

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

B.A., Appellant

and

**U.S. DEPARTMENT OF JUSTICE, BUREAU
OF PRISONS, Pollack, LA, Employer**

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**Docket No. 13-1366
Issued: November 14, 2013**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On May 20, 2013 appellant filed an application for review of the April 18, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claim on the grounds the evidence failed to establish a firm medical diagnosis which could be connected to the accepted factors of federal employment. The Board assigned Docket No. 13-1366.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision.

The Board notes that on August 19, 2003 appellant had previously filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2003 he sustained a back strain when he was breaking up an inmate altercation and was thrown to the floor, claim No. xxxxxx845. OWCP accepted the claim for lumbar strain. Appellant was released to full duty on August 19, 2003 and returned to work on August 25, 2003.

On June 8, 2010 appellant submitted a notice of recurrence (Form CA-2a) alleging that he had sustained a recurrence of disability on July 5, 2007, claim No. xxxxxx845. This case was previously before the Board. By decision dated September 21, 2012, the Board affirmed an October 26, 2011 OWCP merit decision which found that appellant had not established an employment-related recurrence of disability commencing on July 5, 2007 and that OWCP

properly exercised its discretion in denying authorization for thoracic lumbar spine fusion at T1-T2 and T2-L1.¹ The findings of fact and conclusions of law from the prior decision and order are hereby incorporated by reference.

On August 15, 2011 appellant, then a 51-year-old correctional treatment specialist, filed an occupational disease claim alleging that he developed a lumbar spine condition as a result of his federal employment duties in this claim, No. xxxxxx462. He stated that he first became aware of his condition and of its relationship to his employment on August 12, 2003 when he was initially injured. In support of his claim, appellant submitted medical records documenting lumbar treatment.

By decision dated November 29, 2011, OWCP denied appellant's claim finding that the evidence failed to establish a firm medical diagnosis. The claims examiner made reference to medical reports documenting treatment for his spinal injuries in claim No. xxxxxx845.

On December 13, 2011 appellant, through counsel, requested an oral hearing before the Branch of Hearings and Review.

By decision dated June 11, 2012, the Branch of Hearings and Review affirmed the November 29, 2011 decision finding that the evidence of record failed to establish a firm medical diagnosis causally related to the established factors of federal employment. The hearing representative also recommended that the instant claim, No. xxxxxx462, and the prior claim, No. xxxxxx845, be combined in accordance with OWCP procedures because both claims involved lumbar spine injuries.

By letter dated June 28, 2012, appellant, through counsel, requested reconsideration of the June 11, 2012 decision.

By decision dated April 18, 2013, OWCP affirmed the June 11, 2012 decision finding that the evidence of record failed to establish a firm medical diagnosis.

OWCP procedures provide that cases should be doubled when a new claim is reported for an employee who previously filed a claim for a similar condition and further indicates that the cases should be doubled as soon as the need to do so becomes apparent.²

As both cases involve the same lumbar condition and the medical evidence from claim No. xxxxxx845 was reviewed by the claims examiner in OWCP's November 29, 2011 decision, the medical evidence contained in claim No. xxxxxx845 will necessarily bear directly on appellant's claim for compensation in this claim, No. xxxxxx462.

Moreover, in the June 11, 2012 decision, the hearing representative recommended this claim, No. xxxxxx462, and appellant's prior claim, No. xxxxxx845, be combined because both claims involved similar spinal injuries.

¹ Docket No. 12-549 (issued September 21, 2012).

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8(c)(1) (February 2000).

Because it is essential for the Board to review the medical evidence contained in Claim No. xxxxxx845 in order to render a full and fair adjudication of the present appeal, this case will be remanded to OWCP to consolidate case files xxxxxx462 and xxxxxx845. Consolidation of the record will be followed by any further development deemed appropriate and a *de novo* decision on the merits of the claim.

IT IS HEREBY ORDERED THAT OWCP's April 18, 2013 decision be set aside and the case remanded for further development consistent with this order.

Issued: November 14, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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