

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

J.J., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
TRAINING CENTER, Great Lakes, IL,
Employer**

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**Docket No. 13-584
Issued: August 23, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On January 16, 2013 appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) decision dated July 23, 2012. By its July 23, 2012 decision, OWCP denied appellant's 1993 claim for a traumatic injury, finding that the medical evidence was insufficient to establish causal relationship. It noted that, while appellant had filed a claim for a recurrence of disability, that claim could not be developed as OWCP had not developed his traumatic injury claim.

The Board has duly considered the matter and notes that on January 7, 2012 appellant filed a CA-2a, notice of recurrence of disability. By letter dated May 25, 2012, OWCP advised appellant that his claim was originally received as a simple, uncontroverted case which resulted in minimal or no time loss from work. It indicated that appellant's claim was administratively handled to allow medical payments up to \$1,500.00 and the merits of the claim were not formally adjudicated. However, the Board notes that, in an August 13, 1993 letter, OWCP accepted appellant's traumatic injury claim for low back strain and instructed him regarding how to claim wage-loss compensation. The record reveals that appellant submitted reports from his treating physician, Dr. L.T. Zabell, that were considered by OWCP in accepting his claim. Additionally, a Form CA-3 dated August 8, 1993 reveals that appellant stopped work on July 20, 1993 and returned on July 22, 1993 and received continuation of pay from July 20 to 22, 1993. OWCP did not rescind acceptance of the claim.

OWCP's procedures require that, in adjudicating the case, the claims examiner must review and evaluate all material submitted to determine whether the case meets the standards for a claim under FECA of timeliness, civil employee, fact of injury, performance of duty and causal relationship.¹ The procedures further provide that OWCP must advise a claimant by letter of the accepted conditions, the date of injury, name of employer and entitlement to continuation of pay and instructions for filing wage loss.² The Board notes that OWCP's August 13, 1993 decision adjudicated appellant's claim and found that it met the criteria for claim acceptance. OWCP's procedures also address the development of recurrence claims.³ Section 2.1500.4(c) of OWCP's procedure manual provides that claims for recurrence require adjudication except when the claimant is still receiving continuation of pay, the recurrence is for medical care only and the claim is in open status and neither wage-loss compensation or payment for medical expenses is claimed at present.⁴ Appellant's claim does not fall within the exceptions. Therefore, the Board finds that OWCP did not conform to its established procedures with regard to adjudicating appellant's claim for a recurrence of disability. Because OWCP's July 23, 2012 decision did not adjudicate the recurrence claim, the Board finds that OWCP has not fulfilled its responsibility under its procedures.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 23, 2012 is set aside and the case remanded for a *de novo* decision on appellant's claim for a recurrence of disability.

Issued: August 23, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

¹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Acceptances*, Chapter 2.806.2 (June 2011).

² *Id.*

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500 (October 2009) (sets forth OWCP procedures for adjudicating recurrence claims).

⁴ *Id.* at 2.1500.4(c).