

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

E.N., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Lauderdale, FL, Employer**

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**Docket No. 11-1321
Issued: May 23, 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 May 10, 2011 appellant filed a timely appeal of decisions of the Office of Workers' Compensation Programs (OWCP) dated December 15, 2010 and March 1, 2011. The Board docketed the appeal as No. 11-1321. By its March 1, 2011 nonmerit decision, OWCP denied reconsideration of its December 15, 2010 decision denying appellant's claim for an emotional condition. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

On October 12, 2010 appellant, a 59-year-old mail handler, filed a Form CA-1, traumatic injury claim, alleging that he experienced emotional stress causally related to employment factors. He alleged that he became stressed because the employing establishment refused to allow him to adhere to medical restrictions stemming from a previously accepted lower back and neck injury. Appellant also stated that his supervisor, Ed Gray, engaged in a pattern of harassment toward him and created a hostile work environment.

Appellant injured his lower back and neck on May 6, 2006. He filed a claim for benefits, which OWCP accepted for temporary aggravation of sprain/strain of the lumbar region and temporary aggravation of sprain/strain of the neck. Appellant was placed on light duty as a

¹ 5 U.S.C. § 8101 *et seq.*

modified mail handler with restrictions which included four hours of sitting and four hours of standing. He alleged in April, May and June 2010 that Mr. Gray was harassing him regarding the amount of sitting he was doing at the workplace. On June 8, 2010 appellant was advised that the employing establishment, pursuant to its National Reassessment Process, would be reevaluating his light duty, modified position. By letter dated June 22, 2010, the employing establishment informed appellant that it no longer had work available for him “within the operational needs of the service.” Appellant alleged that the employing establishment told him to change his medical duty status to a full eight hours of standing; otherwise, it would have no work available for him. He stated that he was placed in an administrative leave status until September 1, 2010, when he submitted a Form CA-17 duty status report from his treating physician indicating that he could stand for eight hours. Appellant then returned to work as a modified mail handler, with restrictions on lifting, kneeling, carrying, bending, stooping and fine manipulation. On September 16, 2010 he was referred for a second opinion examination with Dr. Anthony Dorto, Board-certified in physical medicine and rehabilitation, which took place on October 6, 2010. The employing establishment advised appellant on October 22, 2010 that Dr. Dorto’s opinion differed from that of appellant’s treating physician in that Dr. Dorto found that appellant had fewer restrictions stemming from his previously accepted back and neck injury. Appellant alleged that the pressure from management to violate his treating physician’s medical restrictions and the harassment from Mr. Gray continued throughout this period. By decision dated December 15, 2010, OWCP denied compensation for a claim based on an emotional condition. By nonmerit decision dated March 1, 2011, it denied reconsideration.

The Board finds that much of the case file required for adjudication of this case is not contained in the instant record. The precise facts regarding appellant’s medical history, history of injury, and the specific work restrictions pertaining to the previous claim are not clear from the instant record. Regarding appellant’s allegation that his supervisor forced him to exceed his physician’s work restrictions, the Board has held that being required to work beyond one’s physical limitations could constitute a compensable employment factor if such activity was substantiated by the record.² The Board notes, however, that the case file does not contain a job description which outlines his work duties which were tailored to adhere to these physical restrictions. In addition, the record does not contain the October 2010 report from Dr. Dorto, the second opinion physician, which further reduced appellant’s work restrictions.

Accordingly, the case file does not include much of the record pertaining to the history and development of appellant’s claim, as is required for an informed adjudication of this case. As all the records pertaining to appellant’s claim are necessary for complete consideration and adjudication of the issue raised on appeal, the Board, therefore, finds that the appeal docketed as No. 11-1321 is not in posture for a decision as the Board is unable to render an informed adjudication of the case. The December 15, 2010 decision is set aside and remanded for consolidation and reconstruction of the case records to include the entire case file pertaining to the instant claim and the previous claim which accepted a low back and neck condition.³

² *Diane C. Bernard*, 45 ECAB 223, 227 (1993).

³ The Board notes that appellant submitted additional evidence to the record following the July 16, 2008 OWCP decision. The Board’s jurisdiction is limited to a review of evidence which was before OWCP at the time of its final review. 20 C.F.R. § 501(c).

IT IS HEREBY ORDERED THAT the December 15, 2010 decision be remanded for consolidation and reconstruction of the case records.

Issued: May 23, 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