

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

_____)	
L.W., Appellant)	
)	
and)	Docket No. 20-0517
)	Issued: June 1, 2022
DEPARTMENT OF COMMERCE, PATENT & TRADEMARK OFFICE, Alexandria, VA,)	
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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 6, 2020 appellant filed a timely appeal from an August 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0517.

On June 14, 2017 appellant, then a 47-year-old patent paralegal specialist, filed an occupational disease claim (Form CA-2) alleging that she developed physical and emotional conditions caused or aggravated by factors of her federal employment. Specifically, she attributed her conditions to "heavy workload, stress, work equipment problems and work environment." On the reverse side of the claim form, E.J., a supervisory paralegal, indicated that she was terminated from her federal employment on April 17, 2017.

In a June 20, 2017 statement, appellant alleged that since 2009 she was subjected to ongoing employment discrimination, harassment, retaliation, prohibited employment policies/practices by employing establishment officials, coworkers and Information Technology (IT) specialists. She described numerous events that had occurred since March 2009. Appellant also alleged that she developed medical conditions which were caused or aggravated by her computer work at the employing establishment since November 2011. She described numerous symptoms including headache, neck, left upper extremity, right knee, and thoracic pain. Appellant submitted

multiple diagnostic test reports relating to her lumbar, thoracic and cervical spine, left scapula, and right knee; and multiple reports from several physicians regarding her physical medical conditions.

In support of her emotional conditional claim, appellant submitted electronic copies of her work assignments from 2014 to 2016, comments from her on her performance evaluations, letters related to the filing of her discrimination/Equal Employment Opportunity (EEO) claims, copies of her assigned cases, photographs of her mouse and computer screen, reasonable accommodation requests, responses from the employing establishment, general information pertaining to temporary work instructions for authorization and use of overtime, increased flextime program, and a union agreement with regard to the hoteling program.

By decision dated December 15, 2017, OWCP denied appellant's emotional condition claim. It found that she had not established "an emotional condition that arose during the course of employment and within the scope of compensable work factors" as defined by FECA.

On May 8, 2018 OWCP received a letter dated May 1, 2018 wherein appellant requested reconsideration. Appellant alleged that she developed medical conditions due to working long hours on the computer at work with a daily heavy workload. She alleged that she had no breaks or minimal breaks during her eight-hour work period daily while employed from March 2009 through April 2017. Appellant also described in detail events that occurred after September 2015, which she alleged contributed to her emotional condition.

By decision dated October 5, 2018, OWCP denied modification of its December 15, 2017 decision. It found that the evidence of record failed to establish that a compensable employment factor either directly caused or contributed to her claimed injury/medical condition. The decision made findings regarding alleged events concerning appellant's emotional condition claim.

On May 17, 2019 appellant again requested reconsideration. She reiterated some of her previous allegations, that she was injured both physically and psychologically.¹ Appellant indicated that her work left her with multiple work-related medical symptoms, which included frozen left shoulder since September 2015 and pain and numbness on the left side of the head, neck, shoulder, back, arm, wrist, and hand and fingers. She advised that, in October 2015, she reported her employment-related injuries and exhausted all her annual and sick leave hours to receive medical treatment. Appellant alleged that she was not allowed to be away from her computer, even when it had problems, and that she was required to advise her supervisor if it took the IT specialists more than 15 minutes to resolve her computer problems. She also alleged that she was not allowed to attend meetings or trainings in person, and that she was only allowed to attend meetings online which kept her sitting at the computer. Appellant further alleged that she was not allowed to attend annual employing establishment holiday events. She claimed that her requests for official time to work on her EEO cases had been denied, that she was not paid for most of her overtime work hours, and that she was paid at a lower pay grade than other coworkers.

¹ These allegations included that, during her employment period March 2009 through April 2017, she had to perform a heavy workload and that her daily excessive workload kept her sitting continuously at the computer, except for 30 minutes for lunch. Appellant also reiterated that the daily heavy workload affected her psychologically and physically. She referenced internet articles which supported the negative effects of heavy workloads.

Appellant indicated that she was submitting enclosures, however, no enclosures were received into the record.

By decision dated August 13, 2019, OWCP denied modification of its December 15, 2017 decision. It reissued the October 5, 2018 notice of decision.

The Board finds that this case is not in posture for decision.

The Board finds that OWCP's August 13, 2019 decision re-reviewed the evidence and allegations submitted with appellant's request for reconsideration received on May 8, 2018, for which it issued a decision on October 5, 2018; however, it did not address and make findings of fact related to appellant's May 17, 2019 request for reconsideration.

In the case of *William A. Couch*,² the Board held that when adjudicating a claim OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. Appellant's May 17, 2019 request for reconsideration, which OWCP never reviewed, contained additional allegations to her physical and emotional condition claims. It is crucial that OWCP address all relevant arguments and evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed.³ As OWCP reissued its October 5, 2018 decision on August 13, 2019, and did not review appellant's May 17, 2019 request for reconsideration, this case must be remanded for further review. On remand OWCP shall make findings of fact and provide a statement of reasons related to appellant's May 17, 2019 request for reconsideration. Following any further development as it deems necessary, it shall issue a *de novo* decision on appellant's claim for emotional and physical conditions.

The record reflects that under OWCP File No. xxxxxx878, appellant has a traumatic injury claim (Form CA-1) for a September 12, 2016 incident, allegedly causing an emotional condition. OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body. On return of the case record, OWCP shall administratively combine the current OWCP File No. xxxxxx750 with OWCP File No. xxxxxx878.

² 41 ECAB 548 (1990); *D.M.*, Docket No. 20-0099 (issued July 16, 2020).

³ See *P.K.*, Docket No. 20-0940 (issued June 1, 2021); *C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *William A. Couch*, *id.*

IT IS HEREBY ORDERED THAT the August 13, 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: June 1, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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