

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

<hr/>	
A.B., Appellant)
)
and)
)
DEPARTMENT OF AGRICULTURE, ANIMAL)
& PLANT HEALTH INSPECTION SERVICE,)
VETERINARY SERVICES, EASTERN)
REGIONAL OFFICE, Raleigh, NC, Employer)
<hr/>	

Docket No. 18-1626
Issued: August 22, 2019

Appearances:

*Paul H. Felser, Esq., for the appellant*¹

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

JANICE B. ASKIN, Judge

On August 24, 2018 appellant, through counsel, filed a timely appeal from a May 21, 2018 decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 18-1626.

On July 12, 2012 appellant, then a 38-year-old veterinary medical officer, filed a traumatic injury claim (Form CA-1) alleging that on July 9, 2012 she slipped and fell between an outdoor stairway landing and a parking deck while in the performance of duty. She noted that she landed

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 February 21, 2019, the Board exercised its discretion and denied the request as the matter could be adequately addressed based on a review of the case record. Order Denying Oral Argument, Docket No. 18-1626 (issued February 21, 2019).

on the right side of her body and experienced pain and numbness in her right arm between her elbow and fingers. In her accompanying narrative statement, appellant reported that she had experienced some degree of pain and numbness in her right arm between her elbow and hand since her prior right upper extremity injury on September 16, 2002, which was accepted for reflex sympathetic dystrophy (RSD), fractures, nerve damage, and multiple surgeries.³ She alleged that the July 9, 2012 employment incident had aggravated her right arm symptoms such that she had been experiencing difficulty with gripping and holding things in her right hand as well as driving.

On October 12, 2012 OWCP accepted appellant's claim for abrasion or friction burn of the right elbow, forearm, and wrist, as well as right upper limb RSD. On March 12, 2013 it placed appellant on the periodic rolls after the employing establishment reported no further light duty was available.

On November 7, 2014 OWCP referred appellant for a second opinion evaluation with Dr. Alexander N. Dorman, a Board-certified orthopedic surgeon. Dr. Dorman reviewed the statement of accepted facts (SOAF), including a description of appellant's September 19, 2002 injury, diagnosis, medical, and procedural history. In a report dated December 12, 2014, he found appellant could not return to her date-of-injury position due to her accepted condition of right upper limb RSD, but could perform light-duty work.

On August 7, 2015 OWCP received an investigative memorandum from the employing establishment including video surveillance of appellant jogging and reports that appellant had competed in a triathlon on September 30, 2012 and in the Boston marathon in 2013. On October 16, 2015 Dr. Dorman reviewed the investigative memorandum and determined that appellant had no residuals of her accepted July 9, 2012 conditions.

By decision dated March 4, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits due to her July 9, 2012 employment injury effective March 6, 2016. Appellant requested an oral hearing before an OWCP hearing representative. By decision dated November 29, 2016, OWCP's hearing representative affirmed the March 4, 2016 decision, finding that appellant had no continuing disability or medical residuals due to her accepted employment injuries of July 9, 2012.

Appellant requested reconsideration on November 28, 2017. On February 27, 2018 OWCP referred appellant to Dr. Howard B. Krone, a Board-certified orthopedic surgeon, for an impartial medical examination. Dr. Krone found that appellant continued to experience RSD, but that this condition was due only to her September 16, 2002 employment injury, with no residuals or disability due to the July 9, 2012 employment injury.

By decision dated May 21, 2018, OWCP denied modification of the November 29, 2016 decision. It found that the special weight of the medical evidence was represented by Dr. Krone's reports, which established no ongoing disability or medical residuals due to the July 9, 2012 employment injury.

³ Appellant's prior claim was assigned OWCP File No. xxxxxx356.

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.⁴ Evidence may not be incorporated by reference, nor may evidence from another individual's case file be used.⁵ 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.⁶ All evidence that forms the basis of a decision must be in that claimant's case record.⁷

In adjudicating the present claim, File No. xxxxxx367, OWCP referenced the facts and medical conclusions obtained from File No. xxxxxx356.⁸ However, it has not administratively combined the two case records or incorporated the referenced evidence into the current case record.⁹ The Board is therefore not in a position to make an informed decision regarding appellant's entitlement to FECA benefits.¹⁰

Furthermore, OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.¹¹ 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.¹²

In the instant case, appellant filed a traumatic injury claim which OWCP assigned File No. xxxxxx367 for a right upper extremity injury. OWCP thereafter terminated wage-loss compensation and medical benefits effective March 6, 2016. Appellant's prior claim for a right upper extremity injury, to which OWCP assigned File No. xxxxxx356, is not presently before the Board. The medical evidence of record in File No. xxxxxx367, begins July 9, 2012 and does not contain prior medical evidence found in File No. xxxxxx356.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(a) (June 2011).

⁵ *Id.*; *G.K.*, Docket No. 18-1594 (issued March 8, 2019).

⁶ *Id.*

⁷ *Id.*

⁸ *G.K.*, *supra* note 5.

⁹ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000) (cases should be combined when correct adjudication of the issues depends on frequent cross-referencing between files); *G.K.*, *supra* note 5.

¹⁰ See *G.K.*, *supra* note 5; *C.R.*, Docket No. 17-1262 (issued May 21, 2018); *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000).

¹² *Id.*; *D.L.*, Docket No. 18-0592 (issued February 6, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

For a full and fair adjudication, the case must be returned to OWCP to combine the current case record with File No. xxxxxx356.¹³ Following this and other such further development as it deems necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the May 21, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 22, 2019
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

¹³ *K.T., id.*