United States Department of Labor Employees' Compensation Appeals Board

V.S., Appellant))
and) Docket No. 13-156
) Issued: April 25, 2014
U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer)
	_)
Appearances:	Case Submitted on the Record
Appellant, pro se	
Office of Solicitor, for the Director	

ORDER REMANDING CASE

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

On October 31, 2012 appellant filed a timely application for review of the Office of Workers' Compensation Programs' (OWCP) decision dated October 19, 2012 in OWCP file number xxxxxx858 denying his claim for compensation for the period August 8 through September 13, 2011. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The Board, having duly considered the matter, concludes that the case is not in posture for decision. In this regard, the Board notes that the record before the Board is not complete. The record does not contain the October 19, 2012 decision¹ or any other documents between January 25 and November 6, 2012. The Board issued an *Order to Complete the Record* within 30 days on June 18, 2013.² However, upon inspection of the case record, the Board finds that the Director of OWCP did not produce the complete case record or show the reason why he cannot comply.³ As set forth in the June 18, 2013 *Order to Complete the Record*, the Board is issuing

¹ Appellant submitted this decision to the Board with his appeal papers.

² Docket No. 13-156 (issued June 18, 2013).

³ Following the June 18, 2013 *Order to Complete the Record*, OWCP issued two decisions on the merit issue, June 24, 2013 and November 5, 2013. However, the Board and OWCP may not simultaneously have jurisdiction over the same case. OWCP therefore did not have the authority to issue its June 24 and November 5, 2013 decisions and they are null and void. 20 C.F.R. § 501.2(c)(3); *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

this *Order Remanding Case* as it is unable to determine whether all of the pertinent evidence reviewed by OWCP in reaching appellant's claim is in the record currently before the Board.

Section 501.2(c) of the Board's *Rules of Procedure*,⁴ provides that the Board has jurisdiction "to consider and decide appeals from the final decision of OWCP in any case arising under the [Federal Employees' Compensation] Act." Additionally, the Board's review of the case is limited to the evidence which was before OWCP at the issuance of the final decision.⁶

Since the record as transmitted to the Board does not contain evidence that OWCP relied upon in reaching its final decision or the final decision itself, the Board is unable to properly "consider and decide" appellant's claim. The October 19, 2012 decision of OWCP must be set aside and the case remanded to OWCP for reconstruction and proper assemblage of the case record. Following this and such further development as OWCP deems necessary, it shall issue an appropriate merit decision pursuant to 5 U.S.C. § 8128(b)(1) to preserve appellant's right to future appeals. Accordingly,

IT IS HEREBY ORDERED that the October 19, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: April 25, 2014 Washington, DC

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

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

⁴ 20 C.F.R. § 501.2(c).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ See 20 C.F.R. § 501.2(c)(1).