

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

C.J., JR., Appellant	)	
	)	
and	)	<b>Docket No. 19-1603</b>
	)	<b>Issued: December 3, 2020</b>
<b>DEPARTMENT OF JUSTICE, FEDERAL</b>	)	
<b>BUREAU OF PRISONS, Fort Dix, NJ, Employer</b>	)	
	)	

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 22, 2019 appellant filed a timely appeal from a March 7, 2019 merit decision and a July 8, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards docketed the appeal as No. 19-1603.<sup>2</sup>

On January 31, 2018 appellant, then a 41-year-old chaplain, filed an occupational disease claim (Form CA-2) alleging that on October 1, 2017 he sustained a broken left pinky finger and

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, it was asserted that oral argument should be granted because of the facts surrounding his assault while in the performance of duty. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this order is based on the case record as submitted to the Board.

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

aggravation of post-traumatic stress disorder (PTSD) when he was assaulted by a large group of inmates with weapons while in the performance of duty. The case record reflects that under OWCP File No. xxxxxx115, OWCP accepted a left pinky finger injury arising from this same incident on October 1, 2017 as a traumatic injury. These claims have not been administratively combined.

By decision dated November 21, 2018, OWCP denied appellant's claim for an emotional condition. It determined that there was at least one accepted factor of employment, but the medical evidence did not substantiate that the diagnosis was caused or aggravated by a compensable employment factor.

On December 10, 2018 appellant requested reconsideration. By decision dated March 7, 2019, OWCP denied modification. It accepted that on October 1, 2017 appellant responded to inmate activity and that several inmates with weapons charged at him injuring his left pinky finger. However, the medical evidence of record did not substantiate that his preexisting PTSD and anxiety conditions were aggravated by the compensable employment factor.

On April 8, 2019 appellant requested reconsideration. No additional evidence was received. By decision dated July 8, 2019, OWCP denied appellant's request for reconsideration without conduction a merit review.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.<sup>3</sup> Its procedures provide as an example of when cases should be doubled, if a new claim is filed for a separate injury that occurred on the same date.<sup>4</sup> In the instant claim, OWCP File No. xxxxxx926, appellant filed an occupational disease claim for an aggravation of a preexisting emotional condition arising from the October 1, 2017 event. OWCP had previously accepted appellant's traumatic injury claim, assigned OWCP File No. xxxxxx115, for fracture of the left little finger phalanx, arising from the same injury on the same date. All evidence that forms the basis of a decision must appear in the case record.<sup>5</sup> The evidence pertaining to OWCP File No. xxxxxx115, however, is not part of the case record presently before the Board.

As these files have not been administratively combined, the Board is unable to determine whether all pertinent evidence submitted in OWCP File No. xxxxxx115 pertaining to the accepted October 1, 2017 incident had been reviewed by OWCP in the instant claim.<sup>6</sup> The Board thus finds that this case is not in posture for decision as the record before the Board is incomplete and would not permit an informed adjudication of the case.<sup>7</sup>

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

<sup>4</sup> *Id.*

<sup>5</sup> *D.B.*, Docket No. 19-0262 (issued December 31, 2019).

<sup>6</sup> *See T.L.*, Docket No. 18-0935 (issued February 25, 2020).

<sup>7</sup> *See Order Remanding Case, L.A.*, Docket No. 19-1248 (issued April 16, 2020).

For a full and fair adjudication, the Board finds that the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx115 so it can properly determine whether appellant has established that his emotional condition was causally related to the alleged factors of employment.<sup>8</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of appellant's claim.

**IT IS HEREBY ORDERED THAT** the July 8 and March 7, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: December 3, 2020  
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>8</sup> See *Order Remanding Case, S.L.*, Docket No. 20-0208 (issued June 15, 2020); *Order Remanding Case, J.N.*, Docket No. 19-1847 (issued April 30, 2020).