

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

M.H., Appellant

and

**DEPARTMENT OF THE AIR FORCE, TINKER
AIR FORCE BASE, OK, Employer**

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**Docket No. 11-1722
Issued: February 27, 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
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On July 19, 2011 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated March 3, 2011 in file number xxxxxx335 finding that he had not established an emotional condition as well as a May 10, 2011 nonmerit decision. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The Board, having duly considered the matter, concludes that the case is not in posture for decision. In this regard, the Board notes that appellant attributed his emotional condition to his accepted employment injuries developed and accepted in file number xxxxxx038. In a narrative statement accompanying his claim for occupational disease, appellant stated that the injuries he received at work and resulting surgeries and pain caused his stress, anxiety and depression. He noted that he injured his left ankle in October 2002 resulting in three failed surgeries and severe pain. Appellant also stated that he had pain in his left and right knees, right shoulder, neck and back. In a report dated October 31, 2007, Dr. William G. Bernhardt, a Board-certified family practitioner, states that appellant had a considerable amount of stress and anxiety resulting from job-related injuries and surgeries. OWCP in its written decisions has repeatedly noted that appellant asserts that he is suffering from stress, anxiety and depression due to his accepted work injuries and that this aspect of his claim would have to be reviewed as a consequential injury. However, it has not combined the claims or attempted to address this central aspect of appellant's emotional condition claim.

Proceedings before OWCP are not adversarial in nature and OWCP is not a disinterested arbiter.¹ It is an accepted principle of workers' compensation law that when the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury is deemed to arise out of the employment, unless it is the result of an independent intervening cause which is attributable to the employee's own intentional conduct.²

Due to OWCP's failure to address the central aspect of appellant's emotional condition claim, that his stress resulted from his accepted employment-related injuries, the record contains only limited information regarding appellant's accepted employment injuries. The Board finds that the files should be combined in order to properly review appellant's claim.³

On remand, OWCP shall undertake proper assemblage of the case record including combining all the files as directed by the Board and undertake development of appellant's emotional claim as a consequential injury of his accepted physical claims. Following this and such further development as OWCP deems necessary, OWCP shall issue a *de novo* decision. Accordingly,

¹ *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

² *Clement Jay After Buffalo*, 45 ECAB 707, 715 (1994).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

IT IS HEREBY ORDERED THAT the May 10 and March 3, 2011 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: February 27, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board