

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

N.C., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Mesa, AZ, Employer)

**Docket No. 10-1747
Issued: November 3, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

**ORDER GRANTING PETITION FOR RECONSIDERATION,
REINSTATING APPEAL & ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

The Board issued an order remanding case in the above-entitled matter on May 25, 2011, finding that the Office of Workers' Compensation Programs (OWCP) did not consider all evidence of record prior to issuing its April 29, 2010 decision affirming denial of appellant's claim for a right knee injury.¹ The Board's order noted that, after initially denying the claim, OWCP accepted the claim for an aggravation of a right knee sprain on April 28, 2010 but, on April 29, 2010, an OWCP hearing representative affirmed the previous denial of the claim. The Board found that the hearing representative's decision did not consider the April 28, 2010 claim acceptance. The Board remanded the case for OWCP to consider all of the evidence in the record at the time of the hearing representative's April 29, 2010 decision.²

On June 24, 2011 the Director of OWCP filed a petition for reconsideration to set aside the order remanding case, arguing that there was an error in the Board's order as the document upon which the Board based its order, the April 28, 2010 decision accepting appellant's claim for aggravation of a right knee sprain, belonged to a separate claim, to which OWCP assigned File

¹ OWCP assigned File No. xxxxxx723 to this claim.

² See *William A. Couch*, 41 ECAB 548 (1990).

No. xxxxxx290. Because this document was erroneously scanned into the case record of File No. xxxxxx723, the Director contended that OWCP's hearing representative properly reviewed all of the evidence of record in File No. xxxxxx723 in reaching her decision. The Director requested that the appeal number 10-1747 be reinstated. Appellant was served with the Director's petition on August 4, 2011.

The standard for granting a petition for reconsideration is that the Board's decision contains an error of fact or law.³ Having duly considered the matter, the Board finds that the Director's petition established that the May 25, 2011 order contained an error of fact warranting further consideration as the document upon which the Board based its May 25, 2011 order, the April 28, 2010 claim acceptance, pertained to a separate OWCP claim. Hence, the appeal docketed as No. 10-1747 is reinstated.

On reinstatement of the appeal, the Board has duly considered the matter and finds that the case is not in posture for a decision. Under its procedures, OWCP has determined that in certain situations separate claims should be combined or doubled. These procedures provide that, when a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, the cases should be doubled.⁴ As noted, the April 28, 2010 decision in File No. xxxxxx290 accepts appellant's claim for an aggravation of a right knee sprain while the April 29, 2010 decision in File No. xxxxxx723, the claim presently before the Board, affirms the denial of a separate claim for a right knee injury. Therefore, for a full and fair adjudication, both of appellant's claims pertaining to her right knee should be combined pursuant to OWCP's procedures. The case will be remanded to OWCP to combine File Nos. xxxxxx723 and xxxxxx290. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim for compensation.

³ *Virginia Faye Gabbert (Byron Lowell Gabbert)*, 21 ECAB 149 (1969); *W.K.*, Docket No. 05-1888 (issued August 4, 2008).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c)(1) (February 2000).

IT IS HEREBY ORDERED THAT the petition for reconsideration filed by the Director of the Office of Workers' Compensation Programs be granted. The Board's May 25, 2011 order remanding case is set aside and the appeal docketed as No. 10-1747 is reinstated.

IT IS FURTHER ORDERED THAT the April 29, 2010 decision of the Office of Workers' Compensation Programs be set aside and the case remanded to OWCP for further proceedings consistent with this order.

Issued: November 3, 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