

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

C.H., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
CUSTOMS & BORDER PROTECTION,)
Edmonton, Alberta, Canada, Employer)

Docket No. 11-1458
Issued: December 19, 2011

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

By letter received on June 4, 2011, appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) May 23, 2011 merit decision denying his occupational disease claim. The appeal was docketed as No. 12-1458. After considering the evidence of record, the Board finds this case is not in posture for a decision.

The present appeal involves appellant's April 16, 2011 occupational disease claim (No. xxxxxx549), in which he alleged that he developed migraine headaches, sinus pain, dizziness and nausea due to employment-related exposure to toxic fumes in the workplace. Appellant also alleged that he sustained a shoulder injury as a result of repetitive fingerprinting activities. In a decision dated May 23, 2011, OWCP denied his claim on the grounds that he had not established that he had experienced the employment-related events as alleged.

The record indicates that appellant has filed similar occupational disease claims based on employment-related exposure to toxic fumes, including: a December 21, 2008 claim (No. xxxxxx995), which was accepted for acute episodic allergic bilateral conjunctivitis/rhinitis; a November 27, 2007 claim (No. xxxxxx846), which he states was accepted by OWCP; a pending May 18, 2011 occupational disease claim (No. xxxxxx270), in which he alleged that he developed occupational asthma and allergic rhinitis due to employment-related exposure to jet and diesel fumes, dust and toxins; and a November 18, 2010 occupational disease claim (No.

xxxxxx576), in which he alleged that he developed severe sinus headaches, breathing difficulties and nausea due to employment-related exposure to jet and diesel fumes, dust and toxins. In an April 1, 2011 occupational disease claim (No. xxxxxx385), appellant alleged that he sustained a shoulder injury as a result of repetitive fingerprinting activities. The record in the instant case, however, does not contain any evidence relating to the development of these prior claims.

In its May 23, 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 File Nos. xxxxxx995, xxxxxx846, xxxxxx576 and xxxxxx270 relating to his exposure to toxic fumes are substantially the same as those contained in the instant case (File No. xxxxxx549), the medical evidence contained in those files will necessarily bear directly on his claim for compensation in File No. xxxxxx549. Additionally, as the allegations contained in File No. xxxxxx385 relating to appellant's claimed shoulder injury are substantially the same as those contained in the instant case (File No. xxxxxx549), the factual and medical evidence contained in File No. xxxxxx385 will necessarily bear directly on his claim for compensation in File No. xxxxxx549. Because it is essential for the Board to review the medical evidence contained in File Nos. xxxxxx995, xxxxxx846, xxxxxx576, xxxxxx385 and xxxxxx270 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 xxxxxx995, xxxxxx846, xxxxxx576, xxxxxx385, xxxxxx270 and xxxxxx549. Reconstruction of the record will be followed by a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.¹

¹ In File No. xxxxxx270, appellant appealed a July 29, 2011 merit decision denying his occupational disease claim. In File No. xxxxxx576, appellant appealed nonmerit decisions dated May 19 and September 29, 2011 denying his request for an oral hearing and his request for reconsideration.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 23, 2011 decision be set aside and the case remanded for further development consistent with this order.²

Issued: December 19, 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

² The Board notes that appellant requested oral argument before the Board. Pursuant to 20 C.F.R. § 501.5(a), oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In light of the Board's ruling, oral argument is not appropriate in this case. Therefore, appellant's request for oral argument is denied.