

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

R.G., Appellant)	
)	
and)	Docket No. 18-0244
)	Issued: May 21, 2018
U.S. POSTAL SERVICE, POST OFFICE,)	
Phoenix, AZ, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On November 14, 2017 appellant filed a timely appeal from an October 5, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 18-0244.

On March 31, 2017 appellant filed an occupational disease claim (Form CA-2) alleging that her job required repetitive upper extremity motions that caused right shoulder pain and a right rotator cuff tear.¹ She noted that first became aware of the condition on January 12, 2017 and of its relation to her federal employment on February 3, 2017. Appellant reported that she had undergone left shoulder surgery in 2012 for a prior occupational injury and had since overused her right arm. She submitted medical evidence. The employing establishment noted that appellant had been working limited duty since January 7, 2012 due to an occupational injury to the left shoulder accepted under OWCP File No. xxxxxx735. Appellant's duties involved hand canceling mail and pitching envelopes one by one into a container.

By decision dated June 6, 2017, OWCP denied the claim, finding that the medical evidence of record failed to establish causal relationship between appellant's work duties and the claimed

¹ OWCP assigned the claim File No. xxxxxx147.

right shoulder condition. In an appeal request form, received on July 10, 2017, appellant requested reconsideration and submitted additional medical evidence.

By decision dated October 5, 2017, OWCP denied modification of its prior decision as the medical evidence of record was insufficient to establish that the claimed right shoulder injury was causally related either to new work factors or as a consequence of favoring the left shoulder. It predicated its decision on the medical evidence of record in the present claim as well as medical reports contained in File No. xxxxxx735. In denying appellant's claim, OWCP referred to medical reports and imaging studies in File No. xxxxxx735 that discussed appellant's right shoulder, including a May 12, 2014 second opinion orthopedic examination by Dr. Ronald Lampert, a June 14, 2014 functional capacity evaluation ordered by Dr. Lampert, and a June 24, 2014 review of the functional capacity evaluation by Dr. P. Dean Cummings, an attending Board-certified orthopedic surgeon. OWCP did not image these documents into the present case record, File No. xxxxxx147.²

The Board finds that this 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.³ Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.⁴ 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.⁵ All evidence that forms the basis of a decision must be in that claimant's case record.⁶ Furthermore, OWCP procedures provide for doubling of case files when correct adjudication of the issues depends on frequent cross-reference 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.⁷

OWCP's October 5, 2017 decision referenced evidence associated with OWCP File No. xxxxxx735 as it pertains to appellant's right shoulder. It discussed Dr. Lampert's May 12, 2014 second opinion examination, June 14, 2014 functional capacity evaluation, and Dr. Cummings' June 24, 2014 report. However, the Board notes that these documents are not found in the current case record, File No. xxxxxx147, and OWCP has not doubled File Nos. xxxxxx735 and xxxxxx147. In the instant appeal, it appears that, for a full and fair adjudication, OWCP's claims pertaining to appellant's upper extremity conditions should be combined pursuant to OWCP

² OWCP imaged the following records from File No. xxxxxx735 into the present claim under File No. xxxxxx147: offers of modified duty dated August 17, 2012, June 15, 2013, and May 20, 2015; September 10, 2015 and December 22, 2016 reports from Dr. Cummings.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims, General Development*, Chapter 2.800.5a (June 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at Chapter 2.400.8(c) (June 2011).

procedures.⁸ The case will be remanded to OWCP to combine case File Nos. xxxxxx147 and xxxxxx735. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

OWCP procedures which provide for combining cases where correct adjudication depends on cross-referencing between files.⁹

IT IS HEREBY ORDERED THAT the October 5, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: May 21, 2018
Washington, DC

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

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

⁸ *Id.* See also *C.R.*, Docket No. 17-1952 (issued February 9, 2018) (where OWCP cross-referenced evidence in adjudicating a new claim for the same part of the body, the Board issued an *Order Remanding Case* directing that OWCP combine the claim files), *M.W.*, Docket No. 17-0743 (issued January 23, 2018) (the Board issued an *Order Remanding Case* to combine two claims for the same part of the body).

⁹ *Id.* at Chapter 2.400.8(c)(1) (June 2011).