

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

G.P., Appellant)	
)	
and)	Docket No. 11-492
)	Issued: August 12, 2011
DEPARTMENT OF THE ARMY,)	
Fort Drum, NY, Employer)	

Appearances:
Appellant, pro se
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 December 13, 2010 appellant filed a timely appeal of a November 24, 2010 Office of Workers' Compensation Programs' (OWCP) merit decision denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c)(1) and 501.3, the Board has jurisdiction to consider the merits of the case.

On February 25, 2010 appellant, then a 50-year-old office aid, filed a traumatic injury claim alleging that he injured both knees, his head, neck and upper back on December 21, 2009 in the employing establishment parking lot at 10:00 am. He stated that he "Was very depressed and had a panic attack which made me sick to my stomach. I leaned over to throw up and slipped fell when knee gave out." Appellant's supervisor indicated that appellant was at the employing establishment for two and a half hours completing paperwork to start his processing for return to work in a suitable work position based on a separate claim.²

In a statement dated December 31, 2009, appellant related his accepted employment injuries of falling from a fire truck and injuring his knee in 1988 resulting in a knee replacement

¹ 5 U.S.C. § 8101 *et seq.*
² OWCP File No. xxxxxx979.

in 1998. He also stated that he developed stress and anxiety attacks while performing light-duty and answering incoming alarm calls due to his hearing loss. Appellant noted that he reported to work on December 21, 2009. He stated, “My knees and hip hurt so bad it raised my stress and anxiety until it made me sick. When we had a break I went outside to my vehicle because I became sick to my stomach. I leaned over to put my hands against my vehicle and slipped and hit my head, went down on my knees on the running boards then flipped sideways and fell onto my back on the ground.”

OWCP denied appellant’s claim on April 9, 2010 finding that he failed to provide a factual or medical explanation for his panic attack. Appellant requested an oral hearing and testified on September 16, 2010 that after reporting for orientation and a safety meeting on December 21, 2009 he became depressed and anxious because he could not hear and developed a panic attack. He went into the icy and snowy parking lot on the employing establishment premises during the lunch break described leaning against his car, bending over and his right knee collapsed and he hit his head on his car and flipped onto his back.

In the November 24, 2010 decision, OWCP’s hearing representative noted that appellant had previously accepted claims for right knee injury, hearing loss, depression and anxiety. The hearing representative denied appellant’s claim because his panic attack was due to his return to work through OWCP decisions. The hearing representative stated, “The claimant also claimed that the fall was due to his right knee giving way as a consequence of the right knee injury. This aspect of the claim was addressed on the March 5, 1988 injury claim (xxxxxx029) and denied on the basis that the medical evidence failed to establish that the fall was sustained as a consequence of the injury.”

The Board, having duly considered the matter, concludes that the case is not in posture for decision. In this regard, the Board notes that, by decision dated November 24, 2010, OWCP’s hearing representative denied appellant’s claim on two bases, both of which relate to previously accepted injuries, his knee and his panic attacks. However, upon perusal of the case record, the Board notes that there is no evidence addressing appellant’s previous claims associated with the case record. The Board is unable to determine whether all of the pertinent evidence reviewed by OWCP is currently in the record before the Board.

Section 501.2(c) of the Board’s *Rules of Procedure*,³ provides that the Board has jurisdiction “to consider and decide appeals from the final decision of OWCP in any case arising under FECA.”⁴ Additionally, the Board’s review of the case is limited to the evidence which was before OWCP at the issuance of the final decision. Since the record as transmitted to the Board does not contain evidence that OWCP relied upon in reaching its final decision, including the additional case record and decision described by the hearing representative as well as documentation regarding his emotional condition claim which was apparently accepted for anxiety and panic attacks, the Board is unable to properly “consider and decide” appellant’s claim. The November 24, 2010 decision of OWCP must be set aside and the case remanded to OWCP for reconstruction and proper assemblage of the case record including combining all the

³ 20 C.F.R. § 501.2(c)(1).

⁴ 5 U.S.C. § 8101 *et seq.*

files implicated by appellant's claim for injury on December 21, 2009. Following this and such further development as OWCP deems necessary,⁵ OWCP shall issue an appropriate merit decision pursuant to 5 U.S.C. § 8128(b)(1) to preserve appellant's right to future appeals.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 24, 2010 is hereby set aside and the case remanded for further proceedings 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

⁵ The Board notes that the District medical director recommended that OWCP refer appellant for a second opinion evaluation in order to accurately assess her permanent impairment due to all accepted conditions.