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

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## M.M., Appellant

and

## DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Cleveland, OH, Employer

Docket No. 14-108 Issued: April 8, 2014

*Appearances: Alan J. Shapiro, Esq.*, for the appellant *Office of Solicitor*, for the Director Case Submitted on the Record

## **ORDER REMANDING CASE**

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

On October 21, 2013 appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) decision dated June 27, 2013 under File No. xxxxx344.

On January 25, 2013 appellant filed a recurrence of disability claim (Form CA-2a) under File No. xxxxx276, accepted for left medial and lateral meniscal tears and an aggravation of left knee osteoarthritis sustained on September 23, 2010, necessitating left knee arthroscopy on January 6, 2011. He asserted that the accepted left knee conditions worsened on November 5, 2012, totally disabling him from work from November 9, 2012 onward. OWCP advised appellant by February 12, 2013 letter, issued under File No. xxxxx276, of the evidence needed to establish his recurrence claim. In response, appellant submitted a February 15, 2013 statement attributing his left knee condition to new work duties following his return to full duty on March 21, 2011. OWCP then advised appellant by April 17, 2013 letter that it would develop his January 25, 2013 recurrence claim as one for a new occupational disease. It assigned the occupational disease claim File No. xxxxx344, severing it from File No. xxxxx344 on the grounds that the medical evidence was insufficient to establish causal relationship.

The record now before the Board under File No. xxxxx344 does not contain any development of appellant's claim in File No. xxxxx276. As appellant attributed his left knee condition under File No. xxxxx344 to the injuries accepted under File No. xxxxx276, it is necessary that OWCP consolidate the claims. Adjudicating appellant's claim under File No. xxxxx344 without reviewing the medical evidence under File No. xxxxx276 would raise the possibility of inconsistent results. It is the Board's policy to avoid such an outcome.<sup>1</sup> Therefore, the case will be set aside and remanded to OWCP to consolidate File No. xxxxx344 with File No. xxxxx276. Following such further development as OWCP deems necessary, it shall issue a *de novo* decision on the merits of the claim.

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 27, 2013 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 8, 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

<sup>&</sup>lt;sup>1</sup> See William T. McCracken, 33 ECAB 1197 (1982).