

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

N.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Boston, MA, Employer**

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Docket No. 17-1790
Issued: May 1, 2018

Appearances:

*Benjamin R. Zimmerman, 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 August 18, 2017 appellant, through counsel, filed a timely appeal from a July 27, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Board docketed the appeal as No. 17-1790.

On March 6, 2013 appellant, then a 61-year-old sales and service associate, filed an occupational disease claim (Form CA-2) alleging an acceleration of her left knee osteoarthritis due to her federal job duties of standing for three hours at a time, with frequent walking, as well as some bending, lifting, pushing, stretching, and reaching. She noted that she had performed her position for 24 years. Appellant retired from the employing establishment on January 31, 2013. She noted that she had two prior traumatic left knee injuries. In OWCP File

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.

² Appellant timely requested oral argument before the Board. By order dated January 29, 2018, the Board exercised its discretion pursuant to 20 C.F.R. § 505.5(a) and denied the request, finding that the issues could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 17-1790 (issued January 29, 2018).

No. xxxxxx771, appellant alleged that she sustained a work-related left knee contusion. She underwent left knee arthroscopy on March 10, 2004. In OWCP File No. xxxxxx395, appellant alleged that she sustained a left knee sprain on December 17, 2007.

The Board has duly considered the matter and finds that this case is not in posture for decision. OWCP procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-referencing between files. For example, if 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, doubling is required.³ In the instant case, appellant had two prior claims for left knee conditions, assigned File No. xxxxxx771 and File No. xxxxxx395. She then filed an occupational disease claim for the same body part, assigned File No. xxxxxx468, which is currently before the Board.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with File Nos. xxxxxx771 and xxxxx395, and determine whether appellant has provided sufficient rationalized medical opinion evidence to establish that she sustained a permanent aggravation or acceleration of her left knee arthritis due to factors of her federal employment.⁴ Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the July 27, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 1, 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

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).