

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

W.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Seattle, WA, Employer**

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**Docket No. 11-891
Issued: December 12, 2011**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
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

Appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) January 14, 2011 merit decision denying his claim for a recurrence of disability. The appeal was docketed as No. 11-891. After considering the evidence of record, the Board finds this case is not in posture for a decision.

The present appeal involves appellant's January 16, 2006 traumatic injury claim (No. xxxxxx433), in which he alleged that he that he sustained a back injury while pushing a heavy box in the performance of duty. OWCP accepted his claim for lumbar and thoracic sprains at T6-8 and T7-8 and intervertebral disc displacement and authorized surgery. Appellant returned to limited duty on March 6, 2009. He filed compensation claims for total disability for intermittent periods beginning on or about March 3, 2010 causally related to his January 16, 2006 injury. OWCP found a conflict in medical opinion between appellant's treating physician and the district medical adviser (DMA) and referred appellant to an impartial medical examiner in order to resolve the conflict.¹ Based upon the July 16, 2010 opinion of the referee physician²

¹ Appellant's treating physician, Dr. Rosemary Crawford, opined that a March 3, 2010 selective nerve block had aggravated his pain and that his current disabling condition was causally related to the January 12, 2006 accepted injury. The DMA opined that the steroid injection did not cause appellant's increased symptoms.

² OWCP selected Dr. Donald Hubbard, a Board-certified orthopedic surgeon, to resolve the stated conflict in medical opinion.

that the evidence did not support a worsening of appellant's work-related condition, OWCP denied appellant's claim by decision dated August 13, 2010. By decision dated January 14, 2011, an OWCP hearing representative affirmed the August 13, 2010 decision.

The record indicates that appellant has filed a December 24, 2009 traumatic injury claim, which was accepted for sacroiliac sprain. (File No. xxxxxx434) In a November 17, 2010 occupational disease claim (No. xxxxxx438), appellant alleged that work activities on and after March 10, 2009 exacerbated his chronic mid-back pain. The record in the instant case, however, does not contain any evidence relating to the development of these other claims.

In its January 14, 2011, decision, OWCP denied appellant's claim in the instant case, without addressing factual and medical evidence submitted in conjunction with appellant's prior claims. As the allegations contained in all of his claims concern injury to the same body part, the medical evidence contained in File Nos. xxxxxx434 and xxxxxx438 will necessarily bear directly on appellant's recurrence claim in File No. xxxxxx433. Because it is essential for the Board to review the medical evidence contained in File Nos. xxxxxx434 and xxxxxx438 in order to render a full and fair adjudication of the present appeal, this case will be remanded for OWCP to consolidate case file numbers xxxxxx434, xxxxxx438 and xxxxxx433. Following reconstruction of the record and any further development it deems necessary, OWCP will issue a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.³

The Board also finds that Dr. Hubbard's July 16, 2010 report created a new conflict in medical opinion. The conflict between the DMA and appellant's treating physician concerned the issue of whether a March 3, 2010 selective nerve block had aggravated appellant's pain. Therefore, Dr. Hubbard's opinion that appellant's current disabling condition was causally related to the January 12, 2006 accepted injury served as a second opinion, rather than a referee opinion, and created a new conflict with the opinion of Dr. Crawford. The Board finds that this case is not in posture for a decision due to an unresolved conflict between the opinions of Dr. Crawford and Dr. Hubbard. On remand, OWCP should combine the claims referenced above and refer appellant, together with a statement of accepted facts and the medical record, to another impartial medical specialist in order to resolve the conflict.

³ Note: Subsequent to the filing of this appeal, OWCP consolidated this case with File No. xxxxxx438.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' January 14, 2011 decision be set aside and the case remanded for further development consistent with this order.

Issued: December 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