

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

L.R., Appellant	)	
	)	
and	)	Docket No. 21-1378
	)	Issued: March 23, 2023
DEPARTMENT OF HOMELAND SECURITY,	)	
TRANSPORTATION SECURITY	)	
ADMINISTRATION, Madison, WI, 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  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

On September 7, 2021 appellant filed a timely appeal from an August 2, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 21-1378.

On April 15, 2015 appellant, then a 46-year-old transportation security officer (screener), filed an occupational disease claim (Form CA-2) for recurrent facial cellulitis, due to factors of her federal employment, which she attributed to alleged exposure to bacteria in the employing establishment's breakroom. She noted that she first became aware of her condition on December 28, 2006 and realized its relation to her federal employment on January 28, 2015. The employing establishment indicated that appellant initially reported her condition on October 19, 2010, and that each year she had been off work intermittently due to recurrent facial cellulitis. It further noted that she was last exposed to the alleged working conditions on April 16, 2015. OWCP assigned the present claim OWCP File No. xxxxxx918.

In an undated narrative statement received June 12, 2015, appellant asserted that she contracted facial cellulitis while cleaning the breakroom as management supplied a cleanser, which was not a disinfectant. She added that dirty water frequently accumulated in the warm, dark environment of the mop closet, creating an unsanitary workplace.

By decision dated October 29, 2015, OWCP denied the claim, finding that the evidence of record was insufficient to establish that the employment exposure to bacteria occurred as alleged. Appellant timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated August 2, 2016, OWCP's hearing representative affirmed the October 29, 2015 decision. Appellant subsequently requested reconsideration. OWCP, however, denied modification.

The Board notes that on May 31, 2017, appellant filed another Form CA-2 alleging that she sustained recurrent facial cellulitis due to factors of her federal employment, including bacteria exposure in an employing establishment restroom and breakroom. Appellant noted that she first became aware of her claimed condition on May 8, 2015 and realized its relation to her employment on April 1, 2015. OWCP assigned that claim OWCP File No. xxxxxx633. On March 16, 2018 it accepted appellant's claim under OWCP File No. xxxxxx633 for temporary aggravation of facial cellulitis.<sup>1</sup>

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

The case record establishes that OWCP has already accepted a temporary aggravation of facial cellulitis under OWCP File No. xxxxxx633, also due to exposure to bacteria in an employing establishment breakroom. In light of the fact that appellant identified the same claimed exposure in OWCP File No. xxxxxx633 as in the present claim, it is essential for OWCP to determine whether or not either claim is a duplicate claim. To consider appellant's appeal at this stage would involve a piecemeal adjudication of the issues in this case and raise the possibility of inconsistent results. It is the Board's policy to avoid such an outcome.<sup>2</sup> On remand, OWCP shall review the case records in OWCP File Nos. xxxxxx918 and xxxxxx633 and determine whether they constitute duplicate claims, followed by any further development as deemed necessary.

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<sup>1</sup> On August 24, 2020, OWCP administratively combined OWCP File Nos. xxxxxx918 and xxxxxx633, with the latter designated as the master file.

<sup>2</sup> See *M.S.*, Docket No. 13-1024 (issued January 14, 2014); *William T. McCracken*, 33 ECAB 1197 (1982).

**IT IS HEREBY ORDERED THAT** the August 2, 2021 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 23, 2023  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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