

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

D.C., Appellant	)	
	)	
and	)	<b>Docket No. 19-0100</b>
	)	<b>Issued: June 3, 2019</b>
	)	
U.S. POSTAL SERVICE, FDR POST OFFICE,	)	
PARCEL POST ANNEX, New York, NY,	)	
Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

**ORDER REMANDING CASE**

Before:  
CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On October 17, 2018 appellant, through counsel, filed a timely appeal from a September 21, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0100.

On April 11, 2017 appellant, then a 56-year-old parcel post carrier, filed an occupational disease claim (Form CA-2) alleging that repetitive heavy lifting, pulling, and pushing while in the performance of duty caused a right<sup>2</sup> rotator cuff tear and bursitis of the right shoulder. He noted

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<sup>1</sup> 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.

<sup>2</sup> The April 11, 2017 claim form alleged a left shoulder injury. However, appellant's accompanying statement and the additional evidence of record demonstrate that his claim pertained to the right shoulder and the claim has been developed by OWCP as a right upper extremity claim.

that he first became aware of his condition on June 22, 2015 and realized its relation to his federal employment on April 10, 2017. OWCP assigned File No. xxxxxx718.

Appellant had previously filed an occupational disease claim alleging injury to his left shoulder on or before June 22, 2015. OWCP accepted that claim, assigned OWCP File No. xxxxxx140, for “bursitis of the left shoulder (rotator cuff tear).”

In a narrative statement submitted in support of his claim, appellant explained that he had been off work from June 22, 2015 through January 31, 2016 and had returned to full-duty work on February 1, 2016. Following his return to work, he experienced discomfort in both shoulders and the right side of his back. Appellant attributed the development of his right shoulder symptoms to overuse as he had been favoring his left shoulder due to his injury in OWCP File No. xxxxxx140.

By decision dated July 10, 2017, OWCP accepted that the work events occurred as appellant had alleged. However, it denied his claim, finding that the medical evidence of record was insufficient to establish causal relationship between those tasks and his diagnosed right shoulder conditions.

On July 31, 2017 appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative, held on January 5, 2018. During the hearing, appellant asserted that he sustained a consequential right shoulder injury in the performance of duty as he had overused his right arm to compensate for his injured left shoulder which had been accepted in File No. xxxxxx140. By decision dated February 23, 2018, the hearing representative affirmed the prior denial of the occupational disease claim.

Appellant requested reconsideration. By decision dated September 21, 2018, OWCP denied modification of the prior decision finding that the evidence submitted was insufficient to establish causal relationship between the diagnosed right shoulder conditions and the accepted employment factors.

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.<sup>3</sup> 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.<sup>4</sup> Both claims filed by appellant relate to claimed cumulative employment injuries to his shoulders and he has further alleged that his current right shoulder condition is a consequential injury related to his accepted left shoulder conditions. As he has alleged a consequential injury to his right shoulder and the

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000).

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

medical records of the two files have not been combined as required by OWCP procedures, this case must be remanded.

The Board therefore finds that for a full and fair adjudication of appellant's pending appeal for his right shoulder conditions, the case file shall be returned to OWCP to administratively combine OWCP File Nos. xxxxxx718 and xxxxxx140. Following this and other such further development as it deems necessary, OWCP shall issue a *de novo* decision.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2018 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: June 3, 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