

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

S.H., Appellant)	
)	
and)	Docket No. 19-0130
)	Issued: October 8, 2019
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION FACILITY, Charleston, SC,)	
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
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 22, 2018 appellant filed a timely appeal from an August 2, 2018 merit decision and a September 28, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-0130.

On February 12, 2018 appellant, then a 53-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging an injury to her right ankle. She explained that she had a medical appointment on November 22, 2017 as her ankle had been "more swollen" for the prior month and that she was taken out of work and provided a boot. Appellant identified December 28, 2016 as the date she first became aware of her condition, and November 22, 2017 as the date she realized it was caused or aggravated by the duties of her federal employment position.

Appellant has a previously accepted injury in OWCP File No. xxxxxx324 as she sustained an injury to her right ankle while operating a pallet jack on December 28, 2016. That claim was accepted for right ankle abrasion, contusion, and sprain.

Appellant was treated for her right ankle in her prior claim and the current claim with Dr. Howard L. Brilliant, a Board-certified orthopedic surgeon. In a November 22, 2017 progress note, Dr. Brilliant noted that appellant was well known to him with reflex sympathetic dystrophy, old fracture, and massive contusion of her right ankle from a work injury a year prior. He noted that appellant was getting well until she had to work extra hard at work the prior day. Dr. Brilliant indicated that his physical examination showed increased swelling along the lateral border of the right ankle, and he provided a diagnosis of “reflex sympathetic dystrophy old ankle fracture.” He characterized appellant as having an acute exacerbation and should remain out of work for two weeks, at which time a follow-up appointment would be made.

On December 5, 2017 Dr. Brilliant advised that appellant should remain off work until further evaluation. In a December 21, 2017 progress note, he noted that appellant was seen first in November 2017 for a recurrence and exacerbation of her previous employment injury, which consisted of a right ankle contusion, abrasion, and sprain. Dr. Brilliant indicated that appellant was off work because of an exacerbation of the initial injury. He again diagnosed reflex sympathetic dystrophy. In a March 6, 2018 note, Dr. Brilliant related that appellant returned with continued right ankle problems, that she could not stand on it for any length of time, and that she had first injured the ankle over a year ago and following a contusion and crush injury she developed reflex sympathetic dystrophy which was accepted as relating to her initial injury for which she received treatment and was able to return to work. He opined her condition was a recurrence of the reflex sympathetic dystrophy which he noted is well documented. Dr. Brilliant reported that the employing establishment considered the condition to be a new injury.

By decision dated March 16, 2018, OWCP denied appellant’s occupational disease claim finding that the medical evidence of record was insufficient to establish a causal relationship between her right ankle reflex sympathetic dystrophy and the accepted employment factors of walking on a cement floor and standing, pulling, and pushing equipment to different places. It noted that she had preexisting conditions involving the same part of the body that occurred on December 28, 2016 under File No. xxxxxx324. OWCP commented that appellant had not provided medical evidence of her preexisting right ankle injury, and that such evidence was necessary as she had a preexisting condition.

In an April 5, 2018 note, Dr. Brilliant again reported that appellant was first seen over a year prior for a contusion and possible break, from which she developed reflex sympathetic dystrophy.

On May 7, 2018 appellant requested reconsideration.

By decision dated August 2, 2018, OWCP denied modification of its prior decision finding that Dr. Brilliant’s latest opinion was insufficient to establish causal relationship.

On September 24, 2018 appellant again requested reconsideration.

By decision dated September 28, 2018, OWCP denied merit reconsideration finding that appellant neither raised substantive legal questions nor included new and relevant evidence.

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.¹ Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.² 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.³ All evidence that forms the basis of a decision must be in that claimant's case record.⁴

For a full and fair adjudication of appellant's claim, the Board finds that the case records under OWCP File Nos. xxxxxx825 and xxxxxx324 must be combined.⁵

The Board finds that OWCP's decision dated March 16, 2018 referenced medical evidence that does not appear in the case record under OWCP File No. xxxxxx825. To date, OWCP has not combined the case records related to appellant's claims, nor did it incorporate all referenced evidence relating to her preexisting and employment-related right ankle condition into the current case record.⁶ Because it neglected to include evidence of her previously accepted right ankle condition in the current case record (including evidence from OWCP File No. xxxxxx324), the Board is not in a position to make an informed decision regarding appellant's claim.⁷

Therefore, the case shall be remanded to OWCP to consolidate evidence from OWCP File Nos. xxxxxx825 and xxxxxx324. Following this and any necessary further development deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim under OWCP File No. xxxxxx825.⁸

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *See K.T.*, Docket No. 17-0432 (issued August 17, 2018); *L.Z.*, Docket No. 11-1415 (issued December 12, 2011).

⁶ *See supra* note 1 at Chapter 2.400.8c (February 2000) (noting cases should be doubled/combined when correct adjudication of the issues depends on frequent cross-reference between files).

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

⁸ *See M.M.*, Docket No. 17-1150 (issued January 28, 2018).

ORDER

IT IS HEREBY ORDERED THAT the September 28 and August 2, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 8, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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