

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

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<b>L.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1111</b>
	)	<b>Issued: December 7, 2020</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>CUSTOMS &amp; BORDER PATROL, Calexico, CA,</b>	)	
<b>Employer</b>	)	
_____	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 6, 2020 appellant filed a timely appeal from a January 15, 2020 merit decision and an April 29, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 20-1111.

On November 28, 2019 appellant, then a 47-year-old supervisory customs and border patrol officer, filed an occupational disease claim (Form CA-2) alleging that she was experiencing worsening left shoulder/rotator cuff pain due to factors of her federal employment. She explained that she had undergone a surgical procedure on her right arm on June 13, 2018, was unable to use her right arm, and compensated with use of her left arm. Appellant indicated that she first became aware of her condition on October 1, 2018 and first realized its relation to her federal employment on November 1, 2018. OWCP assigned the claim File No. xxxxxxxx931.

In a December 13, 2019 development letter, OWCP informed appellant that additional evidence was needed in support of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire. OWCP afforded appellant 30 days to submit the requested evidence. No response was received.

By decision dated January 15, 2020, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish fact of injury.

On February 18, 2020 appellant requested reconsideration.

OWCP received a medical report from Dr. James E. Sweeney, a Board-certified orthopedic surgeon, dated February 11, 2020. Dr. Sweeney noted appellant's prior August 14, 2017 right shoulder injury and the development of her left shoulder symptoms. OWCP also received a February 5, 2019 report from Dr. Sweeney in which he discussed appellant's right shoulder condition and noted that appellant had recently developed left shoulder pain, without any specific trauma.

By decision dated April 29, 2020, OWCP denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

The Board, having duly considered the matter, 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. 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>1</sup> All evidence that forms the basis of a decision must be of record.<sup>2</sup>

In appellant's occupational disease claim she indicated that a surgery procedure to her right shoulder led to increased use of her left arm, and eventually caused a left shoulder/rotator cuff condition. As noted by Dr. Sweeney, appellant had a prior claim for an August 14, 2017 traumatic injury to her right shoulder, assigned OWCP File No. xxxxxx197. That claim was accepted for impingement syndrome of the right shoulder and strain of muscle, fascia, and tendon of other parts of the right arm biceps.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.<sup>3</sup> Regarding alleged consequential injuries, in discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>4</sup>

The Board finds that for a full and fair adjudication of appellant's claim, the case shall be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx197 and xxxxxx931. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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<sup>1</sup> *D.T.*, Docket No. 19-0867 (issued August 12, 2020).

<sup>2</sup> *Id.* See also *G.O.*, Docket No. 18-1483 (issued June 20, 2019).

<sup>3</sup> *K.K.*, Docket No. 20-0581 (issued September 14, 2020); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

<sup>4</sup> See *C.H.*, Docket No. 20-0228 (issued October 7, 2020); see also *K.S.*, Docket No. 17-1583 (issued May 10, 2018).

**IT IS HEREBY ORDERED THAT** the April 29 and January 15, 2020 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: December 7, 2020  
Washington, DC

Christopher J. Godfrey, Deputy 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