

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

B.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cincinnati, OH, Employer**

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**Docket No. 13-1611
Issued: December 20, 2013**

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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On June 28, 2013 appellant, through her attorney, filed a timely appeal from a February 20, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. The Board docketed the appeal as No. 13-1611.

The Board finds that the case is not in posture for decision. By decision dated December 2, 2011, OWCP found that appellant had not established an aggravation of preexisting low back, neck and bilateral shoulder conditions due to performing modified duty after July 25, 2007. In a decision dated June 11, 2012, an OWCP hearing representative vacated the December 2, 2011 decision and remanded the case for OWCP to combine the case record from the current claim, file number xxxxxx821, with the case records from appellant's prior neck and back claims, assigned file numbers xxxxxx345, xxxxxx329 and xxxxxx330. She instructed OWCP to prepare a statement of accepted facts describing each injury and appellant's job duties on the date of each injury. The hearing representative then determined that OWCP should refer appellant, together with the relevant evidence from all file numbers, to a referral physician for an opinion regarding whether her modified work duties beginning July 25, 2007 aggravated a preexisting condition.

OWCP prepared a statement of accepted facts describing appellant's accepted work injuries in master file number xxxxxx329 and subsidiary file numbers, xxxxxx345, xxxxxx330 and xxxxxx821. In a report dated July 19, 2012, Dr. Richard H. Deerhake, a Board-certified orthopedic surgeon and OWCP referral physician, indicated that he had reviewed medical

records, including a March 2, 2008 report from Dr. Gregory Fisher, a Board-certified orthopedic surgeon and a May 17, 2012 evaluation from Dr. John Ellis, Board-certified in family practice. Based on Dr. Deerhake's opinion, in decisions dated September 10, 2012 and February 20, 2013, OWCP denied appellant's occupational disease claim in file number xxxxxx821. The Board, however, does not have the case records for file numbers xxxxxx329, xxxxxx345 and xxxxxx330. The March 2, 2008 report from Dr. Fisher and the May 17, 2012 evaluation from Dr. Ellis are not in the record before the Board. The absence of this evidence and the evidence from the other file numbers precludes the Board from properly reviewing OWCP's February 20, 2013 decision. Further, it is unclear from the record whether OWCP referred all relevant medical evidence to Dr. Deerhake or properly combined the case records as instructed by the hearing representative.¹

As the case record submitted to the Board would not permit an informed adjudication of the case, the Board finds that the case is not in posture for decision on appeal and must be remanded to OWCP. On remand, OWCP should combine the present case record with the case records for file numbers xxxxxx329, xxxxxx345 and xxxxxx330 and issue a *de novo* decision to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the decision dated February 20, 2013 is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 20, 2013
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

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