

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

D.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsfield, ME, Employer**

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**Docket No. 11-322
Issued: September 15, 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

On November 22, 2010 counsel filed an application for review of the Office of Workers' Compensation Programs' (OWCP) decision dated October 19, 2010 in OWCP claim number xxxxxx847.¹

In the October 19, 2010 decision, an OWCP hearing representative affirmed in part and set aside in part a December 31, 2002 decision that terminated appellant's compensation, effective January 9, 2001, on the grounds that he refused suitable work. The hearing representative found that OWCP improperly terminated appellant's compensation as the correct issue was not suitable work, but whether he sustained a recurrence of disability in January 2001 due to a change in the accepted lumbar conditions or withdrawal of his modified-duty job. The hearing representative then denied that appellant sustained a recurrence of disability as there was no evidence his light-duty job was withdrawn, but she did not discuss the medical record.

¹ This matter has previously been before the Board. On March 16, 2006 the Board affirmed in part and modified in part OWCP's June 21, 2005 decision denying his claim for an emotional condition, chest pain and gastroesophageal reflux disease. The Board found that appellant established compensable employment factors but not that the claimed conditions were due to those factors. Docket No. 05-1916 (issued March 16, 2006).

The Board cannot determine the basis for OWCP's October 19, 2010 decision. In determining whether a claimant has discharged his burden of proof and is entitled to compensation benefits, OWCP is required by statute and regulations to make findings of fact.² OWCP procedure further specifies that a final decision must include findings of fact and provide clear reasoning which allows the claimant to "understand the precise defect of the claim and the kind of evidence which would tend to overcome it."³ These requirements are supported by Board precedent.⁴

The Board finds that OWCP's hearing representative failed to properly explain her findings with respect to the issues presented. Although her decision states that the claim is now denied because a recurrence of disability was not established, instead of a refusal of suitable work under 5 U.S.C. § 8106(c), she did not cite to specific medical evidence supporting her finding that appellant did not sustain a recurrence of disability in January 2001. Also, a review of the three claim files relevant on the present appeal reveals that OWCP did not develop a medical recurrence issue in this case.

The case must therefore be returned to OWCP for a proper decision which includes findings of fact, a clear and a precise statement regarding the basis for the decision. Following such further development as OWCP deems necessary, it shall issue an appropriate merit decision.

² 5 U.S.C. § 8124(a) provides: "The [OWCP] shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons." See also *Tonja R. Hiebert*, 55 ECAB 706 (2004); *Beverly Dukes*, 46 ECAB 1014 (1995).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.4 (July 1997).

⁴ See *James D. Boller, Jr.*, 12 ECAB 45 (1960).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 19, 2010 is set aside, and the case remanded for further action consistent with this order of the Board to be followed by an appropriate decision.

Issued: September 15, 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