

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

_____)	
J.M., Appellant)	
)	
and)	Docket No. 19-1724
)	Issued: April 8, 2020
DEPARTMENT OF AGRICULTURE,)	
NATIONAL FOREST SERVICE, Double)	
Springs, AL, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 14, 2019 appellant filed a timely appeal from a May 13, 2019 merit decision and a June 28, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1724.¹

On November 26, 2018 appellant, then a 47-year-old forestry technician, filed an occupational disease claim (Form CA-2) alleging that he developed back pain as a result of factors of his federal employment. He noted that he first became aware of his condition and realized its relationship to his federal employment on June 16, 2017. Appellant also indicated that he had

¹ The Board notes that, following the June 28, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "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. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

originally filed the claim as a traumatic injury (Form CA-1), but it was denied by OWCP.² He stopped work on June 15, 2017.

In an attached statement, appellant explained that, during the week of June 12 to 16, 2017, he worked on a farm tractor with a 55-gallon sprayer on his back while he sprayed plants with herbicides as part of his official work duties. He related that on June 15 and 16, 2017 his back hurt and that on the morning of Friday, June 16, 2017 he was in excruciating pain.

By decision dated January 14, 2019, OWCP accepted that the employment factors occurred, as alleged, but denied the claim, finding that no medical evidence had been submitted to establish a medical diagnosis in connection with the accepted employment factors. Thus, it determined that the requirements had not been met to establish an injury as defined by the Federal Employees' Compensation Act.

On February 12, 2019 appellant requested reconsideration. In a narrative statement, he clarified that, although he worked from June 12 to 16, 2017, he only experienced back pain for the last day and a half. Appellant explained that, as he drove the tractor, he hit rough spots multiple times, which caused it to jar like a jackhammer bouncing. He reported that he originally filed a CA-1 form, but was told to refile as a CA-2 form.

By decision dated May 13, 2019, OWCP modified the January 14, 2019 decision. It found that the medical evidence of record had established a diagnosis of lumbago with sciatica, but that the claim remained denied as appellant had not established that his diagnosed condition was causally related to the accepted factors of his federal employment. OWCP noted that it had reviewed the case file under File No. xxxxxx628 as it was closely related to the present claim. It did not, however, image the referenced medical evidence into the present claim file.

On May 23, 2019 appellant requested reconsideration. By decision dated June 28, 2019, OWCP denied appellant's request for reconsideration of the merits of the claim under 5 U.S.C. § 8128(a).

The Board, having duly considered the matter, concludes 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.³ Evidence may not be incorporated by reference, nor may evidence from another individual's case file be used.⁴ Evidence contained in another of the claimant's case files may be used, but a copy of that evidence

² Appellant's prior claim was assigned by OWCP as OWCP File No. xxxxx628. The previous claim is not currently before the Board.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(a) (June 2011).

⁴ *Id.*; *G.K.*, Docket No. 18-1594 (issued March 8, 2019).

should be placed into the case file being adjudicated.⁵ All evidence that forms the basis of a decision must be in that claimant's case record.⁶

In adjudicating the present claim, File No. xxxxxx861, OWCP indicated that it had also reviewed the evidence contained in the case record for File No. xxxxxx628.⁷ However, it neglected to include the referenced information in the current case file. The Board is therefore not in a position to make an informed decision regarding appellant's entitlement to FECA benefits.⁸

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁹ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.¹⁰ In the instant case, appellant filed an occupational disease claim, which OWCP assigned File No. xxxxxx861 for a back injury. Appellant's prior traumatic injury claim, to which OWCP assigned File No. xxxxxx628, was also for a back injury and is not presently before the Board. For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with File No. xxxxxx628. Following this and other such further development as it deems necessary, OWCP shall issue a *de novo* decision.

⁵ *Id.*; A.B., Docket No. 18-1626 (issued August 22, 2019).

⁶ *Id.*

⁷ *See D.B.*, Docket No. 19-0262 (issued December 31, 2019).

⁸ *Id.*

⁹ Federal (FECA) Procedure Manual, *supra* note 3 at Chapter 2.400.8(c) (February 2000).

¹⁰ *Id.*

IT IS HEREBY ORDERED THAT the May 13, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.¹¹

Issued: April 8, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹¹ In view of the Board's disposition regarding the merits of the case, the issue of whether OWCP properly denied appellant's reconsideration request under section 8128(a) is moot.