

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

C.M., Appellant)	
)	
and)	Docket No. 18-1724
)	Issued: June 14, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Schaumburg, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

On September 13, 2018 appellant, through counsel, filed a timely appeal from a July 16, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP) under OWCP File No. xxxxxx087. The Clerk of the Appellate Boards assigned Docket No. 18-1724.² The Board finds that this case is not in posture for decision.

On May 5, 2015 appellant, then a 68-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained left hip and bilateral knee conditions due to walking while in the performance of duty for over 40 years. He noted that he first became aware of his

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 July 16, 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.*

claimed conditions on January 10, 2010 and first realized their relation to his federal employment on April 17, 2015. Appellant did not stop work. OWCP assigned the present claim OWCP File No. xxxxxx087.

By decision dated June 17, 2015, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the diagnosed medical condition and the accepted employment factors.

On August 27, 2015 appellant filed an occupational disease claim (Form CA-2) alleging a right hip condition due to 41 years of working as a letter carrier. OWCP assigned that claim OWCP File No. xxxxxx796 and on December 7, 2015 accepted it for aggravation of bilateral hip osteoarthritis.

By decision dated February 9, 2016, in OWCP File No. xxxxxx087, an OWCP hearing representative set aside the June 17, 2015 decision and remanded the case for further development of the evidence. She found that the opinion of Dr. Ankur Chhadia, a Board-certified orthopedic surgeon and sports medicine physician, while not sufficiently rationalized, was sufficient to warrant further development of the medical evidence.

On February 26, 2016 OWCP referred appellant, along with the case record and a statement of accepted facts (SOAF), for a second opinion evaluation with Dr. Allan Brecher, a Board-certified orthopedic surgeon, to determine the nature and extent of any employment-related conditions and resultant disability. The attached SOAF stated that OWCP had not accepted any conditions arising out of the accepted employment factor of walking for 40 years as a letter carrier.

In a March 30, 2016 report, Dr. Brecher, based upon a review of the medical evidence, and the SOAF, diagnosed arthritis of the hips and knees. He noted that appellant had degenerative arthritis involving multiple joints, which was part of the natural aging process, and which did not limit his work capability. Dr. Brecher opined that appellant's arthritis conditions were part of the natural aging process. He explained that appellant's work duties had not aggravated his arthritis conditions as he was able to perform his full-duty job. He indicated that appellant could return to his regular duties one month after his last arthroscopy.

By decision dated May 9, 2016, OWCP denied appellant's claim under OWCP File No. xxxxxx087, finding that the medical evidence of record was insufficient to establish causal relationship. It found the weight of the medical opinion evidence rested with the well-rationalized opinion of OWCP's referral physician, Dr. Brecher, who concluded that appellant's bilateral knee osteoarthritis had not been caused or aggravated by the accepted employment factors.

Appellant subsequently requested a hearing and submitted additional medical evidence from Dr. Chhadia diagnosing bilateral knee and left hip osteoarthritis, which he opined were work related. The reports contained findings repetitive of his prior reports. By decision dated March 28, 2017, OWCP's hearing representative affirmed the denial of appellant's claim.

Appellant continued to submit additional medical evidence from Dr. Chhadia and, on April 17, 2018, requested reconsideration. By decision dated July 16, 2018, OWCP denied modification of its prior decision, finding that the medical evidence of record was insufficient to

establish causal relationship between his diagnosed conditions and the accepted factors of his federal employment.

The record in OWCP File No. xxxxxx087 does not contain any reference to appellant's claim in File No. xxxxxx796. In light of the fact that appellant had identified the same hip condition and the same employment factors in both OWCP File Nos. xxxxxx087 and xxxxxx796, it is essential for OWCP to consolidate the claim files and determine whether they are duplicate claims. This will allow OWCP to consider all relevant claim files in developing appellant's claims. Moreover, to consider appellant's appeals at this state would involve a piecemeal adjudication of the issues involved and raise the possibility of inconsistent results. It is the Board's policy to avoid such an outcome.³ Because it is essential for the Board to review the medical evidence contained in both case files in order to render a full and fair adjudication of the present appeals, this case must be set aside and remanded to OWCP to administratively combine File Nos. xxxxxx087 and xxxxxx796 to be followed by any necessary further development and a *de novo* decision on the merits of the claim.

IT IS HEREBY ORDERED THAT the July 16, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this order.

Issued: June 14, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

³ See *William T. McCracken*, 33 ECAB 1197 (1982).