

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

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<b>T.L., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 18-0935</b>
	)	<b>Issued: February 25, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Oklahoma City, OK, 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  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On April 3, 2018 appellant filed a timely appeal from a March 1, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards docketed the appeal as No. 18-0935.

On June 6, 2012 appellant, then a 52-year-old mail handler, filed an occupational disease claim (Form CA 2) alleging that he sustained a back injury due to standing and leaning against a rest bar in the performance of duty. This claim was assigned OWCP File No. xxxxxx830. On June 18, 2012 OWCP accepted the claim for lumbar strain. On April 9, 2015 it expanded acceptance of this claim to include depressive disorder, anxiety state and bipolar disorder. On May 28, 2015 OWCP issued a notice of proposed rescission relating that acceptance of the claim should not have been expanded, but rather appellant should have been advised to file a claim for a new injury.

On May 12, 2015 appellant filed an occupational disease claim (Form CA-2) alleging that he sustained stress and anxiety in the performance of duty. He related that he continued to work

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<sup>1</sup> The Board notes that, following the March 1, 2018 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.*

while in pain and it was very stressful deciding whether to take time off work and not be paid, or work in pain. Appellant also noted that his workdays and schedule was changed following his accepted injury, which caused stress.<sup>2</sup> He stopped work on February 15, 2015. This claim was assigned OWCP File No. xxxxxx822. The employing establishment noted that appellant had prior claims.<sup>3</sup>

On June 24, 2015 OWCP received a supplemental statement from appellant. Appellant related that he had an accepted claim for a back condition under OWCP File No. xxxxxx830 and had originally claimed that his stress condition was consequential to that claim.

By decision dated November 5, 2015, OWCP denied appellant's claim on the factual component of the third basic element, fact of injury, because the evidence did not support that the injury and/or event(s) occurred.

On October 17 and November 8, 2016 appellant requested reconsideration. He referred to his prior claim OWCP File No. xxxxxx830.

By decision dated January 13, 2017, OWCP denied modification of the prior decision.

On January 11, 2018 appellant requested reconsideration. In a separate letter, he indicated that he had not received any response to his medical documentation as to why he developed his emotional condition. Appellant referred to prior injuries and indicated that they greatly affected him physically. He also submitted additional medical evidence.

By decision dated March 1, 2018, OWCP denied appellant's request for reconsideration, finding that the evidence submitted was insufficient to warrant review of its prior decision. It also explained that it appeared that he was claiming a consequential injury due to accepted work injuries and that he should file a consequential injury under one or all of his accepted claims.

The Board, having duly considered the matter, finds that the case is not in posture for decision.

In the March 1, 2018 decision denying appellant's request for reconsideration of the merits of his claim, OWCP related that, based on appellant's request for reconsideration, it appeared that he was claiming a consequential injury due to his accepted employment injuries. It indicated that appellant should file a consequential injury claim under one or all of his accepted injury claims.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.<sup>4</sup> In the instant

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<sup>2</sup> In an April 2, 2015 statement, P.A., appellant's manager, indicated that she worked with appellant for over 10 years as his manager. She explained that, as his manager, she had to change his tours and work hours to accommodate his work restrictions. P.A. indicated that this caused stress for appellant.

<sup>3</sup> The record reflects that appellant has six prior claims dating from August 15, 2008 to April 9, 2012. OWCP File No. xxxxxx830 has been combined with OWCP File No. xxxxxx823, with the former serving as the master file.

<sup>4</sup> *D.M.*, Docket No. 19-0340 (issued October 22, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

claim, OWCP File No. xxxxxx822, appellant has alleged stress and anxiety while continuing to work in pain following his accepted June 6, 2012 occupational disease claim in OWCP File No. xxxxxx830. In denying appellant's request for reconsideration on March 1, 2018 in the instant claim, and advising appellant to file a consequential injury claim in his accepted claim, OWCP did not acknowledge that it has accepted depressive disorder, anxiety state and bipolar disorder in OWCP File No. xxxxxx830.

As these files have not been administratively combined, the Board is unable to determine whether all pertinent evidence had been reviewed by OWCP in the instant claim.

The record before the Board does not contain the evidence from the June 6, 2012 occupational disease claim, OWCP File No. xxxxxx830, thus precluding a full and proper adjudication of the issues presented in OWCP File No. xxxxxx822. The Board thus finds that the case is not in posture for decision as the record as provided by OWCP is incomplete and would not permit an informed adjudication of the case. The case must therefore be remanded to OWCP to administratively combine the File Nos. xxxxxx830 and xxxxxx822 and for further reconstruction and development as it may deem necessary, to be followed by an appropriate decision.<sup>5</sup>

**IT IS HEREBY ORDERED THAT** the March 1, 2018 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this order of the Board.

Issued: February 25, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>5</sup> See *T.M.*, Docket No. 18-0887 (issued February 21, 2019).