

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

---

**S.C., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Madison, WI, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 12-509  
Issued: July 26, 2012**

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On December 30, 2011 appellant filed a timely appeal from a July 7, 2011 decision of the Office of Workers' Compensation (OWCP) denying appellant's claim for recurrence of disability. The claim was docketed as No. 12-509.<sup>1</sup>

On May 15, 2007 Dr. Krisada Chanbusarakum, a Board-certified neurosurgeon, performed an anterior cervical discectomy at C5-6. Appellant returned to modified duty on October 9, 2007, and on August 5, 2008 accepted a modified position processing passport applications, answering the telephone, assisting lobby customers and clerical duties. He stopped work on November 13, 2008.<sup>2</sup> In a June 12, 2009 decision, OWCP found that appellant's actual earnings as a modified sales and service distribution associate fairly and reasonably represented his wage-earning capacity.

---

<sup>1</sup> On April 3, 2003 appellant, a sales and service distribution associate, was injured while lifting a sack of periodicals. OWCP accepted cervical radiculopathy. Appellant returned to part-time modified duty in October 2003 and to eight hours of modified duty on November 10, 2003. In the 1990s, he had sustained an employment-related neck injury and had a cervical fusion at C6-7.

<sup>2</sup> He filed an emotional condition claim, adjudicated by OWCP under file number xxxxxx089, that was denied.

On February 26, 2010 appellant filed a claim alleging that he sustained a recurrence of disability on November 13, 2008 due to the April 3, 2003 employment injury and submitted medical evidence.<sup>3</sup> The employer challenged the claim, stating that appellant had always been accommodated. On March 30, 2011 OWCP accepted appellant's claimed November 13, 2008 recurrence and informed him to complete a Form CA-7, claim for compensation with supporting medical evidence if he had lost time from work due to the recurrence. Appellant was informed that the June 12, 2009 wage-earning capacity decision had been modified because it was not based on a *bona fide* position. On April 20, 2011 he claimed compensation for the period November 13, 2008 to October 13, 2009. Appellant also filed a schedule award claim. He retired on disability effective June 21, 2010.

By decision dated July 7, 2011, OWCP denied appellant's claim for wage-loss compensation for the period November 13, 2008 to October 13, 2009 on the grounds that the medical evidence was insufficient to establish disability. It noted reviewing reports from Dr. Holz dated December 16, 2009 and Dr. Chang dated December 28, 2009.

The Board has duly considered the matter and finds this case is not in posture for decision. In the case of *William A. Couch*,<sup>4</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all relevant evidence properly submitted by a claimant and received by OWCP before the final decision is issued. In this case, appellant submitted copious medical evidence relevant to the merit issue of whether his 2003 employment injury rendered him totally disabled for work beginning on November 13, 2008.<sup>5</sup> Other than specifically mentioning two reports, there is no indication that OWCP reviewed this evidence prior to issuing the July 7, 2011 decision denying wage-loss compensation. Thus, the case must be remanded for OWCP to review all medical evidence in the case record, to be followed by an appropriate decision as to whether appellant has established that he was totally disabled due to his employment-related conditions, from both his 1994 and 2003 employment injuries for the period November 13, 2008 to October 13, 2009.

---

<sup>3</sup> This included November 21, 2008 to March 25, 2009 treatment notes from Dr. Tony S. Chang, an attending Board-certified internist, who described appellant's complaint of disabling chronic pain and noted findings and diagnoses. On December 28, 2009 Dr. Chang noted treating appellant since October 13, 2004 for chronic pain from work injuries. He described appellant's treatment and noted diagnoses. Dr. Chang opined that appellant's pain limited his function and prevented him from working. In January 9 and March 2, 2009 progress notes, Dr. M. Sarafaz Khan, a psychiatrist, noted appellant's complaints and symptoms. On March 27, 2009 Dr. Khan noted first seeing appellant on December 18, 2008 and noted that he had work injuries for which he had surgery in 1997 and 2007, as well as a hospitalization in November 2008 for major depression with suicidal ideation. He diagnosed major depression disorder and mood disorder due to appellant's neck injury. Michael DiMarco, Jr., Psy.D., provided reports dated March 17 to May 26, 2009 in which he noted seeing appellant for chronic pain, including spasms that related to 1993 and 2003 work injuries. In February 25 to October 14, 2009 reports, Dr. Sara Christensen Holz, a Board-certified physiatrist, noted seeing appellant's neck and arm pain that began with a 1990s work injury. She described the 2003 work injury, appellant's complaint of pain and provided findings and diagnoses. Dr. Holz found him permanently totally disabled.

<sup>4</sup> 41 ECAB 548 (1990); see *Willard McKennon*, 51 ECAB 145 (1999).

<sup>5</sup> *Supra* note 3.

**IT IS HEREBY ORDERED THAT** the July 7, 2011 decision of the Office of Workers' Compensation Programs is vacated and the case remanded to OWCP for proceedings consistent with this order of the Board.

Issued: July 26, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board