

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

L.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Bakersfield, CA, Employer**

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**Docket No. 13-1059
Issued: November 25, 2013**

Appearances:
Sally F. LaMacchia, 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 March 28, 2013 appellant, through her attorney, filed a timely appeal from the November 8, 2012 and March 7, 2013 merit decisions of the Office of Workers' Compensation Programs (OWCP) denying her occupational disease claim. The Clerk of the Board assigned Docket No. 13-1059.

The Board has duly considered the matter and finds that this case is not in posture for decision. In a November 8, 2012 decision, OWCP denied appellant's claim under File No. xxxxxx797 on the grounds that she had not submitted any medical evidence to establish a medical condition in connection with the claimed event and work factors.

In a November 29, 2012 letter, appellant's attorney noted that OWCP had accepted appellant's claim assigned File No. xxxxxx026 for cervical and lumbar strains and other affectations of the left shoulder region not elsewhere classified. She stated that appellant was now claiming cervical and left shoulder degenerative disc disease, right shoulder impingement and chronic pain syndrome under the instant claim on appeal before the Board, File No. xxxxxx797. Counsel submitted medical reports from Dr. Pradeep K. Singh, an attending Board-certified family practitioner, which were also submitted in File No. xxxxxx026. The Board notes that the case record presently before the Board is limited to evidence in File No. xxxxxx797.

In an undated narrative statement submitted with counsel's November 29, 2012 letter, appellant described the development of pain in her neck, back, shoulders, arms and hands. She provided a history of her employment at the employing establishment commencing November 5, 1980 and described her repetitive work duties.

By letter dated December 18, 2012, appellant, through her attorney, requested reconsideration of OWCP's November 8, 2012 decision and submitted a November 6, 2012 second opinion report from Dr. John F. Lawrence, a Board-certified orthopedic surgeon and OWCP referral physician, in xxxxxx026. OWCP had referred appellant to Dr. Lawrence to determine if she had residuals of the January 24, 2001 injury and to obtain current work restrictions and potential for vocational rehabilitation. He opined that appellant had cervical and lumbar strains and sprains, left shoulder impingement by history and signs and symptoms suggestive of fibromyalgia resulting from her January 24, 2001 work injury. Appellant continued to have residuals of this injury and total disability due to her physical restrictions.

In a February 13, 2013 letter, counsel requested that OWCP double the instant claim, File No. xxxxxx797 with the claim assigned File No. xxxxxx026.

In a March 7, 2013 decision, OWCP denied modification of its November 8, 2012 decision. The decision noted the requirements for reopening a claim for merit review following a reconsideration request. OWCP's decision found that the statements from appellant and her attorney did not establish an error in its prior decision or contain a medical diagnosis. OWCP explained that, as appellant's November 29, 2012 statement was the same information received under another compensation claim and her attorney's December 18, 2012 and February 13, 2013 statements indicated that she had provided a copy of a second opinion medical report that was also received in that same compensation claim, she did not establish her entitlement to compensation based on an occupational disease claim under File No. xxxxxx797.

The record forwarded to the Board includes evidence suggesting that a prior claim was accepted for cervical and left shoulder injuries in File No. xxxxxx026 and it is currently under development for possible vocational rehabilitation. OWCP procedures provide that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further indicates that the cases should be doubled as soon as the need to do so becomes apparent.¹ On remand, it should combine the present case record, File No. xxxxxx797, with File No. xxxxxx026. After combining these two case records, OWCP should consider the evidence contained in the combined case record and, following any necessary further development, issue a *de novo* decision regarding whether appellant has established that she sustained an injury caused or aggravated by factors of her employment.

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8(c)(1) (February 2000).

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 7, 2013 and November 8, 2012 are set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: November 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