

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

P.E., Appellant)	
)	
and)	Docket Nos. 17-1586 & 17-1648
)	
U.S. POSTAL SERVICE, POST OFFICE, Elizabethtown, KY, Employer)	Issued: February 7, 2019
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 14, 2017 appellant, through counsel, filed a timely appeal from a June 14, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP) under OWCP File No. xxxxxx598.² On July 25, 2017 appellant, through counsel, filed a timely appeal from a July 5, 2017 merit decision of OWCP under OWCP File No. xxxxxx362.³ The Board finds that these cases are not in posture for decision.

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 The Clerk of the Appellate Boards assigned the July 14, 2017 appeal Docket No. 17-1586.

³ The Clerk of the Appellate Boards assigned the July 25, 2017 appeal Docket No. 17-1648.

On October 2, 2015 appellant, then a 50-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 1, 2015 she injured her right shoulder and forearm in the performance of duty.⁴ OWCP assigned that claim File No. xxxxxx598.

By decision dated November 12, 2015, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the October 1, 2015 employment incident occurred, as alleged. Appellant subsequently requested reconsideration, but by decisions dated June 29 and November 23, 2016 and June 14, 2017, OWCP denied modification of its prior decision.

On November 10, 2015 appellant filed an occupational disease claim (Form CA-2) alleging that she sustained osteoarthritis, bursitis, and tendinosis of the right shoulder in the performance of her duties. OWCP assigned that claim File No. xxxxxx362. Appellant indicated that she first became aware of her claimed condition and realized its relation to her federal employment on or about October 28, 2015.⁵ On the reverse side of the claim form, appellant's supervisor noted that appellant stopped work on October 2, 2015 and had not returned, and the medical evidence submitted by her in support of her claim discussed an October 1, 2015 fall at work which caused injury to her arm and shoulder. By decision dated January 20, 2016, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the claimed work event(s) occurred as described. It noted that it was unclear as to when she claimed factors of employment contributed to her injury. Appellant subsequently requested reconsideration. By decision dated June 21, 2016, OWCP modified the January 20, 2016 decision to find that it had accepted that appellant's work included casing mail and flats, pulling on 700 mailboxes daily, and carrying parcels weighing up to 70 pounds. However, the claim remained denied as the evidence of record was insufficient to establish causal relationship between those accepted work factors and appellant's diagnosed medical conditions. Appellant again requested reconsideration, but in its July 5, 2017 decision, OWCP denied modification.

The record in OWCP File No. xxxxxx362 does not contain any development of appellant's claim in OWCP File No. xxxxxx598. Likewise, the record in OWCP File No. xxxxxx598 does not contain any development of appellant's claim in OWCP File No. xxxxxx362. In light of the fact that appellant had identified the same claimed pain and shoulder trauma in both OWCP File Nos. xxxxxx598 and xxxxxx362, it is essential for OWCP to consolidate the claim files and determine whether they are duplicate claims. This will allow OWCP to consider all relevant claim files in developing appellant's claims. Moreover, to consider appellant's appeals at this stage would involve a piecemeal adjudication of the issues in appellant's claims and raise the possibility

⁴ On December 17, 2015 OWCP received in File No. xxxxxx598 an undated handwritten statement from appellant. Appellant explained that, when she walked through the door after parking her employing establishment vehicle to reload, her foot got caught on a tray of mail. She threw her right arm out to catch a step, but missed, and her right arm took the brunt of the fall, causing injury to her right arm and shoulder.

⁵ On December 17, 2015 OWCP received in File No. xxxxxx362, the same undated narrative statement that was received in File No. xxxxxx598, wherein appellant explained that, when she walked through the door after parking her employing establishment vehicle to reload, her foot got caught on a tray of mail. Appellant threw her right arm out to catch a step, but missed, and her right arm took the brunt of the fall, causing injury to her right arm and shoulder.

of inconsistent results. It is the Board's policy to avoid such an outcome.⁶ Because it is essential for the Board to review the medical evidence contained in both case files in order to render a full and fair adjudication of the present appeals, this case will be set aside and remanded to OWCP to consolidate OWCP File No. xxxxxx362 with OWCP File No. xxxxxx598. Reconstruction of the record will be followed by any necessary further development and a *de novo* decision on the merits of the claims, in order to protect appellant's appeal rights.⁷

IT IS HEREBY ORDERED THAT the July 5 and June 14, 2017 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order.

Issued: February 7, 2019
Washington, DC

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

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁶ See *William T. McCracken*, 33 ECAB 1197 (1982).

⁷ On remand, OWCP should review the evidence in both case files to determine whether appellant's claim in File No. xxxxxx362 constitutes a claim for a new injury or is a duplicate of the claim adjudicated under File No. xxxxxx598.