



because of an unusual amount of snow on December 28, 2015, she was unable to get her work vehicle close to her mailboxes on December 29, 2015. As a result, she was required to reach out further to place mail into the mailboxes. Appellant indicated that the additional reaching required by the weather conditions caused pain in her right shoulder and arm. Because of her right upper extremity pain, she was unable to report for duty on December 30, 2015. Appellant reportedly first sought medical treatment for her condition on January 4, 2016.

On March 28, 2016 appellant submitted her letter of resignation, which was effective April 8, 2016. In addition to filing her Form CA-1, she filed claims (Form CA-7) for intermittent wage loss from February 20 through April 1, 2016.

The employing establishment indicated that it had not received notification of the alleged December 29, 2015 injury until March 29, 2016 and, consequently, it challenged appellant's claim based on the delayed notification. The 90-day delay reportedly hampered its ability to investigate the circumstances/conditions that allegedly caused appellant's claimed injury. The employing establishment further noted that appellant already had a claim for a shoulder injury (File No. xxxxxx164) for which she received compensation through February 19, 2016.<sup>4</sup> Additionally, it noted that appellant had not submitted any medical documentation with her Form CA-1.

By letter dated April 13, 2016, OWCP requested that appellant submit additional factual and medical evidence in support of her traumatic injury claim. It specifically inquired as to the reason for the delay in filing the claim. Appellant was afforded at least 30 days to submit the requested information.

Appellant submitted a May 1, 2016 statement in which she again described the circumstances of the claimed December 29, 2015 employment injury and the medical treatment she received for her right shoulder beginning January 4, 2016. She also explained that her October 17, 2017 injury claim (File No. xxxxxx164) was never closed, and when she injured herself on December 29, 2015, she did not think to file a new injury form. When it was brought to her attention to fill out a new form, appellant was reportedly confused as to which form to submit (Form CA-1, CA-2 or CA-2a), so she completed them all. Management reportedly informed appellant that she could not submit all three forms, so she and management decided on Form CA-1.

OWCP did not receive any medical evidence within the allotted time frame. In the interim, appellant had relocated to California and had not yet found a new treating physician.

By decision dated May 31, 2016, OWCP denied appellant's claim for a work-related right shoulder injury on December 29, 2015. It accepted that the December 29, 2015 incident occurred as alleged. However, it denied appellant's traumatic injury claim because the record did not include any medical evidence containing a diagnosis in connection with the December 29, 2015 incident. OWCP specifically noted that medical evidence in appellant's other claim (File No. xxxxxx164) could not be transferred to the current claim as none of the reports were specific to the claimed December 29, 2015 injury.

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<sup>4</sup> The case record associated with File No. xxxxxx164 is not currently before the Board.

Appellant disagreed with the May 31, 2016 decision and timely requested a review of the written record by a representative from OWCP's Branch of Hearings and Review. She submitted a June 14, 2016 medical report in which Dr. David R. Ross, an attending Board-certified orthopedic surgeon, advised that, beginning on January 4, 2016, he saw appellant several times through April 2016. Dr. Ross indicated that appellant did not initially provide him with a history of an injury for December 29, 2015. He diagnosed partial-thickness rotator cuff tear and biceps tendinitis, which was evident on a September 2015 magnetic resonance imaging (MRI) scan. Dr. Ross posited that appellant significantly exacerbated her underlying shoulder problem from her previous work-related injury due to repetitive reaching activities with her right shoulder on December 29, 2015, as she described in her May 1, 2016 statement.

Appellant also submitted a February 22, 2016 progress note in which Dr. Ross discussed the findings of his examination on that date and diagnosed right shoulder pain, status post arthroscopy, distal clavicle excision, and subacromial decompression.

In a decision dated November 22, 2016, OWCP's hearing representative affirmed the May 31, 2016 decision denying appellant's claim for a work-related right shoulder injury on December 29, 2015. She found that appellant did not submit a rationalized medical report relating her right shoulder condition to the implicated December 29, 2015 employment factor(s).

The Board finds that the case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings.<sup>5</sup> Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.<sup>6</sup> Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.<sup>7</sup> All evidence that forms the basis of a decision must be in that claimant's case record.<sup>8</sup>

The hearing representative's November 22, 2016 decision, which is the subject of the current appeal, includes extensive references to information associated with a prior claim of appellant, *i.e.*, her claim for an October 17, 2014 shoulder injury (File No. xxxxxx164). The hearing representative referenced a number of reports which are not part of the current file, including reports of a Dr. Donald J. Zoltan and Dr. Ross. In particular, the hearing representative discussed a January 4, 2016 report of Dr. Ross from the earlier October 17, 2014 traumatic injury claim. The hearing representative relied on these various reports in denying appellant's current traumatic injury claim, as she mentioned in several parts of her decision that the reports from the earlier claim for an October 17, 2014 injury did not mention a December 29, 2015 employment incident or injury. For example, in discussing the January 4, 2016 report of

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<sup>5</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Dr. Ross, the hearing representative noted that he made “no mention of the events claimed for December 29, [2015].”

Although the hearing representative relied on the above-referenced information in denying appellant’s claim for a work-related traumatic injury on December 29, 2015, she neglected to include the referenced information from File No. xxxxxx164 in the current case record.<sup>9</sup> Because of this oversight, the Board is not in a position to make an informed decision regarding appellant’s claim that she sustained a traumatic right shoulder injury at work on December 29, 2015.<sup>10</sup>

As the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. As noted, all evidence that forms the basis of a decision must be included in the case record.<sup>11</sup> After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant’s claim for a December 29, 2015 traumatic right shoulder injury.

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<sup>9</sup> At the conclusion of her analysis, the hearing representative advised that OWCP “may wish to combine both claims for future review.” However, no such combination of claims occurred prior to the issuance of the November 22, 2016 decision.

<sup>10</sup> See *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

<sup>11</sup> *Supra* note 5.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 22, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this decision.

Issued: May 12, 2017  
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