

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

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T.M., Appellant)	
)	
and)	Docket No. 19-1065
)	Issued: December 17, 2019
DEPARTMENT OF VETERANS AFFAIRS, ST.)	
CLOUD HEALTH CARE SYSTEM,)	
St. Cloud, MN, Employer)	
_____)	

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
JANICE B. ASKIN, Judge

On April 15, 2019 appellant, through counsel, filed a timely appeal from a March 15, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1065.

On April 14, 2016 appellant, then a 32-year-old information technology (IT) specialist, filed a recurrence of disability claim (Form CA-2a) under OWCP File No. xxxxxx636 for a previously accepted February 22, 2011 employment injury. On his Form CA-2a he identified April 4, 2016 as the date of recurrence. Appellant claimed that he sustained a recurrence of disability after returning to work on April 4, 2016 due to walking, not at his own pace. Thereafter, on May 24, 2016 he filed an occupational disease claim (Form CA-2 alleging that he sustained continued left L5 radiculopathy from the previously accepted February 22, 2011 work injury by performing the same types of body movements that had caused his February 22, 2011 employment

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.

injury, but that he was filing a new claim as his prior recurrence claim had been denied. OWCP assigned the new occupational disease claim File No. xxxxxx995.

By decision dated November 29, 2016, OWCP adjudicated appellant's claim in File No. xxxxxx995 as an occupational disease, but found that the evidence of record failed to establish the factual component of fact of injury because he had not submitted a statement with a detailed description of the employment-related activities which he believed contributed to his condition.

On December 6, 2016 appellant, through counsel, requested an oral hearing before a hearing representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on June 16, 2017. By decision dated August 31, 2017, OWCP's hearing representative affirmed the prior decision, finding that the evidence of record was insufficient to establish fact of injury.

On April 24, 2018 appellant, through counsel, requested reconsideration and submitted an October 23, 2017 report from Dr. Nathan R. Brever, a Board-certified family practitioner, who opined that appellant had sustained an aggravation of his prior employment injury which resulted in disability from work.

By decision dated March 15, 2019, OWCP denied modification of its prior decision.

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-reference between files.² 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 Appellant filed a recurrence of disability claim for a February 22, 2011 employment injury, which OWCP converted to an occupational disease claim and assigned File No. xxxxxx995. OWCP thereafter denied the claim for failure to establish fact of injury. The earlier claim for the February 22, 2011 employment injury, to which OWCP assigned File No. xxxxxx636, is not presently before the Board. The medical evidence of record in File No. xxxxxx995 begins on March 14, 2016 and does not contain prior medical evidence contained in File No. xxxxxx636. As these two case files have not been administratively combined, the Board is unable to determine whether appellant has established a new employment injury or a recurrence of his previously accepted claim. For a full and fair adjudication, the case must be returned to OWCP to combine the current case record with File No. xxxxxx636 and determine whether appellant sustained either a recurrence of disability due to his previously accepted employment injury or a new employment injury.⁴ Following this and such further development as it deems necessary, OWCP shall issue a *de novo* decision.

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

³ *Id.*

⁴ *See D.L.*, Docket No. 17-1588 (issued January 28, 2019); *L.Z.*, Docket No. 11-1415 (issued December 12, 2011).

IT IS HEREBY ORDERED THAT the March 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: December 17, 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