

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

_____)
D.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
VETERANS ADMINISTRATION MEDICAL)
CENTER, Marion, IL, Employer)
_____)

Docket No. 13-633
Issued: June 25, 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 January 22, 2013 appellant filed an application for review of a December 18, 2012 decision of the Office of Workers' Compensation Programs (OWCP), claim file number xxxxxx530, which affirmed a May 8, 2012 decision denying appellant's claim for a traumatic lumbar injury filed on March 26, 2012.¹ The appeal was docketed as No. 13-633.

In the December 18, 2012 decision, an OWCP hearing representative noted that appellant had prior claims for her low back including a closed claim for "an injury of October 16, 2008 (file number xxxxxx735) that was accepted for a lumbar strain and lumbago. In addition, a claim was accepted and administratively closed (file number xxxxxx631) on November 25, 2009, for a back injury when she slipped on a wet floor." The hearing representative noted reviewing the other claim files and medical evidence, specifically stating "a review of the evidence of file shows that in addition to the prior work-related back injuries, the claimant underwent lumbar microdiscectomy in November 2011 for a nonwork-related back condition. An MRI scan performed on April 10, 2012, showed evidence of the L5-S1 hemilaminectomy and discectomy." In the December 18, 2012 decision, the hearing representative noted that Dr. Jeffrey M. Jones'

¹ On March 26, 2012 appellant a nursing assistant, alleged that on March 20, 2012 she was assisting a patient to the restroom when the patient's legs gave out and he fell causing appellant to be pinned underneath him and causing injury to her low back.

August 14, 2012 report referenced that he saw appellant in 2011, prior to the claimed injury and described symptoms similar to those coming from the claimed injury. Dr. Jones further noted that appellant was status post the surgery and that the condition was aggravated by the injury. The hearing representative further noted that “the claimant testified that she underwent back surgery in November 2011 in the same area that was injured during the current injury.”

The Board has duly considered the matter and notes that the case is not in posture for a decision. The claim before the Board, file number xxxxxx530, involves appellant’s claim for a traumatic injury involving her low back, specifically that she sustained low back pain, lumbar radiculitis, disc displacement and lumbar degenerative disc disease. In the December 18, 2012 decision, the hearing representative noted reviewing evidence and findings made in claim numbers xxxxxx735 and xxxxxx631. The evidence also indicates that file numbers xxxxxx735 and xxxxxx631 may have evidence germane to claim number xxxxxx530.

Pursuant to its procedures, OWCP has determined that cases should be combined where correct adjudication depends on cross-referencing between files. In the instant appeal, it appears that, for a full and fair adjudication, OWCP claims pertaining to appellant’s lumbar conditions should be combined pursuant to OWCP procedures.² This will allow OWCP to consider all relevant claim files in developing appellant’s claim. Moreover, to consider appellant’s appeal at this stage would involve a piecemeal adjudication of the issues in this case and raise the possibility of inconsistent results. It is the Board’s policy to avoid such an outcome.³

The case will be remanded to OWCP to combine case files numbers xxxxxx530, xxxxxx735 and xxxxxx631. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant’s claim.

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

³ See *William T. McCracken*, 33 ECAB 1197 (1982).

IT IS HEREBY ORDERED THAT the December 18, 2012 decision of the Office of Workers' Compensation Programs be set aside and the matter remanded to OWCP for further proceedings consistent with this order.

Issued: June 25, 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