

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

_____)	
D.L., Appellant)	
)	
and)	Docket No. 18-0592
)	Issued: February 6, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Summerville, SC, 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
ALEC J. KOROMILAS, Alternate Judge

On January 26, 2018 appellant, through counsel, filed a timely appeal from a December 12, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). This appeal was assigned Docket No. 18-0592.

On June 18, 2014 appellant, then a 55-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she injured her right knee and right shoulder on May 8, 2014 when she jammed on the brakes of her postal vehicle to stop suddenly while delivering mail. That claim was adjudicated under OWCP File No. xxxxxx360. By decision dated July 29, 2014, OWCP denied the claim, finding that, although appellant had established that the claimed May 8, 2014 incident occurred as alleged, the medical evidence of record was insufficient to establish that the accepted incident caused an injury or medical condition.

On August 6, 2014 appellant filed a second traumatic injury claim (Form CA-1), alleging that on June 18, 2014 she fell backwards at the employing establishment, injuring her right

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.

shoulder and right knee. OWCP adjudicated that claim under OWCP File No. xxxxxx120. By decision dated September 22, 2014, it denied the June 18, 2014 claim. OWCP found that appellant had not submitted sufficient evidence to support that the claimed injury and/or event occurred as alleged.²

Appellant, through counsel, filed an appeal with the Board on August 17, 2016. By decision dated February 10, 2017, the Board found that appellant had not established either a right knee and/or a right shoulder injury on May 8, 2014 or on June 18, 2014 and affirmed OWCP's July 1 and 25, 2016 merit decisions.³

On August 15, 2017 appellant, through counsel, again requested reconsideration and submitted additional medical evidence. By decision dated December 12, 2017, OWCP reviewed the merits of appellant's June 18, 2014 claim under OWCP File No. xxxxxx120, but denied modification. It noted that the medical evidence did not relate appellant's current condition to the accepted June 18, 2014 employment incident, but rather related it to an alleged injury that occurred on May 8, 2014 that had not been accepted as employment related.

OWCP's procedures provide that cases should be doubled when a new injury is reported for an employee who previously filed an injury claim for a similar condition and continues that the cases should be doubled as soon as the need to do so becomes apparent.⁴ Its procedures further provide for combining case files where correct adjudication depends on 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.⁵ In the claim adjudicated by OWCP under File No. xxxxxx360, appellant claimed injury to her right shoulder and knee due to the accepted May 8, 2014 incident. In the claim adjudicated under File No. xxxxxx120, she also claimed injury to her right knee and shoulder due to a June 18, 2014 incident that has also been accepted.

² Appellant timely requested hearings before an OWCP hearing representative from both the July 29, 2014 decision, adjudicated under File No. xxxxxx360, and the September 22, 2014 decision, adjudicated under File No. xxxxxx120. By decision dated May 6, 2015, an OWCP hearing representative affirmed the July 29, 2014 decision, finding that the medical evidence submitted was insufficient to establish that the diagnosed conditions were caused by the accepted incident of May 8, 2014. By decision dated July 24, 2015, she affirmed the September 22, 2014 decision, as modified. The hearing representative found the evidence sufficient to establish that the claimed June 18, 2014 incident occurred as alleged, but that the medical evidence submitted was insufficient to establish that diagnosed conditions were caused by the accepted incident. On January 8, 2016 appellant, through counsel, requested reconsideration of the May 6, 2015 decision, issued under File No. xxxxxx360 (May 8, 2014 incident). In a merit decision dated February 18, 2016, OWCP denied modification of the May 6, 2015 decision because the record did not contain a medical opinion that sufficiently explained how or why the current diagnoses were due to the May 8, 2014 employment incident. On April 20 and 21, 2016 appellant, through counsel, requested reconsideration of the April 5, 2016 decision regarding File No. xxxxxx360 and the July 21, 2015 decision regarding File No. xxxxxx120. By decision dated July 1, 2016, issued under File No. xxxxxx360 (May 8, 2014 injury), and decision dated July 25, 2016, issued under File No. xxxxxx120 (June 18, 2014 injury), OWCP denied modification of the prior decisions.

³ Docket No. 16-1661 (issued February 10, 2017).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8(c)(1) (February 2000). See *T.M.*, Docket Nos. 09-1090 & 09-2226 (issued March 8, 2010).

⁵ *Id.* at Chapter 2.400.8(c); see also *J.M.*, Docket No. 13-1111 (issued July 15, 2013).

The Board finds that these cases should be combined. On remand OWCP shall combine OWCP File No. xxxxxx360 with OWCP File No. xxxxxx120. Following this and any necessary further development, OWCP shall issue a *de novo* decision on appellant's claims for right shoulder and right knee conditions.⁶

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2017 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: February 6, 2019
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

⁶ *M.M.*, Docket No. 17-1150 (issued January 28, 2018).