

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

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**R.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Pittsburg, PA, Employer**

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**Docket No. 12-1413  
Issued: December 21, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

On June 18, 2012 appellant filed for review of the nonmerit decision of the Office of Workers' Compensation Programs (OWCP) dated June 4, 2012, denying appellant's request for reconsideration. The appeal was docketed as No. 12-1413.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for a decision.

On April 10, 2008 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on April 7, 2008 he sustained back pain and right leg weakness when he was delivering mail on his route and carrying a very heavy bag of mail.<sup>1</sup>

By letter dated April 24, 2008, the employing establishment stated that appellant had been out of work for four years under Claim No. xxxxxx939 and was cleared to return to work on March 17, 2008. The employing establishment noted that appellant returned to full duty on April 7, 2008 when he alleged that he sustained a back spasm in this claim, Claim No. xxxxxx002.

By decision dated July 25, 2008, OWCP denied appellant's claim finding that the evidence of record failed to establish that the claimed medical condition was causally related to the accepted April 7, 2008 employment incident.

On August 20, 2008 appellant requested an oral hearing before the Branch of Hearings and Review.

At the March 17, 2009 telephone hearing, appellant testified that he returned to work on March 17, 2008 where he answered telephones after a long period of absence from employment due to another work injury. He performed that job until April 7, 2008 when he was released to full duty and began delivering mail. Appellant stated that on that date, he was carrying a large bag of mail which aggravated his back injury.

By decision dated May 22, 2009, the Branch of Hearings and Review affirmed OWCP's July 25, 2008 decision because the evidence of record failed to establish that appellant's back injury was causally related to the accepted April 7, 2008 employment incident.

By letter dated September 4, 2009, appellant requested reconsideration of the May 22, 2009 decision.

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<sup>1</sup> The Board notes that appellant has additional compensation claims which are distinct from this claim currently on appeal but have some relevance to factual matters. This is because the claims involve the same body parts and were being developed during a period close to this traumatic injury claim. The following claims are not before the Board. Appellant had a prior traumatic injury on February 22, 2003 when he fell five feet when porch stairs failed. The claim was accepted for lumbar strain and thoracic strain, Claim No. xxxxxx842. Appellant also injured himself on December 15, 2003 while delivering mail on that date in the performance of duty. The claim was accepted for lumbar strain and thoracic strain, Claim No. xxxxxx939. The two claims have since been combined, Claim No. xxxxxx939.

On March 13, 2004 appellant stopped work due to a recurrence of a disability, Claim No. xxxxxx939.

On April 11, 2008, appellant filed a recurrence of disability (Form CA-2a) alleging that the employing establishment did not have work available for him after he hurt his back when he had to carry mail on route which was too heavy. Appellant stated that the recurrence was related to his December 15, 2003 injury and occurred on April 7, 2008, Claim No. xxxxxx939.

On May 6, 2009, appellant filed an occupational disease (Form CA-2) alleging that he aggravated his thoracic degenerative disc disease and chronic lumbar thoracic sprain as a result of his federal employment duties. Appellant stated that he first became aware of his condition on February 22, 2003 and of its relationship to his employment on April 7, 2008, Claim No. xxxxxx251.

By decision dated December 16, 2009, OWCP affirmed the May 22, 2009 decision finding that the evidence of record failed to establish that appellant's injury was causally related to the April 7, 2008 employment incident.

By letter dated December 10, 2009, appellant requested reconsideration of OWCP's December 16, 2009 decision.

By decision dated March 15, 2011, OWCP affirmed its December 16, 2009 decision because the additional evidence submitted failed to establish that appellant's medical condition was causally related to the accepted April 7, 2008 employment incident. It noted that appellant had 12 workers' compensations claims on record and 2 retired claims for a total of 14 workers' compensation claims.<sup>2</sup> OWCP stated that review of the additional factual and medical evidence either did not pertain to the present claim or failed to provide a well-rationalized opinion establishing that appellant's condition was causally related to the April 7, 2008 employment incident.

By letter dated March 9, 2012, appellant requested reconsideration of OWCP's March 15, 2011 decision. He argued that a January 25, 2011 OWCP decision stated that Claim No. xxxxxx002 and Claim No. xxxxxx939 were doubled. Appellant also argued that OWCP adjudicated his October 10, 2008 recurrence claim based on a May 14, 2009 second opinion examination, Claim No. xxxxxx939. He noted that OWCP's April 22, 2009 statement of accepted facts provided for this examination referenced an April 7, 2008 injury. Appellant further stated that OWCP's March 15, 2011 decision demonstrated clear evidence of error and the issue should not have been causal relationship but suitability.

By decision dated June 4, 2012, OWCP denied appellant's request for reconsideration finding that he neither raised substantive legal questions nor included new and relevant evidence.

The Board notes that a January 25, 2011 OWCP decision for Claim No. xxxxxx939 states that this claim, Claim No. xxxxxx002 was doubled into Claim No. xxxxxx939. The Board finds, however, that based on review of the record, it appears that Claim No. xxxxxx002 was not doubled with Claim No. xxxxxx939. Both of appellant's claims involve similar lumbar conditions and are being developed during a period close to this traumatic injury claim. As new medical evidence was submitted in Claim No. xxxxxx939 after OWCP's last March 15, 2011 merit decision in Claim No. xxxxxx002, the medical evidence contained in Claim No. xxxxxx939 will necessarily bear directly on appellant's claim for compensation in this claim, Claim No. xxxxxx002.

Because it is essential for the Board to review the medical evidence contained in Claim No. xxxxxx939 in order to render a full and fair adjudication of the present appeal, this case will be remanded to OWCP to consolidate case files, Claim No. xxxxxx939 and Claim No. xxxxxx002. On remand OWCP should prepare a statement of accepted facts which includes an employment history, details regarding appellant's various OWCP claims, the conditions accepted by OWCP, specific functions performed by appellant in each position and the restrictions

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<sup>2</sup> The Board notes that information regarding appellant's additional claims is not currently before the Board.

imposed by appellant's treating physicians. 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** Office of Workers' Compensation Programs' June 4, 2012 decision be set aside and the case remanded for further development 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

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