

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

S.W., Appellant)	
)	
and)	Docket No. 22-1188
)	Issued: October 18, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
JOHN J. PERSHING VA MEDICAL CENTER,)	
Poplar Bluff, MO, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On August 11, 2022 appellant filed a timely appeal from an August 9, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-1188.

On January 13, 2019 appellant, then a 47-year-old medical technologist, filed an occupational disease claim (Form CA-2) alleging that he experienced an allergic reaction, shortness of breath, confusion, fatigue, and blurred vision due to workplace exposure to mold. He noted that he first became aware his condition on March 1, 1990 and realized its relationship to his federal employment on February 1, 2015. OWCP assigned that claim OWCP File No. xxxxxx158.

On January 17, 2019 appellant filed a traumatic injury claim (Form CA-1) alleging that on January 14, 2019 he experienced brain and body swelling, confusion, memory problems, and difficulty breathing due to exposure to mold while in the performance of duty. He stopped work on that date. OWCP assigned that claim OWCP File No. xxxxxx215.

By decision dated March 1, 2019, OWCP denied appellant's traumatic injury claim under OWCP File No. xxxxxx215, finding that appellant had not factually established that the workplace mold exposure occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

By decision dated March 18, 2019, OWCP denied appellant's occupational disease claim under OWCP File No. xxxxxx158. It accepted that appellant was exposed to mold at work and that appellant had established a diagnosed condition, but denied appellant's claim finding insufficient medical evidence to establish causal relationship between his allergic reaction and the accepted workplace exposure.

Appellant subsequently submitted multiple requests for reconsideration, along with additional evidence. By decisions dated May 16, 2019 under OWCP File No. xxxxxx215, and June 27, 2019, September 27, 2019, and February 26, 2020 under OWCP File No. xxxxxx158, OWCP denied modification.

On October 2, 2019 appellant appealed the May 16, 2019 decision to the Board.

On October 2, 2020 appellant, through then-counsel, requested reconsideration of the February 26, 2020 decision and submitted additional evidence. By decision dated January 8, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim under OWCP File No. xxxxxx158, pursuant to 5 U.S.C. § 8128(a). On February 1, 2021 appellant, through his then-counsel, again requested reconsideration of the February 26, 2020 decision under OWCP File No. xxxxxx158 and submitted additional evidence. By decision dated February 25, 2021, OWCP denied appellant's request for reconsideration of the merits of his claim under OWCP File No. xxxxxx158, pursuant to 5 U.S.C. § 8128(a). By decision dated March 29, 2021, it vacated the February 25, 2021 decision. OWCP conducted a merit review of appellant's case under OWCP File No. xxxxxx158 and denied modification. Appellant continued to request reconsideration under OWCP File No. xxxxxx158 and submitted additional evidence. By decision dated September 15, 2021, OWCP denied modification of the March 29, 2021 decision under OWCP File No. xxxxxx158.

By decision dated March 4, 2022, the Board set aside the May 16, 2019 decision under OWCP File No. xxxxxx215 and ordered OWCP to administratively combine OWCP File Nos. xxxxxx215 and xxxxxx158 to be followed by a *de novo* decision.

On April 11, 2022, OWCP administratively combined OWCP File Nos. xxxxxx215 and xxxxxx158, with the latter serving as the master file.

By *de novo* decision dated August 9, 2022, under OWCP File No. xxxxxx215, OWCP found that appellant was exposed to mold at work and that he was diagnosed with medical conditions; however, it denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between his medical conditions and the accepted employment exposure.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

The Board notes that appellant, in his January 13, 2019 occupational disease claim under OWCP File No. xxxxxx158 and his January 17, 2019 traumatic injury claim under OWCP File No. xxxxxx215, alleged the same workplace exposure to mold. The Board has held that a claim is duplicative of a previous claim, if the employee did not assert that the injury occurred from any

new employment factors beyond those considered in the denial of the previous claim.¹ OWCP's procedures further contemplate that duplicate cases should not be created and that development should not occur under the duplicate case.²

Consequently, in the present case, as appellant has not alleged any new work factors or exposure, his January 17, 2019 traumatic injury claim assigned OWCP File No. xxxxxx215 constitutes a duplicate claim.³

The case must therefore be remanded to OWCP. On remand, OWCP shall combine the contents of OWCP File Nos. xxxxxx215 and xxxxxx158 under the latter file number, and thereafter delete OWCP File No. xxxxxx215 as a separate claim file.⁴

IT IS HEREBY ORDERED THAT the August 9, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: October 18, 2024
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹ See *S.W.*, Docket No. 16-0219 (issued April 5, 2016).

² See Federal (FECA) Procedure Manual, Part 1 -- Mail and Files, *Duplicate Cases*, Chapter 1.400.7 (February 2000); see also *W.M.*, Docket No. 09-1609 (issued April 5, 2010).

³ See *I.W.*, Docket No. 17-0958 (issued November 13, 2017); *S.W.*, Docket No. 16-0219 (issued April 5, 2016).

⁴ *Supra* note 2 at Chapter 1.400.8 (February 2000).