009); *Order Remanding Case*, Docket No. 06-1211 (issued January 31, 2007); Docket No. 05-1905 (issued March 6, 2006).

³ OWCP assigned the present claim OWCP File No. xxxxxx429. It accepted a prior traumatic injury claim under OWCP File No. xxxxxx724 for left knee strain, right hip contusion, and lumbosacral strain sustained on August 24, 1992. Under OWCP File No. xxxxxx666, appellant claimed a June 22, 2007 traumatic injury to her neck and right upper extremity when working on her computer while seated at her desk in the performance of duty, and under OWCP File No. xxxxxx390, filed an occupational disease claim (Form CA-2) for aggravation of a preexisting condition resulting in pain in her neck, right shoulder, and right upper extremity as a result a June 22, 2007 muscle spasm when she turned her head to the right and felt a "pop" in her neck while in the performance of duty. OWCP denied the claims under OWCP File Nos. xxxxxx666 and xxxxxx390. OWCP File Nos. xxxxxx724, xxxxxx666, xxxxxx390, and xxxxxx429 have been administratively combined, with the latter serving as the master file.

and determined that the issue in this case could equally well be addressed by a request for reconsideration before OWCP along with the submission of new evidence.

On August 19, 2025, appellant requested reconsideration of OWCP's December 19, 1995 and March 8, 1996 decisions. She provided an August 18, 2025 brief with arguments regarding OWCP's denial of authorization of right shoulder surgery, and denial of her request for an oral hearing.

In statements dated September 2, 2025, appellant provided additional arguments regarding OWCP's denial of authorization for right shoulder surgery.

By decision dated September 2, 2025, OWCP denied appellant's request for reconsideration of its December 19, 1995 decision⁴ as it was untimely filed and failed to present clear evidence of error. It explained that the basis for the decision was that appellant "did not submit any new evidence showing that [it] made a mistake."

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

In the case of *William A. Couch*,⁵ 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.

In its September 2, 2025 decision, OWCP failed to consider appellant's September 2, 2025 statements, received on that same date, which contained additional arguments regarding the underlying issue in OWCP's December 19, 1995 decision. While it is not required to list every piece of evidence submitted, OWCP failed to follow its procedures by not considering all of appellant's statements in support of her request for reconsideration.⁶ This principle applies with regard to evidence received by OWCP the same day a final decision is issued.⁷

⁴ OWCP has not issued a decision regarding appellant's August 19, 2025 request for reconsideration of OWCP's March 8, 1996 decision regarding the denial of her January 26, 1996 request for an oral hearing.

⁵ 41 ECAB 548 (1990); *see also Order Remanding Case, A.D.*, Docket No. 22-0519 (issued January 11, 2023); *A.B.*, Docket No. 22-0179 (issued June 28, 2022); *S.H.*, Docket No. 19-1582 issued May 26, 2020); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

⁶ *Order Remanding Case, C.B.*, Docket No. 25-0823 (issued December 18, 2025); *Order Remanding Case, S.T.*, Docket No. 23-0915 (issued January 8, 2024); *Order Remanding Case, G.A.*, Docket No. 21-0862 (issued June 8, 2022); *E.P.*, Docket No. 20-0655 (issued March 17, 2021). OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5b(2) (November 2012).

⁷ *See S.B.*, Docket No. 24-0774 (issued September 25, 2024); *Order Remanding Case, R.P.*, Docket No. 23-0536 (issued October 3, 2023); *T.B.*, Docket No. 21-0448 (issued September 27, 2021); *Order Remanding Case, S.S.*, Docket No. 19-1737 (issued April 7, 2020); *Order Remanding Case, J.S.*, Docket No. 16-0505 (issued July 18, 2016); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of an OWCP decision must be reviewed).

As the Board's decisions are final as to the subject matter appealed, it is crucial that OWCP consider and address all evidence received prior to the issuance of its final decision. The Board shall, therefore, remand the case for a full review of appellant's August 19, 2025 request for reconsideration and September 2, 2025 statements.⁸ Following this and other such further development as deemed necessary, OWCP shall issue an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the September 2, 2025 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: July 1, 2026
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁸ *Id.*