

By development letter dated December 31, 2013, OWCP informed appellant that it had administratively converted her recurrence claim under File No. xxxxxx366 into a new occupational disease claim, assigned File No. xxxxxx438. It requested that she respond to an attached development questionnaire in order to substantiate the factual element of her claim and submit additional medical evidence to establish a diagnosed condition causally related to her employment. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant, through counsel, replied that the employment-related activities that led to her medical conditions consisted of repetitive grasping, pushing, pulling, and lifting for approximately 22 years. She noted that OWCP had previously accepted neck and shoulder injuries sustained in the performance of duty on August 23, 2007, and that the evidence of record substantiated that factors of her federal employment caused her debilitating conditions. Appellant also submitted additional medical evidence.

In its February 11, 2014 decision, OWCP accepted appellant's described repetitive automation clerk duties as factual but denied the claim because the medical evidence of record failed to establish a diagnosed condition causally related to the accepted employment factors. It determined that the medical evidence of record failed to provide medical rationale explaining how her employment contributed to or aggravated her cervical and left shoulder conditions.

Appellant, through counsel, requested reconsideration and submitted additional medical evidence. By decision dated March 30, 2015, OWCP denied modification. Appellant appealed to the Board and, by order dated October 4, 2016, the Board set aside the March 30, 2015 OWCP decision.³ The Board found that OWCP failed to administratively combine File Nos. xxxxxx438 with File No. xxxxxx366, to determine whether appellant either sustained a recurrence of disability causally related to the August 23, 2007 employment injury or a new occupational disease injury. Accordingly, the Board remanded the case for further proceedings.

Upon return of the case record, OWCP administratively combined Files Nos. xxxxxx438 and xxxxxx366, with the latter serving as the master file. It conducted further development of the record and, by decision dated January 23, 2017, denied appellant's claim for a recurrence commencing September 29, 2013. OWCP found, "The evidence of record does not establish the basis for your recurrence because you failed to substantiate the factual elements of your claim relating to a spontaneous change in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness...." It further found that appellant had not established "that you are disabled/further disabled due to a material change/worsening of your accepted work-related conditions." OWCP explained that, after the case was remanded and the files were doubled, "you indicated that you are filing a new injury [of September 29, 2013] and not a recurrence." It went on to note that on December 17, 2013 it had denied appellant's occupational disease claim under File No. xxxxxx768; that under "denied file number xxxxxx438" appellant had filed a notice of recurrence commencing May 2, 2014, to which it assigned File No. xxxxxx131;⁴ that it

³ *Order Remanding Case*, Docket No. 15-1806 (issued October 4, 2016).

⁴ Appellant claimed that the recurrence was related to an "original injury" of September 29, 2013. The Board notes that, although the notice of recurrence references Master File No. xxxxxx366, the record as transmitted to this Board does not demonstrate that OWCP has combined File No. xxxxxx131 with File No. xxxxxx366.

denied this latter claim as appellant's submitted medical evidence did not establish a diagnosed medical condition causally related to the accepted employment factors; and that it had previously denied her September 29, 2013 traumatic injury claim under File No. xxxxxx438 as the medical evidence did not establish that her disability was causally related to the "claimed events or work factors of September 29, 2013."

The Board, having duly considered the matter, concludes that this case is not in posture for decision as the basis for OWCP's decision is unclear.

A recurrence of disability is defined as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

Appellant filed a notice of recurrence of commencing September 29, 2013, causally related to an August 23, 2007 employment injury that OWCP had accepted for left shoulder and cervical strains under File No. xxxxxx438. However, it had previously converted the recurrence claim to a new traumatic injury occurring on September 29, 2013, which it denied under OWCP File No. xxxxxx131. Although when denying appellant's claim on January 13, 2017 OWCP found that appellant had not established "the factual elements" of her claim "relating to a spontaneous change in the medical condition which resulted from a previous injury or occupational illness without an intervening injury or new exposure to factors causing the original illness," which defines a recurrence, it also found that appellant was claiming a new traumatic injury.

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make findings of fact.⁹ The Federal (FECA) Procedure Manual further specifies that a final decision of OWCP "should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence

⁵ 20 C.F.R. § 10.5(x); see *Theresa L. Andrews*, 55 ECAB 719 (2004).

⁶ See *A.C.*, Docket No. 18-0683 (issued November 6, 2018); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ See *id.*

⁸ See *A.C., id.; C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008).

⁹ 5 U.S.C. § 8124(a) provides that OWCP "shall determine and make a finding of facts and make an award for or against payment of compensation." 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP "shall contain findings of fact and a statement of reasons."

necessary to overcome the defect of the claim.”¹⁰ These requirements are supported by Board precedent.¹¹

Given the above-described precedent, the Board finds that OWCP’s January 23, 2017 decision does not contain adequate factual findings and/or recitation of the reason(s) for the denial of appellant’s claim and which claim it was referring to, *i.e.*, recurrence or a new traumatic injury. This lack of specificity would prevent appellant from understanding the reason for the disallowance of the claim and the evidence necessary to overcome the defect of the claim.¹² For these reasons, the case must be remanded to OWCP for further development.

Upon remand, OWCP shall issue a *de novo* decision specifically identifying which claim it is denying, recurrence or a new traumatic injury, which contains findings of fact and a statement of reasons supportive of its conclusion. Accordingly,

IT IS HEREBY ORDERED THAT the January 23, 2017 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: February 7, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees’ Compensation Appeals Board

¹⁰ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5c(3)(e) (February 2013).

¹¹ See *R.P.*, Docket No. 18-1128 (issued December 17, 2018); *James D. Boller, Jr.*, 12 ECAB 45, 46 (1961).

¹² See *supra* note 9.