

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

D.L., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Daytona Beach, FL, Employer**

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**Docket No. 11-649
Issued: September 28, 2011**

Appearances:
Appellant, pro se
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 January 19, 2011 appellant filed a timely appeal of a November 17, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision denying her occupational disease claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

On February 5, 2010 appellant, then a 51-year-old patient services assistant, filed an occupational disease claim alleging that she developed cervical degenerative disc disease, cervical disease, tendinitis in the shoulder and bilateral shoulder impingement with a right tendon tear due to repetitive typing, pulling, reaching, pushing, filing, answering telephones and for a high volume, fast-pasted clinic in order to produce progress notes. She indicated that she first became aware of her conditions on July 9, 2001 and first related these conditions to her employment on June 29, 2004. Appellant stated that OWCP advised her to file a claim for a new injury due to her current employment rather than pursuing her previously accepted claim, File No. xxxxxx469, for occupational disease resulting in accepted conditions of bilateral shoulder injury and aggravation of degenerative disc disease as a result of her employment with the Department of the Army.

¹ 5 U.S.C. § 8101 *et seq.*

By decision dated May 5, 2010, OWCP denied appellant's claim. Appellant requested an oral hearing on May 13, 2010. She testified before the hearing representative on August 18, 2010 and stated that OWCP required her to file a new claim. The hearing representative indicated that she had reviewed appellant's prior claims and was transferring evidence into the current case file. By decision dated November 17, 2010, an OWCP hearing representative stated that all the evidence in appellant's files had been reviewed prior to issuance of this decision. She denied appellant's claim on the grounds that the medical evidence was not predicated on a proper factual background.

The Board, having duly considered the matter, concludes that the case is not in posture for decision. In this regard, the Board notes that, by decision dated November 17, 2010, OWCP's hearing representative denied appellant's claim after reviewing her prior claims and transferring evidence from those claims. However, upon review of the case record, the Board notes that appellant's claims have not been combined. The Board is unable to determine whether all of the pertinent evidence reviewed by OWCP is currently in the record as transmitted to the Board.

Section 501.2(c) of the Board's *Rules of Procedure*,² provides that the Board has jurisdiction "to consider and decide appeals from the final decision of OWCP in any case arising under FECA."³ Additionally, the Board's review of the case is limited to the evidence which was before OWCP at the issuance of the final decision.⁴ Since the record as transmitted to the Board does not contain evidence that OWCP relied upon in reaching its final decision, including the additional claims reviewed and considered by the hearing representative in reaching a final decision, the Board is unable to properly "consider and decide" appellant's claim. The November 17, 2010 decision of OWCP must be set aside and the case remanded to OWCP for reconstruction and proper assemblage of the case record including combining all the files implicated by appellant's claim for occupational disease on February 5, 2010. Following this and such further development as OWCP deems necessary, OWCP shall issue a *de novo* decision to preserve appellant's right to future appeals. Accordingly,

² 20 C.F.R. § 501.2(c).

³ 5 U.S.C. §§ 8101-8193.

⁴ 20 C.F.R. § 501.2(c)(1).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 17, 2010 is set aside, and the case remanded for further proceedings consistent with this order of the Board.

Issued: September 28, 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