

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

D.E., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Rocky Point, NY, Employer**

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**Docket No. 12-1149
Issued: October 25, 2012**

Appearances:
Anthony C. Darienzo, Esq., for the appellant
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 May 2, 2012 appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) December 9, 2011 merit decision denying her traumatic injury claim. The appeal was docketed as No. 12-1149. After considering the evidence of record, the Board finds this case is not in posture for a decision.

OWCP accepted appellant's July 9, 2009 traumatic injury claim (File No. xxxxxx095) for lumbar radiculopathy. On May 17, 2010 appellant filed a Form CA-2a claiming that she sustained a recurrence of total disability causally related to her accepted injury while loading boxes at work on May 11, 2011. OWCP developed her recurrence claim as a new claim for a traumatic injury under File No. xxxxxx079. Appellant submitted medical evidence supporting her claim for injury to her neck and lumbar spine. By decision dated July 22, 2010, OWCP denied her claim on the grounds that the medical evidence failed to establish a causal relationship between her diagnosed condition and the claimed incident. On October 12, 2010 OWCP denied modification of the July 22, 2010 decision.

In a December 9, 2011 decision, OWCP again denied modification of its prior decisions on the grounds that the evidence failed to establish a causal relationship between the claimed event and appellant's cervical and lumbar conditions. In explaining his ruling, the claims examiner discussed the facts and medical evidence contained in File No. xxxxxx095. He stated

that appellant's benefits under File No. xxxxxx095 were terminated effective February 8, 2011 based upon an August 26, 2010 referee medical report from Dr. Eric Manoff, a Board-certified orthopedic surgeon, who opined that her accepted lumbar condition had resolved. The record in the instant case does not contain a copy of the August 26, 2010 referee report or the second opinion report relating to the termination of appellant's benefits under File No. xxxxxx095.

The Board finds that it is essential to review the medical evidence contained in File No. xxxxxx095 in order to render a full and fair adjudication of the present appeal. As the injury claimed in the instant case is substantially the same as the injury in File No. xxxxxx095, the medical evidence contained in File No. xxxxxx095 will necessarily bear directly on appellant's claim for compensation in this case. Moreover, OWCP's December 9, 2011 denial decision discussed medical evidence contained in File No. xxxxxx095, but unavailable for review in the instant case. Accordingly, this case will be remanded for OWCP to consolidate case files xxxxxx095 and xxxxxx079. 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.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 28, 2011 decision be set aside and the case remanded for further development consistent with this order.

Issued: October 25, 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