

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

B.C., Appellant)	
)	
and)	Docket No. 10-1112
)	Issued: May 25, 2011
U.S. POSTAL SERVICE, POST OFFICE,)	
Albuquerque, NM, Employer)	
)	

<i>Appearances:</i> Gordon Reiselt, Esq., for the appellant Office of Solicitor, for the Director	<i>Case Submitted on the Record</i>
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ORDER REMANDING CASE

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

On March 15, 2010 appellant, through her representative, filed an application for review of an Office of Workers' Compensation Programs' decision dated January 8, 2010. The appeal was docketed as No. 10-1112.

This is the second appeal before the Board. Appellant filed a Form CA-2 claim for benefits based on an occupational condition under case file number xxxxxx560 on September 11, 2007, seeking compensation for a lower back condition causally related to factors of her employment. She stated on the form that she had filed a claim for a back injury under case file number xxxxxx085. On November 6, 2007 appellant filed a Form CA-2a claim for a recurrence of disability. In a November 6, 2007 statement, she indicated that she wanted to cancel the Form CA-2 claim and replace it with the Form CA-2a recurrence claim, which she indicated pertained to case file number xxxxxx085. In an October 6, 2007 statement, received by the Office on November 13, 2007, appellant stated that she had experienced back problems ever since her November 1, 1991 car accident -- these problems had recently worsened.

By decision dated November 26, 2007, OWCP denied the claim, finding that appellant failed to submit medical evidence sufficient to establish that she sustained a lower back injury in the performance of duty. It noted that appellant had submitted a Form CA-2a, but did not discuss or consider her request to have her claim adjudicated as one for recurrence of disability.

By decisions dated September 9 and December 16, 2008, OWCP denied modification of the November 26, 2007 decision. It noted that it had reviewed medical evidence from Dr. Roland K. Sanchez, a Board-certified family practitioner and the attending physician, and Dr. Barry R. Maron, a Board-certified orthopedic surgeon, which indicated that appellant was involved in a motor vehicle accident on November 1, 1991 in which she sustained fractures to her back and spine. Dr. Sanchez stated in his October 17, 2007 report, which was included in case number xxxxxx085, that appellant had aggravated her back on August 17, 2007 when she lifted a tub of mail at work and was off work for two months. He also stated that appellant had work restrictions and had been receiving compensation for partial leave without pay for four hours per day. Dr. Maron stated in his June 7, 2008 report that appellant had sustained no new injury in 2007 and that appellant's job duties on August 22, 2007 had aggravated a chronic right shoulder pain syndrome/rotator cuff tendinitis condition.

In an order dated September 14, 2009,¹ the Board set aside the December 16, 2008 decision. The Board stated that contemporaneous factual and medical evidence pertaining to appellant's previously accepted 1991 claim, which the Office had referenced in its September 9 and December 16, 2008 decisions, was not contained in the instant record. The Board further stated that the Office did not explain why it chose to adjudicate appellant's claim as a new injury or condition and denied appellant's request to adjudicate her claim as one for a recurrence of disability, despite the fact that appellant and several of the physicians of record indicated that her current back symptoms were caused or aggravated by the accepted 1991 work injury. The Board therefore remanded the case for the Office to consolidate claim numbers xxxxxx560 and xxxxxx085, compose a statement of accepted facts and determine whether appellant sustained a new injury or condition in the performance of duty, or whether appellant sustained a recurrence of her November 1991 injury.

On remand the Office consolidated claim numbers xxxxxx560 and xxxxxx085 and composed a statement of accepted facts. By decision dated January 8, 2010, it affirmed the December 16, 2008 decision. The Office reiterated its previous determination that appellant had presented a claim for a new injury, not one for a recurrence of disability. It therefore denied her request to cancel her CA-2 claim and replace it with the CA-2a claim.

Section 20 C.F.R. § 10.126 requires the Office to issue a decision containing findings of fact and a statement of reasons.² The Board finds that the Office erred in its January 8, 2010 decision by failing to sufficiently discuss or analyze whether the reports from Dr. Sanchez and other physicians showed that appellant's claimed August 2007 back condition was caused or aggravated by her accepted November 1991 back injury. The preponderance of the facts and circumstances presented from August to November 2007 suggests that appellant attributed her August 2007 back condition and work stoppage to her accepted 1991 back injury. The record reflects that she initially filed a Form CA-2 claim for an alleged August 17, 2007 back injury on September 11, 2007; however, she subsequently requested on several occasions that her case be adjudicated as one for a recurrence of her November 1991 back condition. The Board notes that on August 17, 2007 appellant was working light duty for four hours per day based on restrictions

¹ Docket No. 09-680 (issued September 14, 2009).

² 20 C.F.R. § 10.126.

stemming from her November 1991 back injury. In her October 6, 2007 statement, appellant stated that she had experienced back problems ever since her November 1, 1991 car accident which had recently worsened. The Board therefore finds that the Office failed to give proper consideration to the factual and medical evidence pertaining to whether appellant sustained a recurrence of her accepted back condition on August 17, 2007.³ The case should be remanded to the Office for consideration of this issue.

Accordingly, the case will be set aside and remanded for consideration of the medical evidence pursuant to the standards set out in section 8128(a) and section 20 C.F.R. § 10.126. The Office is directed to review this evidence for the purpose of determining whether appellant sustained a recurrence of her 1991 accepted back condition as of August 17, 2007. After such further development as the Office deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT this case be set aside and remanded for consideration of appellant's claim for a recurrence of her accepted 1991 back condition as of August 17, 2007.

Issued: May 25, 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

³ In addition, appellant's attorney submitted a letter dated December 12, 2009 which specifically requested that the claim be adjudicated as one for recurrence of disability.