

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

R.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Phoenix, AZ, Employer**

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**Docket No. 19-0368
Issued: November 26, 2019**

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 December 10, 2018 appellant, through counsel, filed a timely appeal from a November 6, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0368.

On October 7, 2017 appellant, then a 52-year-old mail carrier, filed a notice of recurrence (Form CA-2a) of disability concerning a previously accepted October 10, 2014 employment injury under File No. xxxxxx866. On his Form CA-2a he identified September 27, 2017 as the date of recurrence and explained that his current condition was related to his original injury because the pain in his lower back was in the same place. On the reverse side of the claim form S.M., appellant's manager at the employing establishment, confirmed that after the October 10, 2014 original injury appellant accepted a permanent modified job offer on November 20, 2015. She noted that appellant had worked his modified carrier position until he stopped work on September 27, 2017. Appellant submitted various medical reports related to his claimed

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.

recurrence of injury. The claim for appellant's previously accepted October 10, 2014 employment injury under File No. xxxxxx866 is not presently before the Board.

On November 29, 2017 appellant filed an occupational disease claim (Form CA-2) alleging that he had sustained a "flare-up" of back pain while delivering mail, and that the pain was in the same location as the pain he experienced in October 2014. He noted that he first became aware of his condition and realized it resulted from his employment on October 7, 2017. OWCP assigned that claim File No. xxxxxx821. By decision dated February 27, 2018, it denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the employment factors occurred as alleged. OWCP noted that appellant had not submitted a detailed description of the employment factors he believed caused or contributed to his alleged lumbar condition. Accordingly, appellant had not met his burden of proof to establish fact of injury.²

On July 24, 2018 appellant, through counsel, requested reconsideration. By decision dated November 6, 2018, OWCP denied modification of the February 27, 2018 denial decision.

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 case 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

Herein, appellant filed a recurrence of disability claim for an October 10, 2014 injury, to which OWCP had assigned File No. xxxxxx866. He subsequently filed an occupational disease claim on November 29, 2017, which was assigned File No. xxxxxx821. On the claim form appellant noted that he sustained a "flare-up" of back pain and related that his back was hurting in the same place as the October 10, 2014 work injury. OWCP thereafter denied the occupational disease claim for failure to establish fact of injury. In its February 27, 2018 decision, it noted that appellant had filed a recurrence of disability claim of his October 10, 2014 work injury. OWCP did not, however, provide any other information regarding the adjudication of appellant's recurrence claim nor an explanation for why it adjudicated appellant's new November 29, 2017 occupational disease claim instead of his October 7, 2017 recurrence of injury claim.

The record reveals that appellant's previous October 10, 2014 employment injury was assigned File No. xxxxxx866 and that the injury in that claim was to the same part of the body as the injury in the present claim. The factual and medical evidence pertaining to File No. xxxxxx866, however, is not in the case record presently before the Board.

² OWCP also noted that appellant had filed a recurrence claim on October 10, 2017 alleging that he sustained a recurrence of his previously accepted October 10, 2014 work injury under File No. xxxxxx866. It related that the previous claim was accepted for closed lumbar fracture.

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

⁴ *Id.*

For a full and fair adjudication, the case must be returned to OWCP to combine the current case record with File No. xxxxxx866.⁵ On remand OWCP shall determine whether appellant sustained either a new work injury or a recurrence of disability due to his previously accepted employment injury. Following this and other such further development as it deems necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the November 6, 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: November 26, 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

⁵ See M.W., Docket No. 17-0743 (issued January 23, 2018).