

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

D.M., Appellant

and

**DEPARTMENT OF THE ARMY,
Camp LeJeune, NC, Employer**

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**Docket No. 12-1638
Issued: January 31, 2013**

Appearances:
Martin Kaplan, Esq, for the appellant
Office of the Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On July 25, 2012 appellant, through his attorney, filed an application for review of a decision of the Office of Workers' Compensation Programs (OWCP) dated May 31, 2012. The appeal was docketed as No. 12-1638.

This is the third appeal before the Board. In its last review, by May 28, 2008 decision, the Board affirmed the denial of claims for wage-loss compensation commencing May 27, 2004.¹ Appellant subsequently sought compensation for wage loss for periods in 2008 and 2010. He also filed a claim for a recurrence of disability as of March 7, 2011. By letter dated May 31, 2012, OWCP advised appellant that it had already disposed of the issue and that the Board had denied his claim in 2008. It stated that he needed to submit an appeal of his issue to the Board.

Appellant's attorney contends on appeal that the May 31, 2012 letter constitutes an effective denial of appellant's claim for recurrence of disability and/or wage-loss compensation and a final adverse decision, even though the letter contained no statement of appeal rights. In support of his contention he references the Board's decision in *B.C.*, Docket No. 11-1903, issued March 26, 2012, which contained a similar factual scenario. In that case, the Board found that an

¹ Docket No. 07-2210 (issued May 28, 2008).

OWCP letter dated July 14, 2011 advising appellant that her case had been formally denied constituted an effective denial of her claim for a recurrence of disability. It therefore found that the July 14, 2011 letter presented a final, adverse decision subject to review under 20 C.F.R. §§ 501.2(c) and 501.3(a). Appellant's attorney argues that the instant claim is sufficiently similar to warrant the same finding by the Board.

Appellant is claiming that there was a recurrence of disability as a result of a worsening of his medical condition and that he is therefore entitled to compensation for wage loss for the periods claimed. OWCP stated in its May 31, 2012 letter that appellant was in fact appealing ECAB's May 28, 2008 decision, which affirmed an October 12, 2006 OWCP decision denying compensation as of May 27, 2004. However, in the instant case, appellant is claiming compensation for wage loss for periods subsequent to the Board's May 28, 2008 decision. Counsel notes that appellant's claim was expanded to include ulnar nerve compression for both upper extremities on September 20, 2007. He asserts that the 2008 ECAB decision did not address whether, based on this additional condition, appellant was currently entitled to compensation or whether his condition worsened in 2007. Counsel argues that the 2008 ECAB decision and the decisions it affirmed did not address his alleged 2007 recurrence and could not possibly address a subsequent recurrence of appellant's accepted conditions.

Section 20 C.F.R. § 10.126 requires OWCP to issue a decision containing findings of fact and a statement of reasons.² As counsel contends, OWCP effectively denied appellant's claims for compensation for wage loss for periods in 2008 and 2010 and for a recurrence of disability as of March 7, 2011 in its May 31, 2012 letter, but did not consider the medical evidence appellant submitted in this case, make findings of fact regarding the medical evidence appellant submitted, or provide a statement of reasons supporting its determination. It erred by finding that the May 28, 2008 ECAB decision addressed and disposed of these issues.

The Board finds that OWCP failed to give proper consideration to the evidence that appellant submitted in support of his claim. As it failed to make detailed findings and state the reasons for its denial of compensation in its May 31, 2012 decision, the Board finds that the appeal docketed as No. 12-1638 must be set aside and remanded for adjudication of the case pursuant to section 8128(a).

Accordingly, the case will be set aside and remanded for consideration of appellant's evidence pursuant to the standards set out in section 8128(a) and section 20 C.F.R. § 10.126, to determine whether he has established that he sustained a recurrence of disability for the periods claimed. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

² 20 C.F.R. § 10.126.

IT IS HEREBY ORDERED THAT this case be set aside and remanded for reconsideration of the merits of appellant's claim.

Issued: January 31, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board