

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

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<b>L.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 17-1960</b>
	)	<b>Issued: August 16, 2018</b>
<b>ARCHITECT OF THE CAPITAL,</b>	)	
<b>CONSTRUCTION DIVISION, Washington, DC,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:*  
*Capp P. Taylor, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
ALEC J. KOROMILAS, Alternate Judge

On September 20, 2017 appellant, through counsel, filed a timely appeal from a September 7, 2017 decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 17-1960.

Appellant, a 54-year-old electrician, has an accepted traumatic injury claim for aggravation of lumbago, which arose in the performance of duty on August 1, 2006 (OWCP File No. xxxxxx198).<sup>2</sup> He resumed work following his August 1, 2006 employment injury, and continued to receive periodic medical treatment for his accepted lumbar condition. On April 17, 2015

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> Appellant slipped and fell while walking down steps that were covered by a plastic tarp.

appellant sustained another employment-related traumatic injury that involved his cervical spine, left shoulder, lower back, and right lower extremity (OWCP File No. xxxxxx118).

On September 14, 2016 appellant filed a recurrence claim (Form CA-2a) under File No. xxxxxx198, alleging to have sustained a recurrence of disability beginning September 12, 2016. He explained that prior to his April 17, 2015 injury (File No. xxxxxx118), he had been working modified duty because of his August 1, 2006 employment-related lumbar condition. Once his April 17, 2015 injury had resolved, the employing establishment would not allow appellant to resume his pre-April 17, 2015 modified-duty assignment.

By decision dated May 24, 2017, OWCP denied appellant's claim for a recurrence of disability beginning September 12, 2016. Appellant requested reconsideration on June 9, 2017 and submitted additional medical evidence. In its September 7, 2017 decision, OWCP denied modification of its May 24, 2017 decision. On appeal, counsel argues that appellant has established a recurrence of disability with respect to his accepted August 1, 2006 lumbar condition (File No. xxxxxx198) because the employing establishment effectively withdrew his modified-duty assignment.

The Board finds that this case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), 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. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes or drawings.<sup>3</sup> Evidence may not be incorporated by reference, nor may evidence from another individual's case file be used.<sup>4</sup> Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.<sup>5</sup> All evidence that forms the basis of a decision must be in that claimant's case record.<sup>6</sup>

In adjudicating appellant's recurrence claim (File No. xxxxxx198), OWCP specifically referenced medical evidence obtained from his other claim (File No. xxxxxx118).<sup>7</sup> However, it did not combine the two lumbar-related case records or incorporate the referenced evidence into the current case record.<sup>8</sup> Because OWCP neglected to include the referenced information from File No. xxxxxx118 in the current case record, the Board is not in a position to make an informed

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

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

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> OWCP referenced a July 28, 2016 second opinion evaluation performed by Dr. Robert A. Smith, which report is not included in the current case record.

<sup>8</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000) (cases should be doubled/combined when correct adjudication of the issues depends on frequent cross-reference between files).

decision regarding appellant's entitlement to FECA benefits.<sup>9</sup> Therefore, the case shall be remanded to OWCP to consolidate case File Nos. xxxxxx198 and xxxxxx119. After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's claimed September 12, 2016 recurrence of disability under File No. xxxxxx198.

**IT IS HEREBY ORDERED THAT** the September 7, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order.

Issued: August 16, 2018  
Washington, DC

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

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

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

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<sup>9</sup> See *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).