

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

D.S., Appellant)	
)	
and)	Docket No. 18-0157
)	Issued: May 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Capital Heights, MD, Employer)	
)	

Appearances:
Stephen Larkin, 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 29, 2017 appellant filed a timely appeal from a September 19, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-0157.

On December 5, 2015 appellant, then a 68-year-old parcel post distribution machine operator clerk, filed an occupational disease claim (Form CA-2) alleging that she developed a right knee injury due to long-term standing and walking which had aggravated prior employment-related knee conditions.² She indicated that she first became aware of the current injury and its relation to her employment duties on December 15, 2014. Appellant stopped work on December 15, 2014. OWCP assigned the claim File No. xxxxxx279.

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 record reflects that appellant had three prior claims for employment-related injuries or conditions.

In a December 5, 2015 statement, appellant noted that she was a postal clerk and her duties for 18 years had involved distributing parcel post mail, keying parcels, and gathering postal equipment. She explained that previously, on February 6, 2013, she had pain in her leg, knees, and hands and she had filed an occupational disease claim. That claim was assigned OWCP File No. xxxxxx704 and accepted for internal derangement of both knees, bilateral tear of the meniscus, bilateral carpal tunnel syndrome, and bilateral sprain of the knee and leg. Appellant explained that she returned to full-time light-duty work on August 24, 2014, and continued working until December 15, 2014, when her knees became so bad she fell, and had to stop working.

By decision dated September 19, 2017, OWCP denied appellant's claim under File No. xxxxxx279, finding that the medical evidence submitted did not include a physician's opinion which was based upon a complete and accurate history of injury. It concluded that her attending physician had not noted the alleged fall at work on December 15, 2014 and had instead noted her repetitive work duties for the employing establishment over her 18 years of employment.

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 a right knee condition which she had alleged was an exacerbation of her prior accepted injuries to her bilateral knees in OWCP File No. xxxxxx704. The medical records of the two files, both relating to conditions of appellant's knees, 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 appeal, the claim file must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx704 and xxxxxx279. 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 September 19, 2017 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: May 22, 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