

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

D.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bakersfield, CA, Employer**

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**Docket No. 10-1014
Issued: April 6, 2011**

Appearances:

*Sally F. LaMacchia, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On March 1, 2010 appellant filed a timely appeal of a November 10, 2009 merit decision of the Office of Workers' Compensation Programs. The appeal was docketed as No. 10-1014.

In the November 10, 2009 decision, the Office denied appellant's July 21, 2009 claim for compensation, and noted that appellant had previously filed a claim alleging stress causally related to her federal employment under OWCP File No. xxxxxx736. The Office stated that, with respect to the instant case, appellant had submitted a 14-page statement that "addresses issues that were already denied in case xxxxxx736" and that "provides the specifics of the incidents complained of in case xxxxxx736 about the exacerbation of the claimant's post-traumatic stress disorder due to negative behavior from her supervisor." According to the Office, appellant had not alleged any new allegations that would not have already been covered under the prior claim, and appellant should exercise her appeal rights under that file. The November 10, 2009 Office decision also referred to the doctrines of collateral estoppel and *res judicata*.

The Board has reviewed OWCP File No. xxxxxx736 and finds that the Office's characterization of the current claim as providing no new allegations is not supported by the record. In the prior claim, appellant had filed a Form CA-2 dated June 26, 2008 and with that claim she submitted a statement alleging that there was harassment from a supervisor after July 16, 2007, and appellant noted several incidents. She specifically noted incidents on March 6, 15 and 25, 2008.

In the present case, appellant submitted a statement that provided new allegations with respect to specific incidents occurring from July 2007 to April 2008. While she also referred to incidents noted in the prior claim, her statement contained many specific factual allegations that had not been raised under OWCP File No. xxxxxx736. Appellant discussed numerous incidents, for example, in August through October 2007 and April 2008. In addition, the current claim contains a September 1, 2009 letter that alleged overwork and the performance of assigned duties as contributing factors. These allegations had not been raised in the prior claim.

The November 10, 2009 Office decision did not address any of the new allegations raised by appellant on the current claim.¹ The case will be remanded to the Office for a proper decision regarding the new allegations.² After such further development as the Office deems necessary, it should issue an appropriate decision.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 10, 2009 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 6, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹ The doctrines of collateral estoppel (also known as issue preclusion) and *res judicata* (claim preclusion) are therefore not applicable. The Board notes in addition that these doctrines apply only to adjudicatory determinations that have attained finality. *David E. Newman*, 48 ECAB 305 (1997). Under the Federal Employees' Compensation Act, the Office may readjudicate an issue or claim and the principles of *res judicata* are not applicable regarding Office decisions. *See Howard E. Johnston*, 40 ECAB 777 (1989).

² The Office may link the two files for administrative purposes.