

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

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| P.M., Appellant  | ) |  |
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| and  | ) | <b>Docket Nos. 17-0935 &amp;<br/>17-0936</b> |
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| U.S. POSTAL SERVICE, POST OFFICE,<br>Midland, MI, Employer | ) | <b>Issued: June 12, 2018</b>                 |
|  | ) |  |

*Appearances:*  
Thomas S. Harkins, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASES**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

On March 27, 2017 appellant, through counsel, filed a timely application for review of an October 28, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP) in OWCP File No. xxxxxx497. The Board docketed the appeal as No. 17-0935. Also on March 27, 2017 appellant, through counsel, filed a timely application for review of a December 14, 2016 decision issued in OWCP File No. xxxxxx168. The Board docketed this appeal as No. 17-0936.

The Board has duly considered this matter and finds that these cases are not in posture for decision.

The Board finds that the aforementioned case files should be administratively combined. In its October 28, 2016 decision in OWCP File No. xxxxxx497, OWCP indicated that it was denying a December 2, 2014 occupational disease claim wherein appellant indicated that she sustained an injury or medical condition on March 10, 2011 due to factors of her federal

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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.

employment. In its December 14, 2016 decision issued under OWCP File No. xxxxxx168, OWCP indicated that it was denying appellant's December 2, 2014 occupational disease claim for an injury sustained on April 24, 2012 due to factors of her federal employment.

On December 2, 2014 appellant filed a notice of recurrence (Form CA-2A), alleging a recurrence of her March 10, 2011 injury commencing April 24, 2012. Appellant alleged that the employing establishment refused to provide work consistent with her medical restrictions and that, as a result, she stopped work on April 24, 2012 due to an increase in her symptoms. This notice of recurrence appears to serve as the basis for both the October 28 and December 14, 2016 decisions. The Board notes that the record in both cases is different, with the record in OWCP File No. xxxxxx168 containing substantially more evidence than the record in OWCP File No. xxxxxx497. The alleged recurrence of disability commencing April 24, 2012 requires a review of evidence not only from the present claim files, OWCP File Nos. xxxxxx497 and xxxxxx168, but also appellant's prior claim in File No. xxxxxx227 (relating to prior accepted injuries of September 25, 2008 and March 10, 2011). The Board notes that the records in all three case files are relevant to whether appellant has sustained a recurrence of disability.

The case must, therefore, be remanded to OWCP to combine OWCP File Nos. xxxxxx497 and xxxxxx168 with xxxxxx227. OWCP should then reevaluate the evidence, conduct any other development as deemed necessary, and then issue an appropriate *de novo* decision.

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 14 and October 28, 2016 are set aside and the cases are remanded for further proceedings consistent with this opinion.<sup>2</sup>

Issued: June 12, 2018  
Washington, DC

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

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

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<sup>2</sup> Colleen Duffy Kiko, Judge, participated in the preparation of this decision, but was no longer a member of the Board effective December 11, 2017.