

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

_____)	
L.T., Appellant)	
)	
and)	Docket No. 19-1357
)	Issued: March 30, 2020
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Chicago, IL, Employer)	
_____)	

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 June 4, 2019 appellant filed a timely appeal from an April 30, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed this appeal as No. 19-1357.

On December 21, 2018 appellant, then a 62-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 20, 2018 she sustained a head contusion when the bar from an all-purpose container (APC) fell and struck her in the head while in the performance of duty. In an attached statement, she explained that as she was loading boxes into the lower rack of the APC, the top rack popped open and slammed down onto the top of her head. Appellant indicated that she sustained a knot on her head and experienced headaches due to the incident. On the reverse side of the claim form, her supervisor indicated that she stopped work the same day and returned to work on December 24, 2018.

¹ Appellant submitted additional evidence with her appeal. However, the Board's *Rules of Procedure* provides that "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 evidence for the first time on appeal. *Id.*

Under OWCP File No. xxxxxx767, appellant has a prior OWCP claim accepted on April 12, 1989 for tenosynovitis of the hands and wrists, bilateral carpal tunnel syndrome, a displaced cervical intervertebral disc, and a complete left rotator cuff rupture due to factors of her federal employment.

In support of her claim, appellant provided a February 23, 2019 narrative medical report from Dr. Samuel Chmell, a Board-certified orthopedic surgeon. Dr. Chmell diagnosed appellant with multi-level cervical disc protrusion with radiculopathy as a result of the December 20, 2018 work incident. He explained that, when appellant was struck on the head by the heavy APC door, she sustained a severe axial load to her cervical spine. Dr. Chmell explained that axial loads such as this are a common cause of serious cervical spine injuries. He also made note of appellant's history of treatment in relation to the December 20, 2018 employment incident.

By decision dated April 30, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that her medical condition was causally related to the accepted December 20, 2018 employment incident. It noted that medical evidence contained in OWCP File No. xxxxxx767 referenced the conditions noted in Dr. Chmell's report a significant number of years prior in relation to a December 3, 1988 date of injury.

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 another individual's 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 claimant's case record.⁵

In adjudicating the present claim, OWCP File No. xxxxxx535, OWCP referenced the facts and medical conclusions obtained from OWCP File No. xxxxxx767.⁶ However, it has not administratively combined the two case records or incorporated the referenced evidence into the

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

³ *Id.*; *G.K.*, Docket No. 18-1594 (issued March 8, 2019).

⁴ *Id.*

⁵ *Id.*

⁶ *G.K.*, *supra* note 3.

current case record.⁷ The Board is therefore not in a position to make an informed decision regarding appellant's entitlement to FECA benefits.⁸

Furthermore, 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

Here, the medical evidence of record in OWCP File No. xxxxxx767 provides a diagnosis of cervical disc displacement with radiculopathy in relation to appellant's cervical spine prior to the December 20, 2018 date of injury. Appellant then filed a traumatic injury claim for the same body part, assigned OWCP File No. xxxxxx535, which is the claim presented before the Board. The evidence pertaining to OWCP File No. xxxxxx767, however, is not part of the case record 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 OWCP File No. xxxxxx767, and determine whether appellant has provided sufficient rationalized medical evidence to establish a cervical spine condition causally related to the December 20, 2018 employment incident. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

⁷ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000) (cases should be combined when correct adjudication of the issues depends on frequent cross-referencing between files); *G.K.*, *supra* note 3.

⁸ See *G.K.*, *supra* note 3; C.R., Docket No. 17-1262 (issued May 21, 2018); *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

¹⁰ *Id.*; *D.L.*, Docket No. 18-0592 (issued February 6, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

IT IS HEREBY ORDERED THAT the April 30, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 30, 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