

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

C.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer**

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**Docket No. 17-1952
Issued: February 9, 2018**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

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 an August 2, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 17-1952.

On October 30, 2016 appellant filed an occupational disease claim (Form CA-2) alleging that his job required a lot of sitting that caused right arm pain. He first became aware of the condition on July 23, 2015. The employing establishment indicated that appellant was working sedentary duties. In an attached statement, appellant described a previous right shoulder injury that occurred when he was lifting a stuck rear door on a work vehicle. He had shoulder surgery on November 30, 2015 and returned to modified duty in June 2016. Appellant also reported that he had previous rotator cuff surgery in 2012 due to an injury that occurred at home.

¹ 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.

By decision dated January 13, 2017, OWCP denied the claim, finding that the medical evidence of record did not establish an occupational disease caused by his sedentary, modified duties. Counsel timely requested a hearing that was held on June 29, 2017. In an August 2, 2017 decision, the hearing representative affirmed the January 13, 2016 decision. She noted that appellant had a previous claim for a July 23, 2015 employment injury, adjudicated under File No. xxxxxx708, accepted for right wrist sprain and right shoulder sprain, and that he had authorized right shoulder arthroscopy by Dr. Thomas W. Throckmorton, a Board-certified orthopedic surgeon, under that claim on November 30, 2015. The hearing representative referenced an October 3, 2016 report in which Dr. Throckmorton indicated that the arthroscopic repair he performed on the right rotator cuff on September 12, 2012 had failed four years later. She noted that this surgery was for a nonindustrial injury and thus did not support that appellant's current condition was causally related to employment factors. The hearing representative directed that File Nos. xxxxxx149 and xxxxxx708 be combined under OWCP procedures which provide for combining cases where correct adjudication depends on cross-referencing between files.²

The Board finds that the 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.³ Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.⁴ 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.⁵ All evidence that forms the basis of a decision must be in that claimant's case record.⁶ Furthermore, OWCP procedures provide for doubling case files when correct adjudication of the issues depends on frequent cross-reference between files such as when a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body.⁷

The hearing representative's August 2, 2017 decision referenced evidence associated with OWCP File No. xxxxxx708 and she directed OWCP to double this file with File No. xxxxxx149. She discussed an October 3, 2016 report by Dr. Throckmorton and relied on this medical evidence in denying appellant's occupational disease claim at issue here. However, the Board notes that Dr. Throckmorton's October 3, 2016 report is not in the current case record, File No. xxxxxx149, and OWCP has not doubled File Nos. xxxxxx149 and xxxxxx708 as directed by the hearing representative. In the instant appeal, it appears that, for a full and fair

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000).

³ *Id.* at *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Supra* note 2.

adjudication, OWCP's claims pertaining to appellant's right arm conditions should be combined pursuant to OWCP procedures.⁸ The case will be remanded to OWCP to combine case File Nos. xxxxxx149 and xxxxxx708. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

IT IS HEREBY ORDERED THAT the August 2, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: February 9, 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

⁸ *Id.* at *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).