United States Department of Labor
Employees' Compensation Appeals Board

D.L., Appellant	)	
and	)	**Docket No. 17-1588**
	)	**Issued: January 28, 2019**
U.S. POSTAL SERVICE, POST OFFICE, Newark, NJ, Employer	)	

Appearances:
Thomas R. Uliase, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 14, 2017 appellant filed a timely appeal from a May 15, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Board docketed the appeal as No. 17-1588.

On June 9, 2000 appellant, then a 33-year-old letter carrier, filed a traumatic injury (Form-CA-1) alleging that on June 9, 2000 she felt pain in her upper back and neck. She noted that the pain returned on June 10, 2000 and she stopped work on June 15, 2000. OWCP accepted the claim, assigned OWCP File No. xxxxxx626, for cervical and thoracic sprains, along with displacement of an intervertebral disc. On August 17, 2000 appellant returned to limited-duty work, four hours a day, five days a week. Additionally, OWCP accepted a recurrence of disability on June 22, 2000. Appellant stopped work and was placed on the periodic compensation rolls by OWCP, effective August 22, 2000.

[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.

On May 1, 2013 appellant returned to work in a full-time modified position. The employing establishment noted that appellant was on a limited-duty assignment with a 50-pound weight restriction since the original injury. Appellant worked for two days in the modified position and thereafter on May 8, 2013 she filed a notice of recurrence (Form CA-2a) alleging total disability, effective May 2, 2013, causally related to her accepted June 9, 2000 employment injury. She alleged the recurrence occurred when she was performing heavy lifting and reaching over head above her shoulders while delivering a full route of mail. OWCP converted the recurrence claim to a claim for a new traumatic injury, assigned File No. xxxxxx614.

Appellant was treated by Dr. James M. Lee, an orthopedic surgeon, who performed a physical examination and determined that she had sustained a recurrence of disability and was disabled from work.

On May 15, 2014 OWCP referred the case record for File No. xxxxxx614, the case record for File No. xxxxxx626, and a statement of accepted facts to a district medical adviser (DMA), for an opinion as to whether appellant's work activities on May 1 or 2, 2013 caused or contributed to the diagnosed conditions and her capacity to return to work.

In a report dated May 27, 2014, the DMA opined that Dr. Lee's findings differed from those reported by a second opinion examiner, Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon, on March 5, 2012. The DMA indicated that a conflict existed between the opinions of Drs. Lakin and Lee as to injury-related conditions and disability. OWCP thereafter found a conflict in the medical opinion evidence between Dr. Lee, the attending physician, and the DMA.

The Board has duly considered the matter and concludes that this case is not in posture for decision. OWCP's procedures provide that cases should be administratively 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]

The DMA referenced many second opinion reports, containing physical examination findings, which had been performed between 2001 and 2012, including the last second opinion of March 15, 2012. However, such records are not available for the Board to review. Without the ability to review this evidence, the Board is precluded from determining the probative value of the reports of Dr. Lee and the DMA relative to whether a conflict had properly been declared by OWCP.

For a full and fair adjudication, the case must be returned to OWCP to combine the current case record with File No. xxxxxx626.[4] Following this and other such 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 K.T.*, Docket No. 17-0432 (issued August 17, 2018); *L.Z.*, Docket No. 11-1415 (issued December 12, 2011).

ORDER

IT IS HEREBY ORDERED THAT the May 15, 2017 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: January 28, 2019
Washington, DC

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

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

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