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

Y.C., Appellant	- ) )
and	) Docket No. 13-944
	) Issued: September 18, 2013
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL	)
CENTER, San Juan, PR, Employer	)
Appearances: Elaine Rodriguez-Frank, Esq., for the appellant	Case Submitted on the Record

## ORDER REMANDING CASE

Office of Solicitor, for the Director

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

On March 12, 2013 appellant, through counsel, filed a timely appeal from a November 29, 2012 decision of the Office of Workers' Compensation Programs concerning the denial of her occupational disease claim for a left foot tendon tear. The Board assigned Docket No. 13-944.

On January 11, 2012 appellant, then a 38-year-old nurse, filed an occupational disease claim alleging that on February 6, 2009 she first became aware of her left foot tendon tear, which she alleged developed as a complication of a prior employment injury. A review of the record indicates that the medical and factual evidence including appellant's statement and hearing testimony that her left foot tendon tear might be a consequential injury of an accepted left ankle sprain were filed under OWCP File No. xxxxxx514. By decision dated April 17, 2012, OWCP denied appellant's claim. At the hearing following the April 17, 2012 OWCP denial, appellant testified about her accepted July 8, 2008 employment injury and how her walking at work aggravated the accepted employment injury resulting in a left foot tendon tear. On November 29, 2012 an OWCP hearing representative affirmed the denial of her claim. She noted that appellant had filed a claim for a recurrence of disability for this same condition under OWCP File No. xxxxxxx514, which had been denied.

The Board has duly considered the matter and concludes that the case is not in posture for a decision. As the record before the Board contains no evidence from the prior claim, the Board is unable to properly address and adjudicate the issue of whether appellant's left tendon foot tear was properly denied.

On remand, OWCP should combine the present case record, OWCP File No. xxxxxx424, with OWCP File No. xxxxxx514. After combining these two case records on remand, OWCP should consider the evidence contained in the combined case record and, following any necessary further development, issue a *de novo* decision. Accordingly, the November 29, 2012 decision denying her occupational disease claim should be set aside.

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 29, 2012 is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: September 18, 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