

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

L.G., Appellant)	
)	
and)	Docket No. 12-1340
)	Issued: December 21, 2012
U.S. POSTAL SERVICE, POST OFFICE,)	
Margate City, NJ, Employer)	
)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

On June 6, 2012 appellant, through his attorney, filed an application for review of a March 9, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP), claim number xxxxxx212, denying his occupational disease claim. The appeal was docketed as number 12-1340.

The Board has duly considered the matter and finds that this case is not in posture for a decision. On June 19, 2009 appellant filed a Form CA-2 notice of occupational disease and claim for compensation alleging that on May 23, 2009 the increased workload and increased casing aggravated his work-related cervical radiculopathy. In a September 30, 2010 decision, OWCP denied his claim and by decision dated March 23, 2011, an OWCP hearing representative affirmed the denial of the claim finding that appellant failed to submit a rationalized medical opinion explaining how and why the work factors of casing and reaching overhead aggravated the cervical radiculopathy. By decision dated March 9, 2012, it denied modification of the March 23, 2011 decision.

In OWCP's March 9, 2012 and March 23, 2011 decisions, it noted the procedural history and medical evidence from File No. xxxxxx870.¹ In File No. xxxxxx870, it accepted that appellant had cervical sprain and cervical radiculopathy but did not require surgery on the basis

¹ OWCP's hearing representative noted in the March 23, 2011 decision that the cases xxxxxx680 and xxxxxx212 should be doubled as they concern the same condition. However there is no indication that the cases were doubled.

of his June 5, 2006 work injury. On July 28, 2009 appellant underwent a cervical fusion, which OWCP did not authorize. Under File No. xxxxxx870, OWCP also issued a September 27, 2010 decision which granted a schedule award for two percent permanent impairment of the right upper extremity.

Due to the overlapping nature of the claims and the fact that the same body part is at issue in both cases, the medical evidence contained in File No. xxxxxx870 will necessarily bear directly on appellant's claim for compensation in the instant case.² Without reviewing the case record in File No. xxxxxx870, the Board is unable to determine whether OWCP properly considered all relevant evidence in rendering its final decision.

Because it is essential for the Board to review the medical evidence contained in File No. xxxxxx870 in order to render a full and fair adjudication of the present appeal, this case will be set aside and remanded to OWCP to consolidate case File No. xxxxxx870 with File No. xxxxxx212.³ Reconstruction of the record will be followed by a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the March 9, 2012 decision be set aside and the matter remanded to the Office of Workers' Compensation Programs for further proceedings consistent with this order of the Board.

Issued: December 21, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

² It is further noted that counsel's brief on appeal, references a May 2, 2011 report of a Dr. Robert M. Holtzin. This report is not in the record before the Board.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000) (cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files).