

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

J.D., Appellant

and

**U.S. POSTAL SERVICE, MANHATTANVILLE
STATION, New York, NY, Employer**

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**Docket No. 13-1569
Issued: March 21, 2014**

Appearances:
Appellant, pro se
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 June 19, 2013 appellant filed a timely appeal from a February 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his occupational disease claims. The Board docketed the appeal as No. 13-1569.

On May 18, 2012 appellant, then a 46-year-old mail handler, filed an occupational disease claim alleging that he sustained arthritis in his hips and back causally related to factors of his federal employment. OWCP assigned the claim file number xxxxxx300. By decision dated August 27, 2012, it denied appellant's claim after finding that the medical evidence did not establish that he sustained a condition causally related to the identified work factors. On September 4, 2012 appellant requested an oral hearing before an OWCP hearing representative.

On July 9, 2012 appellant filed a traumatic injury claim alleging that on May 9, 2012 he sustained an injury in the performance of duty. OWCP assigned the claim file number xxxxxx437. By decision dated August 21, 2012, it denied appellant's claim after finding that he had not established the occurrence of the May 9, 2012 work incident or submitted medical evidence supporting that he had a diagnosed condition due to the alleged work incident. On September 4, 2012 appellant requested an oral hearing.

On December 19, 2012 an OWCP hearing representative held a hearing regarding the denial of appellant's claims in file numbers xxxxxx300 and xxxxxx437. The hearing

representative determined that the July 9, 2012 traumatic injury claim was instead an occupational disease claim as he attributed the injury to work factors that occurred over more than one shift. At the hearing, appellant submitted reports from Dr. Andrew M. Peretz, an attending Board-certified orthopedic surgeon, dated August 2 and 16, 2012. The hearing representative returned the original reports from Dr. Peretz to him so that he could mail copies of the reports to OWCP subsequent to the hearing. He also asked appellant to submit a copy of a magnetic resonance imaging (MRI) scan study.

On February 1, 2013 appellant submitted an August 14, 2012 MRI scan study of his lumbar spine and August 2 and 16, 2012 and January 17, 2013 reports from Dr. Peretz.

By decision dated February 4, 2013, OWCP's hearing representative affirmed the August 21 and 27, 2012 decisions. He indicated that he had returned reports dated August 2 and 16, 2012 from Dr. Peretz to appellant with "instructions that he should copy the documents and mail the copies to OWCP within 30 days following the hearing."¹ The hearing representative also requested copies of November 2011 and August 2012 MRI scan studies. He found, however, that "[n]either additional evidence nor the marked exhibits were received."

The Board finds that the case is not in posture for decision. On appeal appellant asserts that he submitted the documents requested at the hearing. As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.² OWCP's hearing representative failed to consider the medical reports from Dr. Peretz dated August 2 and 16, 2012 and January 17, 2013 and the August 12, 2012 MRI scan study that OWCP received prior to the issuance of his decision.³ As OWCP failed to address all the medical evidence at the time it issued its February 4, 2013 decision, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.⁴

¹ The hearing representative indicated that the date of the report was August 3 rather than August 2, 2012; however, this appears to be a typographical error.

² 20 C.F.R. § 501.6(d); *see also William A. Couch*, 41 ECAB 548 (1990).

³ The August 2 and 16, 2012 reports from Dr. Peretz were initially received by OWCP in file number xxxxxx437 on August 27, 2012 and then resubmitted following the hearing.

⁴ *See A.B.*, Docket No. 12-1907 (issued May 13, 2013).

IT IS HEREBY ORDERED THAT the February 4, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 21, 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