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

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C.D., Appellant	)
and	) Docket No. 11-1490 ) Issued: January 12, 2012
U.S. POSTAL SERVICE, POST OFFICE, Capitol Heights, MD, Employer	) ) ) _ )
Appearances: Stephen J. Dunn, Esq., for the appellant	Case Submitted on the Record

Office of Solicitor, for the Director

## ORDER REMANDING CASE

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

On June 9, 2011 appellant, through his attorney, filed an application for review of an April 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as number 11-1490. Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision.

OWCP accepted appellant's July 29, 2000 traumatic injury claim for cervicalgia and neck sprain. Appellant returned to restricted duty on August 2, 2000.

In an October 5, 2006 second opinion report, Dr. Robert Allen Smith, a Board-certified orthopedic surgeon, opined that appellant no longer had residuals of his accepted injury. He concluded that there was no causal relationship between appellant's age-related spondylitic changes and degenerative joint disease and his accepted cervical condition.

On October 16, 2006 OWCP proposed to terminate appellant's medical and compensation benefits based on Dr. Smith's opinion. By decision dated December 10, 2007, it finalized its proposed termination of benefits. In a May 14, 2008 decision, an OWCP hearing representative affirmed the December 10, 2007 termination decision. In a nonmerit decision dated September 9, 2008, OWCP denied appellant's request for merit review.

Appellant submitted a request for reconsideration dated May 8, 2009, received by OWCP on May 12, 2009, and a medical report from Dr. Robert Macht, a Board-certified surgeon, who opined that appellant's current radiculopathy and herniated disc condition was causally related to the accepted injury. He also submitted reports of magnetic resonance imaging (MRI) scans dated November 7, 2006 and May 27, 2008, and several work capacity evaluations reflecting current work restrictions.

On August 12, 2010 appellant, through his representative, again requested reconsideration. Counsel contended that an enclosed report from Dr. Neil Novin, a Board-certified surgeon, was sufficient to establish a causal relationship between appellant's current condition and his accepted injury.

In the July 15, 2010 report, Dr. Novin provided a history of injury and treatment, noting that he had reviewed the entire medical record and interviewed appellant. He opined to a reasonable degree of medical certainty that appellant's current disc herniation and January 11, 2008 surgery were a direct result of the July 29, 2000 injury. Dr. Novin explained that appellant's original neck condition had progressed to the extent that surgery had been required.

In its April 21, 2011 decision, OWCP denied modification of its prior decision. Although it listed the medical evidence it had received, it did not reference nor discuss Dr. Novin's July 15, 2010 report.

The Board finds that OWCP failed to consider all medical evidence of record before making its determination. As the Board's jurisdiction of a case is limited to reviewing that evidence which was before OWCP at the time of its final decision, it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision. In its final decision, OWCP made no reference to Dr. Novin's July 15, 2010 report. Because it does not appear that OWCP considered this evidence in reaching its April 21, 2011 decision, the Board cannot review such evidence for the first time on appeal.

The Board finds that this case is not in posture for a decision. On remand, OWCP should review all of the evidence of record, including Dr. Novin's July 15, 2010 report. Following such further development as it deems necessary, it shall issue an appropriate decision.

<sup>&</sup>lt;sup>1</sup> In his request for reconsideration, appellant's counsel referenced an August 13, 2009 OWCP decision. The record in xxxxxx385 does not contain a decision of that date.

<sup>&</sup>lt;sup>2</sup> 20 C.F.R. § 501.2(c).

<sup>&</sup>lt;sup>3</sup> See William A. Couch, 41 ECAB 548 (1990).

<sup>&</sup>lt;sup>4</sup> See supra note 2.

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' April 21, 2011 decision be set aside, and the case is remanded for further development consistent with this order.

Issued: January 12, 2012 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