

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

A.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 13-1245
Issued: April 15, 2014**

Appearances:
Thomas R. Uliase, 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 April 30, 2013 appellant, through counsel, filed an application for review of a February 19, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 13-1245.

The Board, having reviewed the case record submitted by OWCP, finds that the record is incomplete, as it must be consolidated with another case file. This is the second appeal before the Board. On March 1, 2009 appellant, a 50-year-old window clerk, filed a Form CA-2 claim for benefits based on an occupational condition under case file number xxxxxx343, alleging that she developed right hand, right wrist, right arm and neck conditions causally related to employment factors. By decision dated June 3, 2009, OWCP denied the claim. By decision dated September 15, 2009, an OWCP hearing representative set aside the June 3, 2009 decision and remanded the case to the district Office for further development of the evidence. By decisions dated December 9, 2009, November 2, 2010 and March 29, 2011, OWCP denied modification of the June 3, 2009 decision. In a February 27, 2012 decision,¹ the Board set aside the March 29, 2011 decision. It found that there was a conflict in the medical evidence between Dr. Jerry Murphy, Board-certified in emergency medicine and appellant's treating physician, and Dr. Noubar A. Didizian, Board-certified in orthopedic surgery and a second opinion physician,

¹ Docket No. 11-1619 (issued February 27, 2012).

regarding whether appellant had sustained right hand, right wrist, right arm or cervical conditions in the performance of duty. The Board remanded the case for referral of appellant to an appropriate impartial medical specialist. The complete facts of this case are set forth in the Board's February 27, 2012 decision and herein incorporated by reference.

OWCP referred appellant for a referee examination with Dr. Stuart L. Trager, Board-certified in orthopedic surgery. In a July 25, 2012 report, Dr. Trager found no clinical evidence of ongoing carpal tunnel syndrome in her right wrist and hand; and insufficient clinical evidence to support a finding that appellant's right shoulder, right arm and neck symptoms directly resulted from employment factors. He further stated:

“Additionally, absent an isolated episode of trauma occurring at the workplace, and in the face of significant degenerative changes noted on the imaging of the spine, I believe it is much more likely that this individual has developed progressive symptoms as related to her underlying degenerative condition than to specific work activities.”

By decision dated August 23, 2012, OWCP denied the claim, finding that appellant failed to establish that her claimed right hand, right wrist, right arm and neck conditions were causally related to factors of employment. It found that Dr. Trager's July 25, 2012 report merited the special weight of an impartial medical specialist and represented the weight of the medical evidence. By decision dated February 19, 2013, an OWCP hearing representative affirmed the August 23, 2012 decision.

In his appeal to the Board, appellant's attorney argues that Dr. Trager's report was not sufficiently well rationalized and probative to represent the weight of the medical evidence. He contends that the statement of accepted facts presented to Dr. Trager was deficient because it did not include accepted facts pertaining to file number xxxxxx326; this pertained to a Form CA-1 traumatic injury claim appellant filed on May 21, 2007 for an incident which occurred on May 19, 2007, which OWCP accepted for neck sprain, left hip sprain, sacrum sprain and left elbow contusion. Counsel contends that this omission was critical given the fact that appellant filed a claim for cervical and right arm conditions which she developed as a result of performing her regular duties as a clerk.

The Board notes that medical evidence pertaining to appellant's previously accepted May 19, 2007 neck sprain, included in file number xxxxxx326, is not contained in the instant record. This evidence is essential given the fact that the instant case is one based on a claimed cervical condition; it is especially significant in light of Dr. Trager's statement that he did not consider appellant's claimed cervical condition to be work related “absent an isolated episode of trauma occurring at the workplace.” Thus the case record before the Board is incomplete.

Accordingly, the case file does not include much of the record pertaining to the history and development of appellant's claim, as is required for an informed adjudication of this case. As all the records pertaining to appellant's claim are necessary for complete consideration and adjudication of the issue raised on appeal, the Board, therefore, finds that the appeal docketed as No. 13-1245 is not in posture for a decision as the Board is unable to render an informed adjudication of the case. The February 19, 2013 decision will be set aside and remanded for

reconstruction and consolidation of the case records to include the entire case file pertaining to claim numbers xxxxxx343 and xxxxxx326.² After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights. Once OWCP obtains this information, clarifies the instant record and composes a new statement of accepted facts, it should then refer the case to Dr. Trager, or a new impartial specialist, to determine whether appellant sustained the claimed conditions in the performance of duty.

IT IS HEREBY ORDERED THAT this case be remanded for reconstruction and consolidation of the case records.

Issued: April 15, 2014
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

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8 (February 2000). Under 2.400.8(c), cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files, including: (1) 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. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc; (2) two or more separate injuries (not recurrences) have occurred on the same date; and (3) adjudication or other processing will require frequent reference to a case which does not involve a similar condition or the same part of the body. For instance, an employee with an existing claim for carpal tunnel syndrome files a new claim for a mental condition which has overlapping periods of disability. *See also V.H.*, Docket No. 12-1523 (issued January 25, 2013).