

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

W.W., Appellant

and

**U.S. POSTAL SERVICE, OLD HAMMOND
STATION, Baton Rouge, LA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-229
Issued: August 12, 2011**

Appearances:
J. Arthur Smith, III, Esq., for the appellant
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 November 5, 2010 appellant, through counsel, filed a timely appeal from a merit decision of the Office of Workers' Compensation Programs (OWCP) dated May 10, 2010 concerning the denial of his emotional condition claim. The Board docketed the appeal as No. 11-229

The Board has duly considered the matter and notes that on February 4, 2004 appellant, then a 43-year-old city carrier, filed an occupational disease claim alleging anxiety and stress. OWCP denied his claim by decision dated April 8, 2004. By decision dated January 5, 2005, the hearing representative found appellant had established compensable factors with respect to overtime and working parts of different routes, but that the medical evidence was insufficient to establish that his condition was causally related to the accepted factors. The hearing representative thus affirmed as modified the April 8, 2004 denial of appellant's claim. Appellant filed for reconsideration of that decision and by decision dated February 14, 2006 OWCP failed to consider the merits of the earlier decision.

In the first appeal to the Board,¹ the Board set aside the February 14, 2006 decision as OWCP had failed to consider all the relevant evidence.

¹ Docket No. 06-1765 (issued December 29, 2006).

Subsequent to the Board remand OWCP considered the new evidence and by decision dated April 30, 2007 denied appellant's request for reconsideration finding the medical evidence had failed to establish a causal connection between the accepted compensable factors and his diagnosed condition. A further request for reconsideration was filed by appellant's representative and, after considering the merits of the new evidence, OWCP denied the request for reconsideration on July 2, 2008.

On July 14, 2009 the Board, in a second appeal,² set aside the July 2, 2008 OWCP decision as it failed to contain a statement of reasons as required by 20 C.F.R. § 10.126 of OWCP's regulations or any discussion of the medical evidence and why it was insufficient to support appellant's claim.

On remand OWCP referred appellant for a second opinion evaluation with Dr. Arthur S. Samuel, a Board-certified psychiatrist. By decision dated May 10, 2010, OWCP denied appellant's claim. In denying appellant's claim OWCP only discussed Dr. Samuel's medical report. The decision contained no reference or discussion regarding any other medical evidence in the record.

Board precedent holds that OWCP must review and evaluate all the evidence submitted by a claimant and received by OWCP prior to the issuance of a final decision.³ As the Board's jurisdiction is final as to the subject matter, it is crucial that OWCP accomplish this.⁴

It is clear to this Board that OWCP did not consider all of the medical evidence in the record. In fact, to date it has reviewed only the reports of the second opinion physician, Dr. Arthur Samuel. There is no discussion of any of the medical evidence submitted by appellant or why it was insufficient to support his claim or to create a conflict with Dr. Samuel's reports. As such, the Board concludes that the case must be again remanded for review and evaluation of all the medical evidence. Following any further necessary development, OWCP shall issue an appropriate merit decision.

² Docket No. 08-2327 (issued July 14, 2009).

³ See *Yvette N. Davis*, 55 ECAB 475 (2004); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of OWCP's decision); *William A. Couch*, 41 ECAB 548 (1990); *M.B.*, Docket No. 09-176 (issued September 23, 2009); 20 C.F.R. § 501.6(c).

⁴ See *id.*

IT IS HEREBY ORDERED THAT the May 10, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: August 12, 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