

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

C.W., Appellant)	
)	
and)	Docket Nos. 18-0011 & 18-1002
)	Issued: June 11, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Highland, NY, 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 October 2, 2017 appellant, through counsel, filed timely appeals from July 28 and 31, 2017 merit decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeals as No. 18-0011 and 18-1022.

On September 23, 2016 appellant, then a 54-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained an injury to his right elbow and forearm as a result of loading parcels into his long life vehicle (LLV) while in the performance of duty. He stopped work on the date of injury. OWCP assigned the claim File No. xxxxxx604.

On November 28, 2016 appellant filed an occupational disease claim (Form CA-2) alleging that he developed a right elbow lateral condition as a result of his employment duties including the repetitive motion of delivering, sorting, and loading mail. He noted that he first became aware of his condition on August 18, 2016 and first realized that it resulted from his employment on

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.

September 28, 2016. Appellant's occupational disease claim was assigned OWCP File No. xxxxxx642.

On October 18, 2016 appellant responded to OWCP's development questionnaire in File No. xxxxxx604. He explained that on September 23, 2016 he lifted a parcel weighing approximately 7 to 10 pounds and placed it into the LLV when he felt a pull in his right forearm and elbow. Appellant asserted that he had not had similar symptoms, to that degree, prior to the incident. He related that on August 8, 2016 he received medical treatment for discomfort in the same arm.

By decision dated November 21, 2016, OWCP denied appellant's traumatic injury claim under OWCP File No. xxxxxx604. It accepted that the September 23, 2016 incident occurred as alleged and that he had been diagnosed with right elbow lateral epicondylitis, but it denied his claim finding that the medical evidence of record was insufficient to establish causal relationship between his right elbow condition and the accepted incident.

Appellant subsequently answered a development questionnaire regarding his occupational disease claim in OWCP File No. xxxxxx642. He noted his belief that his employment activities of sorting, lifting, and delivering mail and parcels on a daily basis had contributed to his right elbow/forearm condition. Appellant explained that he sorted parcels and mail in delivery sequence for approximately 2 to 2½ hours daily; transferred mail and parcels from the work area to the postal truck using trays, carts, and hampers for approximately 10 to 15 minutes daily; delivered mail and parcels along an established route for 4 to 5 hours daily; and returned to the post office to bring back any mail or parcels for approximately 10 to 15 minutes daily.

By decision dated February 3, 2017, OWCP accepted appellant's occupational disease claim under File No. xxxxxx642 for the condition of right elbow lateral epicondylitis. It paid appellant wage-loss compensation and medical benefits. By separate decision dated February 3, 2017, OWCP denied the expansion of the acceptance of appellant's occupational disease claim to include the condition of right elbow partial-thickness tear. It found that the medical evidence of record was insufficient to establish that his right elbow tear was causally related to the accepted factors of his federal employment.

On April 21, 2017 appellant underwent authorized right elbow surgery.

Appellant, through counsel, timely requested a telephonic hearing. On June 14, 2017 telephonic hearings were held regarding both claim files.² Counsel clarified that he was pursuing appellant's claim for right elbow tendon tear under both the traumatic injury and occupational disease claims.

By decision dated July 28, 2017, an OWCP hearing representative affirmed the November 21, 2016 decision denying appellant's traumatic injury claim under OWCP File No.

² The record reflects that the telephonic hearing for appellant's traumatic injury claim under OWCP File No. xxxxxx604 was held at 9:03 a.m. Eastern Standard Time (EST). The telephone hearing for appellant's occupational disease claim under OWCP File No. xxxxxx642 was held at 9:21 a.m. EST.

xxxxxx604. She found that the medical evidence submitted was insufficient to establish that appellant sustained a right elbow tear as a result of the September 23, 2016 employment incident.

By decision dated July 31, 2017, the same hearing representative affirmed the February 3, 2017 decision denying expansion of appellant's occupational disease claim under OWCP File No. xxxxxx642 to include a right elbow partial thickness tear. She found that the medical evidence submitted was insufficient to establish that appellant's right elbow tear was caused or aggravated by his employment duties.

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 Appellant's present claim is for right elbow conditions which he alleged was due to a traumatic injury in OWCP File No. xxxxxx604 and an occupation disease claim in OWCP File No. xxxxxx642. The medical records of the two files, both relating to conditions of appellant's right elbow, have not been combined for cross-referencing as required by OWCP's procedures.

The Board therefore finds that for a full and fair adjudication of appellant's pending appeals, the claim files must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx604 and xxxxxx642. Following this and other such further development as it deems necessary, OWCP shall issue a *de novo* decision.

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

⁴ *Id.*; *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

ORDER

IT IS HEREBY ORDERED THAT the July 31 and 28, 2017 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this order of the Board.

Issued: June 11, 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