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

E.T, Appellant	- ) )
and	) Docket No. 22-0701 ) Issued: August 29, 2022
DEPARTMENT OF THE NAVY, COMMANDER, NAVY INSTALLATIONS COMMAND, San Diego, CA, Employer	)   155dett. August 29, 2022
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

## **ORDER REMANDING CASE**

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On April 6, 2022 appellant filed a timely appeal from a March 8, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of Appellate Boards docketed the appeal as Docket No. 22-0701.<sup>2</sup>

On November 8, 2021 appellant, then a 70-year-old general business and industry specialist, filed an occupational disease (Form CA-2) alleging that he developed shortness of breath and lung disease due to factors of his federal employment including exposure to asbestos. He noted that he had a history of chronic obstructive pulmonary disease (COPD) since 2007.

<sup>&</sup>lt;sup>1</sup> The Board notes that following the March 8, 2022 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*.

<sup>&</sup>lt;sup>2</sup> The Board notes that, while this appeal was pending, OWCP issued a July 5, 2022 decision, which modified the March 8, 2022 decision finding that the evidence was sufficient to establish the alleged employment exposure, but denied the claim as the medical evidence did not establish causal relationship between the diagnosed conditions and the accepted employment factors. OWCP may not simultaneously have jurisdiction over the same issue. Consequently, the July 5, 2022 decision is set a side as null and void. See 20 C.F.R. § 10.626; see also A.C., Docket No. 18-1730 (issued July 23, 2019); M.C., Docket No. 18-1278, n.1 (issued March 7, 2019); Russell E. Lerman, 43 ECAB 770 (1992); Douglas E. Billings, 41 ECAB 880 (1990).

Appellant noted that he first became aware of his current condition and realized its relation to his federal employment on October 25, 2021. He retired from the employing establishment on November 5, 2021.

By decision dated March 8, 2022, OWCP denied appellant's occupational disease claim, finding that he had not submitted factual evidence to establish that the employment exposures occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

The Board has duly considered the matter and concludes that this case is not in posture for decision.

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> 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.<sup>4</sup> Herein, appellant has a previously accepted claim for extrinsic asthma, a pulmonary condition, as causally related to occupational exposures under OWCP File No. xxxxxxx493, which is also at issue in the present claim under OWCP File No. xxxxxxx814. For a full and fair adjudication, this case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxxx493, so it can consider all relevant claim files and accompanying evidence in adjudicating his current occupational disease claim.<sup>5</sup>

Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

<sup>&</sup>lt;sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

<sup>&</sup>lt;sup>4</sup> *Id.*; *M.L.*, Docket No. 20-1176 (issued April 29, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

<sup>&</sup>lt;sup>5</sup> Supra note 3 at Chapter 2.400.8(c)(1); W.D., Docket No. 19-0961 (issued March 31, 2021); L.P., Docket Nos. 18-1558, 18-1568 (issued June 21, 2019).

**IT IS HEREBY ORDERED THAT** the March 8, 2022 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: August 29, 2022

Washington, DC

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

Janice B. Askin, Judge Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge Employees' Compensation Appeals Board