

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

P.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Deptford, NJ, Employer**

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**Docket No. 12-1685
Issued: March 15, 2013**

Appearances:
Jeffrey P. Zeelander, 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On August 6, 2012 appellant filed a timely appeal from a July 26, 2012 merit decision of the Office of Workers Compensation Programs (OWCP) denying his emotional condition claim in case number xxxxxx924.

On April 20, 2011 appellant, then a 46-year-old city letter carrier, filed an occupational disease claim alleging that his anxiety and depression were caused or aggravated by his postmaster who treated him unfairly. He first noticed his condition and related it to his employment on March 24, 2011. By decision dated June 6, 2011, OWCP denied appellant's claim. It found he failed to establish a factual basis to support his claim. By decision dated August 3, 2011, OWCP denied appellant's reconsideration request without conducting a merit review. On April 26, 2012 appellant's attorney requested reconsideration. In an April 1, 2012 statement, appellant related several allegations of incidents which occurred between 1999 and 2012. In an April 26, 2012 letter, appellant's attorney alleged several factors he claimed were in the performance of duty, including several incidents that predated appellant's claim of stress and anxiety on March 24, 2011. Documents submitted included Equal Employment Opportunity (EEO) material, investigations, witness statements, disciplinary actions, and grievance settlements along with medical evidence.

By decision dated July 26, 2012, OWCP modified its prior decision to reflect appellant had established a factual basis of his claim. It made some findings of fact relating to specific allegations, but also found that events pertaining to an incident in 2002, was not a basis for his current claim of harassment and his claim of harassment due to a 2004 incident with Andy Daly, a coworker, was denied under claim number xxxxxx735 and could not be considered in the instant claim. OWCP found that appellant established a compensable factor of employment, that on December 17, 2010 he and Mr. Daly were involved in verbal altercation and Mr. Daly called him the “N” word and was subsequently suspended, but denied the claim as the medical evidence failed to establish that appellant’s medical condition was causally related to the accepted employment factor.

The Board has duly considered the matter and notes that the case is not in posture for a decision. OWCP regulations, at 20 C.F.R. § 10.126, require OWCP to issue a decision containing findings of fact and a statement of reasons. The Board finds that OWCP erred in its July 26, 2012 decision by failing to discuss and analyze whether all of the alleged incidents referenced by appellant implicated compensable factors of employment. Occupational disease claims by definition pertain to a series of events occurring over the course of work shifts.¹ OWCP’s justification for not evaluating these allegations, that they occurred prior to the date of injury, was not proper.² As OWCP has not made sufficient findings of fact, the Board directs that the July 26, 2012 decision be set aside and the case remanded to OWCP for further findings of fact. Furthermore, it appears that claim number xxxxxx735 pertains to an emotional condition claim in 2004. For purposes of judicial economy this claim and any other emotional condition claim should be consolidated with the current claim.³

Accordingly, the July 26, 2012 decision will be set aside and the pertinent claims will be consolidated. OWCP shall thereafter issue an appropriate decision, with findings of fact for each of appellant’s allegations. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant’s appeal rights.

¹ 20 C.F.R. § 10.5(q).

² See *W.C.*, Docket No 08-2015 (issued May 8, 2009) (statements from a claimant in amplification and expansion of a claim are as much a part of the claim as the claim form itself; technical requirements of pleading are inconsistent with the remedial purposes of the statute).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000) (OWCP procedures provide for doubling claims when correct adjudication of the issues depends on frequent cross-reference between files and when a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body).

IT IS HEREBY ORDERED THAT that the July 26, 2012 Office of Workers' Compensation Programs' decision is set aside and this case be remanded for further development consistent with this decision.

Issued: March 15, 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