

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

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T.M., Appellant)	
)	
and)	Docket No. 18-0887
)	Issued: February 21, 2019
DEPARTMENT OF LABOR, MINE SAFETY & HEALTH ADMINISTRATION,)	
Barbourville, KY, 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 March 19, 2018 appellant filed a timely appeal from a January 11, 2018 merit decision and a February 9, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) that denied his claim for a December 22, 2016 left knee injury. The Clerk of the Appellate Boards docketed the appeal as No. 18-0887.

On December 27, 2016 appellant, then a 57-year-old underground mine safety and health inspector, filed a traumatic injury claim (Form CA-1) alleging that, on December 22, 2017, he twisted his left knee when crossing a belt conveyor while inspecting an underground mine. OWCP assigned this File No. xxxxxx482. By decision dated May 11, 2017, it found the claimed incident occurred as alleged, but denied the claim because the medical evidence of record was insufficient to establish causal relationship. Following appellant's timely request for reconsideration, by decision dated January 11, 2018, OWCP denied modification of its prior decision, again finding the medical evidence of record insufficient to establish causal relationship. Appellant again requested reconsideration, but, by nonmerit decision dated February 9, 2018, it declined to review the merits of the claim.

The Board has duly considered the matter and concludes that this case is not in posture for decision. In both merit decisions issued in this case, dated May 11, 2017 and January 11, 2018,

OWCP referenced an additional claim appellant had filed regarding an August 6, 2016 bilateral knee claim. The August 2016 claim was adjudicated under File No. xxxxxx043. In both OWCP decisions referenced above, OWCP noted that it had reviewed medical evidence found in File No. xxxxxx043. It further noted that Dr. Jerry L. Woolum, an attending orthopedic surgeon, referenced the August 2016 injury in a report dated January 5, 2017 and in an undated report. In the January 11, 2018 decision, OWCP also referenced an occupational disease claim (Form CA-2), adjudicated under File No. xxxxxx283, that appellant filed alleging that she injured her knees due to employment factors.

OWCP's procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files.¹ In the instant case, File No. xxxxxx482, OWCP denied appellant's traumatic injury claim for a left knee injury that occurred on December 22, 2016. As noted, in both OWCP merit decisions issued in this case, it referenced a second knee claim for an August 6, 2016 knee injury, adjudicated by OWCP under File No. xxxxxx482. The Board further notes that in its January 11, 2018 decision, OWCP also indicated that appellant had filed an occupational disease claim, adjudicated under File No. xxxxxx283, claiming employment-related conditions of both knees.

As these files have not been combined, the Board is unable to determine whether all pertinent evidence had been reviewed by OWCP in the instant claim to determine whether appellant established a left knee injury on December 22, 2016.

The record before the Board does not contain the evidence from either the August 2016 traumatic injury claim, under File No. xxxxxx482, or appellant's occupational disease claim, under File No. xxxxxx283, both for knee conditions. The Board, therefore, is unable to properly adjudicate the instant claim. The Board finds the case is not in posture for decision as the record before the Board is incomplete and would not permit an informed adjudication of the case by the Board. The case must be remanded to OWCP for it to combine the files and for further reconstruction and development deemed necessary, to be followed by an appropriate decision.²

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000).

² See *W.B.*, Docket No. 15-1751 (issued March 8, 2016).

IT IS HEREBY ORDERED THAT the February 9 and January 11, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: February 21, 2019
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