

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

L.D., Appellant)	
)	
and)	Docket No. 16-0225
)	Issued: May 4, 2016
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On November 17, 2015 appellant, through counsel, filed a timely appeal from an October 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 16-0225.

On October 3, 2014 appellant, then a 51-year-old labor custodian, filed an occupational disease claim (Form CA-2) alleging that she developed a right shoulder "flare-up" as a result of her federal employment. She had previously filed a claim for occupational disease under File No. xxxxxx153, which was accepted for sprain and strain of an unspecified site of shoulder and upper arm. Appellant filed a notice of recurrence of this accepted injury on September 5, 2014. OWCP denied appellant's recurrence claim, noting that the evidence of record suggested a new injury. It denied her October 3, 2014 occupational disease claim on February 2, 2015.

A brief filed with the Board on appeal from counsel argues that OWCP improperly instructed appellant that she was required to file a new claim. Counsel argued that appellant's accepted right shoulder condition never resolved, and her current condition was not due to a new injury. His brief references medical evidence regarding her right shoulder, as well as correspondence between OWCP and appellant regarding the issue of whether to characterize her current right shoulder condition as a recurrence or a new injury, which do not appear under the current file number, but which apparently do appear under File No. xxxxxx153. Counsel concluded that it was improper for OWCP to deny a recurrence claim under a guise that appellant had established a new injury, and then deny her application for new injury, as she had not established a new injury.

As such, File No. xxxxxx153 contains evidence pertinent to the present claim under File No. xxxxxx869. Appellant's claim for a right shoulder condition was denied because she had not submitted medical evidence containing a rationalized physician's opinion on the causal relationship between her federal employment and the current condition. OWCP had already accepted a prior claim for the same bodily member under File No. xxxxxx153, and apparently had determined upon viewing the medical evidence that her present claim was actually for a new injury, rather than a recurrence.

As appellant's claim for a new injury deals with the same bodily member accepted under File No. xxxxxx153, and as she is arguing on appeal that OWCP made an error in characterizing her condition as a new injury rather than as a recurrence, medical evidence relating to the earlier accepted occupational disease under File No. xxxxxx153 would be necessary to the adjudication of the present claim. The Board, therefore, finds that the appeal docketed as No. 16-225 is currently not in posture for decision.

OWCP procedures require that cases should be combined where proper adjudication depends on cross-referencing evidence between files, such as 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. For instance, a claimant with an existing case for a back strain submits a new claim for a herniated lumbar disc."¹ The case is remanded to OWCP for reconstruction and proper assemblage of the case record, to be followed by the issuance of an appropriate decision.

IT IS HEREBY ORDERED THAT the October 23, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000). See also *J.M.*, Docket No. 13-1111 (issued July 15, 2013).

Issued: May 4, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board