

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

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K.B., Appellant )  
and ) Docket No. 18-1571  
DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Sioux Falls, SD, Employer )  
Issued: July 29, 2019

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*Appearances:*

*John S. Evangelisti, Esq.*, for the appellant<sup>1</sup>  
*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  
JANICE B. ASKIN, Judge

On August 14, 2018 appellant, through counsel, filed a timely appeal from an August 3, 2018 decision of the Office of Workers' Compensation Programs. The Clerk of the Appellate Boards docketed the appeal as No. 18-1571.

On April 14, 2012 appellant, then a 51-year-old former food service worker, filed an occupational disease claim (Form CA-2) alleging injuries to her left shoulder and cervical spine as a result of her federal employment duties. She indicated that she first became aware of her claimed conditions on January 12, 2010. On the reverse side of the claim form, the employing

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

establishment indicated that it had removed appellant from employment effective December 13, 2010.<sup>2</sup>

By decision dated September 6, 2012, OWCP denied appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish causal relationship. Appellant subsequently exercised various appeal rights, including appeals to the Board, but OWCP continued to deny modification of its prior decision. In a March 13, 2018 order, the Board instructed OWCP to reconsider the April 2, 2015 report of Dr. Jack L. Rook, a Board-certified physiatrist, who found that appellant's employment through 2007 worsened her neck and left shoulder condition.<sup>3</sup>

On remand, OWCP issued an August 3, 2018 decision where it again denied modification, finding that appellant had not established causal relationship. In evaluating Dr. Rook's April 2, 2015 opinion on causal relationship, it noted that he had not discussed other relevant medical evidence, including an October 29, 2007 cervical magnetic resonance imaging (MRI) scan and medical reports dated April 13 and 22, 2009. OWCP identified what it considered to be pertinent findings from the above-noted evidence and explained how this information, and Dr. Rook's failure to consider it, undermined his April 2, 2015 opinion on causal relationship.

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>4</sup> Evidence may not be incorporated by reference, nor may evidence from "another claimant's case file" be used.<sup>5</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>6</sup> All evidence that forms the basis of a decision must be in that claimant's case record.<sup>7</sup>

The October 29, 2007 MRI scan and the April 13 and 22, 2009 medical reports, which OWCP relied upon in finding Dr. Rook's April 2, 2015 opinion insufficient to establish causal relationship, are not included in the electronic case record now before the Board. Although OWCP relied upon the aforementioned reports in determining appellant's entitlement to FECA benefits, it neglected to include the referenced information in the current case record. Because of this oversight, the Board is not in a position to make an informed decision regarding appellant's

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<sup>2</sup> OWCP assigned the present claim File No. xxxxxx782. Appellant has a prior claim for a March 28, 2007 traumatic injury under File No. xxxxxx664, accepted for bilateral shoulder strain and cervical intervertebral disc degeneration. Appellant's claims have not been administratively combined.

<sup>3</sup> *Order Remanding Case*, Docket No. 17-0969 *id.*

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(a) (June 2011).

<sup>5</sup> *Id.*

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

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

entitlement to FECA benefits.<sup>8</sup> Therefore, the case shall be remanded to OWCP for further development including administratively combining the claim files. As noted, all evidence that forms the basis of a decision must be included in the case record.<sup>9</sup> After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's entitlement to FECA benefits with respect to her April 14, 2012 occupational disease claim.

**IT IS HEREBY ORDERED THAT** the August 3, 2018 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.

Issued: July 29, 2019  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> See *O.R.*, Docket No. 18-0013 (issued April 9, 2018); *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

<sup>9</sup> *Supra* note 4.