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

T.D., Appellant	)
and	) Docket No. 13-2130 ) Issued: May 1, 2014
U.S. POSTAL SERVICE, POST OFFICE, Philadelphia, Employer	) ) )
Appearances: Thomas R. Uliase, 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 September 17, 2013 appellant, through her attorney, filed an application for review from a June 26, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) that terminated her medical benefits. The appeal was docketed as No. 13-2130.

This case has previously been before the Board. In this claim, adjudicated under master file number xxxxxx154, with subsidiary files numbered xxxxxx860 and xxxxxx142, in a December 3, 2002 decision, the Board affirmed a May 16, 2002 OWCP decision which found that appellant had not established a recurrence of disability on March 14, 2002 and vacated a June 4, 2002 nonmerit decision on the grounds that properly submitted medical evidence had not been reviewed by OWCP. In a May 1, 2007 decision, the Board found that appellant failed to establish that she sustained a recurrence of disability on January 18, 2005 causally related to the

<sup>&</sup>lt;sup>1</sup> Docket No. 02-1819 (issued December 3, 2002). On March 26, 1985 appellant, a mail handler, was injured lifting a pile of mail sacks. In a January 13, 1998 decision, OWCP adjusted appellant's compensation to reflect her actual earnings as a modified distribution clerk working 20 hours a week. On August 24, 1998 appellant received a schedule award for 32 percent left arm impairment. The accepted conditions under file number xxxxxx154 are strains of the neck (cervical) and left shoulder, and left ulnar nerve injury. Under file number xxxxxxx860, appellant stopped work on March 14, 2002 and returned to part-time sedentary work on February 3, 2003. OWCP accepted right lateral epicondylitis under file number xxxxxxx860. File number xxxxxxx142 claim was denied.

March 26, 1985 employment injury and affirmed OWCP decisions dated March 7 and November 7, 2005.<sup>2</sup>

The record in file number xxxxxx154 contains decisions issued by OWCP and the Board, adjudicated by OWCP under file number xxxxxx530. Under file number xxxxxx530, appellant stopped work on January 24, 2005 and filed a claim indicating that her right upper extremity was affected by cold. The record indicates that this claim has not been accepted. In file number xxxxxx154, on October 3, 2007, the Board issued an order remanding case in file number xxxxxx530. The Board instructed OWCP to combine files xxxxxx530, xxxxxx154 and xxxxxx860.<sup>3</sup> In a letter dated November 28, 2007, OWCP informed appellant that these files had been combined with file number xxxxxxx530 case identified as the master file. The case file before the Board, for master file xxxxxx154, does not include file number xxxxxx530.

Subsequent to the October 3, 2007 remand order, the Board issued two decisions on file number xxxxxxx530. In decisions dated September 16, 2009 and August 16, 2011, the Board remanded file number xxxxxxx530 to OWCP. In the September 16, 2009 decision, the Board found that, as OWCP did not provide appellant's physician with a statement of accepted facts, the case was not in posture for decision. The Board remanded the case to OWCP to prepare a corrected statement of accepted facts and submit it to the treating physician or a second opinion examiner for an opinion regarding whether appellant's current condition was causally related to her employment. In the August 16, 2011 decision, the Board again found the case not in posture for decision because the opinion of Dr. Kevin F. Hanley, a Board-certified orthopedic surgeon and OWCP referral physician, was not based on a correct statement of accepted facts. The Board set aside OWCP's June 3, 2010 decision and remanded the case to OWCP for further development in accordance with the Board's September 16, 2009 decision.

The Board has duly considered the matter and finds this case is not in posture for decision as OWCP did not comply with the Board's October 3, 2007 remand order in file number xxxxxx530 case. By that order, on remand OWCP was to combine files xxxxxx530, xxxxxx154 and xxxxxx860. There is nothing in this record (xxxxxx154 master file) to indicate that this was done. As file number xxxxxx530 was remanded to OWCP on August 16, 2011 for further development of the medical record, medical reports in file number xxxxxxx530 could have bearing on the merit issue in the case on appeal before the Board, *i.e.*, whether OWCP properly terminated medical benefits. The record before the Board does not demonstrate that evidence under file number xxxxxxx530 has been considered by OWCP.

Hence, the Board finds that this case is not in posture for a decision as the record before the Board does not indicate that OWCP properly combined and considered evidence from file

<sup>&</sup>lt;sup>2</sup> Docket No. 06-1087 (issued May 1, 2007).

<sup>&</sup>lt;sup>3</sup> Docket No. 07-1422 (issued October 3, 2007).

<sup>&</sup>lt;sup>4</sup> Docket No. 08-2147 (issued September 16, 2009).

<sup>&</sup>lt;sup>5</sup> Docket No. 10-2280 (issued August 16, 2011).

<sup>&</sup>lt;sup>6</sup> *Id*.

number xxxxxx530 as contemplated by the Board's prior decisions relative to file number xxxxxx530. It is important for OWCP to fully consolidate these claims to ensure that all evidence germane to the termination of benefits is properly considered. Moreover, to consider appellant's appeal at this stage would involve a piecemeal adjudication of the issues in this case and raise the possibility of inconsistent results. It is the Board's policy to avoid such an outcome. The case must therefore be remanded to OWCP to properly consider and combine OWCP file number xxxxxxx530 with the OWCP master file number xxxxxxx154, and its subfiles. Following this reconstruction of the record as well as any additional development deemed necessary, OWCP shall issue an appropriate *de novo* decision.

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated June 26, 2013 is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: May 1, 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

3

<sup>&</sup>lt;sup>7</sup> See William T. McCracken, 33 ECAB 1197 (1982).