

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

G.O., Appellant)	
)	
and)	Docket No. 18-1483
)	Issued: June 20, 2019
DEPARTMENT OF THE ARMY,)	
DEPARTMENT OF PUBLIC WORKS,)	
Fort Drum, NY, 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
JANICE B. ASKIN, Judge

On July 27, 2018 appellant filed a timely appeal from a February 28, 2018 decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 18-1483.

On March 29, 2013 appellant, then a 40-year-old engineering equipment operator, filed an occupational disease claim which OWCP has accepted for a right wrist fracture sustained in the performance of duty on January 7, 2002 (OWCP File No. xxxxxx373). On June 18, 2002 he underwent authorized corrective osteotomy of the distal right radius with iliac crest bone graft and distal oblique plate and screw fixation. Appellant resumed work on September 7, 2002 with a lifting restriction.

On May 30, 2017 appellant claimed a recurrence of disability (Form CA-2a) under OWCP File No. xxxxxx373. He alleged that on February 3, 2017, while in the performance of duty, he was tightening a nut and felt a pop in his right wrist, later diagnosed as an extensor pollicis longus

¹ Appellant timely requested oral argument before the Board. By order dated December 6, 2018, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. *Order Denying Oral Argument*, Docket No. 18-1483 (issued December 6, 2018).

tendon rupture caused by friction against the distal oblique fixation plate from the June 28, 2002 authorized surgery. OWCP administratively created a new traumatic injury claim and assigned it OWCP File No. xxxxxx078.

By decision dated August 17, 2017, under OWCP File No. xxxxxx078, OWCP accepted that the February 3, 2017 employment incident occurred as alleged, but denied the claim as causal relationship had not been established.

On September 12, 2017 appellant requested an oral hearing before an OWCP hearing representative, which was conducted on January 29, 2018. During the hearing, the hearing representative acknowledged the prior claim under File No. xxxxxx373. Appellant contended that his physician opined that the February 3, 2017 tendon rupture would not have occurred, but for the fixation plate used to correct the accepted January 7, 2002 distal right radius fracture under File No. xxxxxx373.

By decision dated February 28, 2018, under OWCP File No. xxxxxx078, OWCP denied modification, finding that appellant's physician attributed the February 3, 2017 tendon rupture to friction against the fixation plate and not the action of tightening a screw.

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, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings.² Evidence may not be incorporated by reference, nor may evidence from an individual's other case file be used.³ 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.⁴ All evidence that forms the basis of a decision must be in that case record of the claimant.⁵

In adjudicating appellant's claim under File No. xxxxxx078, OWCP acknowledged the right wrist fracture with plate fixation accepted under File No. xxxxxx373. However, it discounted the opinion of appellant's physician under File No. xxxxxx078 as he attributed the tendon rupture to friction against the fixation plate rather than tightening a screw on February 3, 2017. Although the medical evidence in File No. xxxxxx078 clearly implicates the prior injury and authorized surgery performed under File No. xxxxxx373, OWCP did not combine the two right wrist injury case records or incorporate the relevant evidence, such as the operative note and any follow-up reports, into the current claim.⁶ The adjudication of appellant's claim under File No. xxxxxx078 requires reference to the medical evidence of record in File No. xxxxxx373. Therefore, the Board

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

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

is not in a position to make an informed decision regarding appellant's entitlement to FECA benefits.⁷ The case shall be remanded to OWCP to consolidate case File Nos. xxxxxx373 and xxxxxx078. After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's claim for FECA benefits under File No. xxxxxx078.

IT IS HEREBY ORDERED THAT the February 28, 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: June 20, 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

⁷ *L.H.*, Docket No. 17-1960 (issued August 16, 2018); *see K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).