

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

_____)	
L.H., Appellant)	
)	
and)	Docket No. 18-1777
)	Issued: July 29, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Freehold, 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
JANICE B. ASKIN, Judge

On September 25, 2018 appellant, through counsel, filed a timely appeal from a May 4, 2018 decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 18-1777.

On January 22, 2014 appellant, then a 49-year-old rural carrier, injured her lower back while in the performance of duty. Under File No. xxxxxx498, OWCP accepted her traumatic injury claim for temporary aggravation of lumbosacral degenerative disc disease. On May 24, 2014 appellant resumed full-time, regular-duty work without restrictions.

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 Board notes that following the May 4, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "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. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On July 11, 2016 appellant filed the current occupational disease claim (Form CA-2) alleging that she sustained injury to her back, hips, and legs due to factors of her federal employment. She indicated that she first became aware of her condition on January 22, 2014, and first realized it was employment related on January 26, 2016. On the reverse side of Form CA-2, the employing establishment reported that appellant stopped work on January 26, 2016, and she had yet to return to work at the time she filed her Form CA-2.

By decision dated November 14, 2016, OWCP denied appellant's occupational disease claim finding that she had not met her burden of proof to establish causal relationship.

Appellant, through counsel, timely requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 1, 2017. By decision dated April 4, 2017, the hearing representative affirmed OWCP's November 14, 2016 decision.

On February 5, 2018 appellant, through counsel, requested reconsideration and submitted additional medical evidence. In a December 12, 2017 report, Dr. Sandeep Rathi, Board-certified in physical medicine, rehabilitation, and pain medicine, noted that appellant had sustained a work-related injury on January 22, 2014 while delivering mail in the snow. He reviewed her history and provided examination findings related to her lumbar spine. Dr. Radhi reported that appellant's diagnoses related to the January 22, 2014 employment injury included: bilateral lumbar facet joint syndrome; annular tear at L3-4 and L4-5; and disc herniations at L4-5 and L5-S1. He opined that she sustained a permanent work-related injury to her spine on January 22, 2014 and that her employment duties for the period May 2014 through January 27, 2016 had aggravated her injury.

In a January 8, 2018 report, Dr. Robert B. Grossman, a Board-certified orthopedic surgeon, indicated that appellant had sustained a previous work-related lumbar injury on January 22, 2014 under OWCP File No. xxxxxx498. He described her rural carrier employment duties, which required twisting, bending, stooping, and lifting, and noted that she continued to experience increased significant back pain from her previous back injury. Dr. Grossman reported that appellant reinjured her back in January 2016 while in the performance of duty as a rural carrier.

By decision dated May 4, 2018, OWCP denied modification of the April 4, 2017 hearing representative's decision.

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-referencing between files.³ 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.⁴ In the instant case, appellant had a prior traumatic injury claim for a back condition, assigned OWCP File No. xxxxxx498. The earlier claim for the January 2014 employment injury is not presently before the Board. Appellant then filed an occupational disease claim for the same part of the body, assigned OWCP File No. xxxxxx373, which is currently before the Board. She submitted medical evidence, which has

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁴ *Id.*

indicated that appellant reinjured or aggravated her previous lumbar injury under OWCP File No. xxxxxx498.

For a full and fair adjudication, the Board finds that the previous claim pertaining to appellant's aggravation of degenerative disc disease condition, under OWCP File No. xxxxxx498 should be combined with the current claim under OWCP File No. xxxxxx373, pursuant to OWCP procedures. In the current case record before the Board, the medical evidence of record has alluded to the fact that appellant's employment duties contributed to or aggravated her original January 22, 2014 employment injury. Accordingly, consolidation of appellant's case files will allow OWCP to consider all relevant claim files and review all of the necessary evidence in order to determine whether she has provided sufficient medical evidence to establish that she sustained an aggravation or acceleration of her degenerative lumbar condition due to facts of her federal employment.⁵

The case will be remanded to OWCP to combine the records for case File Nos. xxxxxx498 and xxxxxx373. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of appellant's claim.

IT IS HEREBY ORDERED THAT the May 4, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order.

Issued: July 29, 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

⁵ See *N.H.*, Docket No. 17-1790 (issued May 1, 2018).