

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

O.V., Appellant)
and) Docket No. 14-997
U.S. POSTAL SERVICE, POST OFFICE,) Issued: September 29, 2014
Elizabeth, NJ, Employer)

)

Appearances:

James D. Muirhead, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

On March 20, 2014 appellant, through counsel, filed a timely appeal of a February 7, 2014 decision of the Office of Workers' Compensation Programs (OWCP) denying authorization for right knee surgery.¹ The Board assigned Docket No. 14-997.

On February 12, 2013 appellant, then a 54-year-old mail carrier, filed a traumatic injury claim alleging that on February 11, 2013 she injured her right knee when she missed a step while going up stairs to deliver a parcel. OWCP accepted the claim for right knee contusion. On May 16, 2013 Dr. Christopher R. Ropiak, a treating Board-certified orthopedic surgeon, requested authorization for right knee arthroscopic surgery with chondroplasty. By decision dated July 12, 2013, OWCP denied appellant's request for authorization for right knee surgery. By decision dated February 7, 2014, an OWCP hearing representative affirmed the denial of authorization for right knee surgery. The hearing representative found that appellant had sustained a prior employment-related right knee injury on June 9, 2008. He noted that the claim had been assigned OWCP File No. xxxxxx606 and the conditions accepted included right knee

¹ The Board notes that appellant's counsel submitted new evidence with her appeal. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. See 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

sprain, medial meniscus tear and osteoarthritis. The hearing representative further noted that appellant underwent right knee arthroscopic surgery on October 21, 2008 and December 27, 2011.

The Board has duly considered the matter and concludes that the case is not in posture for a decision. OWCP procedures provide that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and further indicates that the cases should be doubled as soon as the need to do so becomes apparent.² As the hearing representative referenced a prior claim which involved right knee conditions in denying her request for authorization for right knee surgery, OWCP should have combined the case files in accordance with its procedures.

As the record before the Board does not contain all the evidence from the prior claim, the Board is unable to properly address and adjudicate the issue of appellant's current traumatic injury under OWCP File No. xxxxxx689.

On remand, OWCP should combine the present case record, OWCP File No. xxxxxx689, with OWCP File No. xxxxxx606. After combining these case records on remand, OWCP should consider the evidence contained in the combined case record and, following any necessary further development, issue a *de novo* decision. Accordingly, the February 7, 2014 decision denying authorization for right knee surgery should be set aside.

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8(c)(1) (February 2000).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 7, 2014 is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: September 29, 2014
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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