

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

| | | |
|--|---|----------------------------------|
| L.P., Appellant |) | |
| |) | |
| and |) | Docket Nos. 18-1558 & 18-1568 |
| |) | |
| U.S. POSTAL SERVICE, SOUTH RIVER POST OFFICE, South River, NJ, Employer |) | Issued: June 21, 2019 |
| |) | |

Appearances:
Jason S. Lomax, 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 August 13, 2018 appellant, through counsel, filed timely appeals from May 15 and 16, 2018 decisions of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned Docket Nos. 18-1558 and 18-1568.

On January 2, 2013 appellant, then a 51-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on December 26, 2012 she injured her back and knees twisting to avoid a rushing dog while in the performance of duty. OWCP assigned File No. xxxxxx701 to this claim and on March 21, 2013 it accepted her claim for lumbosacral sprain and left knee sprain.

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 15 and 16, 2018 decisions, 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.*

Appellant alleged additional left knee conditions arising from the December 26, 2012 employment injury. By decision dated July 13, 2016, OWCP denied appellant's claim for the additional conditions of left knee anterior cruciate ligament tear and left lateral meniscal tear. On July 18, 2016 appellant, through counsel, requested an oral hearing before an OWCP hearing representative. By decision dated May 30, 2017, OWCP's hearing representative denied appellant's additional left knee conditions noting that there was no rationalized medical opinion evidence of record addressing causal relationship between her current diagnosed left knee conditions and her accepted December 26, 2012 employment injury.

On August 15, 2016 appellant filed a second traumatic injury claim (Form CA-1) alleging that she experienced a sharp pain in her lower back while lifting a tub of relay mail while in the performance of duty.³ This claim was assigned OWCP File No. xxxxxx352. By decision dated September 27, 2016, OWCP denied the August 15, 2016 traumatic injury claim finding that appellant had not established causal relationship between her diagnosed back condition and the accepted employment incident. On September 30, 2016 appellant, through counsel, requested an oral hearing with an OWCP hearing representative. By decision dated May 26, 2017, OWCP's hearing representative denied appellant's August 15, 2016 traumatic injury claim finding that she had not established causal relationship between the accepted employment incident and her diagnosed low back or left hip conditions.

On February 14, 2018 appellant, through counsel, requested reconsideration of the May 30, 2017 OWCP decision. On February 16, 2018 reconsideration of the May 26, 2017 OWCP decision was also requested. In support of these requests, counsel asserted that appellant's case files (File No. xxxxxx701 and File No. xxxxxx352) should be combined. He also provided additional evidence that appellant sustained left hip injuries as a result of her accepted December 26, 2012 employment injury and her accepted August 15, 2016 employment incident. By decision dated May 15, 2018, OWCP denied modification of the May 30, 2017 decision. By decision dated May 16, 2018, it denied modification of the May 27, 2017 decision.

The Board has duly considered the matter and finds that the case is not in posture for decision. OWCP's procedures provide that cases should be combined where correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.⁴

Appellant filed two traumatic injury claims alleging that she sustained injuries to her back and left hip.⁵ For a full and fair adjudication, the claims in File Nos. xxxxxx701 and xxxxxx352 should be combined, pursuant to OWCP procedures.⁶ This will allow OWCP to consider all

³ On August 15, 2016 the employing establishment provided appellant with an authorization for examination (Form CA-16) which she did not have a physician complete.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁵ Appellant also asserted additional conditions of her left knee due to the December 26, 2012 employment injury which were not accepted by OWCP.

⁶ *Supra* note 4 at Chapter 2.400.8(c)(1); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018).

relevant claim files in developing this claim. Moreover, to consider appellant's appeal in piecemeal fashion, as presented to the Board, could result in inconsistent results. It is the Board's policy to avoid such an outcome.⁷

These cases must be remanded to OWCP to combine the case records for File Nos. xxxxxx701 and xxxxxx352. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* merit decision on appellant's claim.

IT IS HEREBY ORDERED THAT the May 16 and 15, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the cases are remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 21, 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

⁷ See *L.S., id.*; *William T. McCracken*, 33 ECAB 1197 (1982).