



his medical condition, AIDS. By order dated January 27, 2006, the Board set aside OWCP's June 17, 2005 denial of appellant's claim and remanded the case for consolidation of File Nos. xxxxxx052 and xxxxxx904 and further development of the medical evidence.<sup>2</sup>

In a March 23, 2006 decision, OWCP denied appellant's claim. By decision dated September 1, 2006, an OWCP hearing representative vacated the March 23, 2006 decision and remanded the entire combined case record for completion of the Board's instructions, including the directive to obtain an impartial medical examination to resolve the conflict in medical opinion evidence. In an order dated August 19, 2008, the Board dismissed appellant's appeal for lack of jurisdiction, noting that OWCP had not yet complied with the directive of both the Board and OWCP's hearing representative to obtain a referee opinion.<sup>3</sup>

In a decision dated April 13, 2009, OWCP denied appellant's claim on the grounds that he had not established a compensable factor of employment. In a June 16, 2010 decision, the Board set aside the April 13, 2009 decision, finding that OWCP had failed to properly review and consider all evidence of record.<sup>4</sup>

The record contains a 32-page report dated February 6, 2009 from Dr. Morton L. Kurland, a Board-certified psychiatrist, who performed an impartial medical examination in accordance with the Board's directive.<sup>5</sup>

In a September 22, 2009 decision, OWCP denied appellant's emotional condition claim on the grounds that he had not established a compensable factor of employment, finding that although the evidence established that appellant's supervisor had discussed his HIV status with coworkers, the discussions were administrative matters and there was no error or abuse on the part of the employing establishment. The claims examiner stated that "medical evidence was not reviewed for this decision."

The Board finds that this case is not in posture for a decision.

OWCP found that appellant had established that his supervisor and manager had discussed his HIV status and sexual orientation; it determined, however, that the discussions did not constitute error or abuse of administrative matters. On remand, OWCP should further develop the evidence regarding this issue in light of the Board's ruling in its October 17, 1991 decision that appellant had established a compensable factor of employment by virtue of comments made by his supervisor to his coworkers regarding his sexual orientation and HIV-positive status.

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<sup>2</sup> Docket No. 05-1629 (issued January 27, 2006). The Board notes that following a referee medical examination, OWCP concluded on April 13, 2009 that appellant continued to experience residuals of his accepted conditions, and File No. xxxxxx052 remains open for medical treatment.

<sup>3</sup> Docket No. 07-1746 (issued August 19, 2008).

<sup>4</sup> Docket No. 09-1343 (issued June 16, 2010).

<sup>5</sup> The record also contains a 2-page supplemental report from Dr. Kurland dated March 16, 2009.

Further, Board precedent requires OWCP to review all evidence received prior to the issuance of its final decision.<sup>6</sup> In the instant case, Dr. Kurland's February 6, 2009 32-page referee report, which was received in File No. xxxxxx052 on March 2, 2009, was properly before OWCP in this case pursuant to its consolidation with File No. xxxxxx904. The Board has held that unless a claimant alleges a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence.<sup>7</sup> In this case, however, the Board had in two prior appeals directed OWCP to obtain and review a referee opinion before issuing a decision. Therefore, OWCP was required to review and consider the referee reports, which may very well contain factual information that would assist OWCP in determining whether appellant has alleged a compensable factor of employment.

The Board, therefore, will set aside the September 22, 2010 decision and remand the case to OWCP to fully consider the evidence which was properly submitted prior to the September 22, 2010 decision and the issuance of a *de novo* decision on the merits of the claim.

**IT IS HEREBY ORDERED THAT** the September 22, 2010 decision is set aside and the case is remanded for action consistent with the terms of this order.

Issued: February 15, 2012  
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

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<sup>6</sup> See *William A. Couch*, 41 ECAB 548 (1990).

<sup>7</sup> See *Barbara J. Latham*, 53 ECAB 316 (2002).