

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

R.S., Appellant)	
)	
and)	Docket No. 19-0416
)	Issued: November 26, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Kona, HI, Employer)	
)	

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 19, 2018 appellant, through counsel, filed a timely appeal from an October 11, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0416.

On July 8, 2016 appellant, then a 63-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained injuries to her neck, right arm, and right shoulder when she was involved in a motor vehicle accident while in the performance of duty.²

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 It should be noted that OWCP previously accepted two of appellant's claims. Under OWCP File No. xxxxxx664, OWCP accepted appellant's claim for right epicondylitis, right carpal tunnel syndrome, and a right shoulder and rotator cuff sprain. On January 21, 2002 appellant underwent a right shoulder rotator cuff repair, arthroscopic subacromial decompression, and an arthroscopic debridement of biceps and subscapularis. Under OWCP File No. xxxxxx915, OWCP accepted appellant's January 27, 2007 claim for left shoulder and left hand sprains.

OWCP accepted her claim for strain of muscle, fascia, and tendon of lower back, and strain of muscle, fascia, and tendon at neck.

By decision dated March 7, 2018, OWCP denied appellant's claim for disability compensation for the period from January 16 through February 7, 2018.³ By decision dated April 12, 2018, it denied her claim for disability compensation for the period from February 3 through 16, 2018 and continuing, finding that the medical evidence of record did not establish that she was disabled as a result of her accepted employment-related conditions.

On April 12 and on May 2, 2018 appellant requested a telephonic hearing with an OWCP hearing representative to review both the March 7 and April 12, 2018 decisions.

By decision dated October 11, 2018, OWCP's hearing representative affirmed the March 7 and April 12, 2018 decisions, finding that appellant had not met her burden of proof to establish that she sustained "a recurrence of disability beginning January 16, 2018." She also instructed OWCP to double the instant case with appellant's previous case files for further review.

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.⁴ 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.⁵

Herein, appellant filed a new traumatic injury claim for her neck, right arm, and right shoulder, which OWCP assigned File No. xxxxxx902. OWCP accepted the claim for low back muscle, fascia and tendon strain thereafter denied the claim for periods of disability due to her accepted employment-related conditions. OWCP's hearing representative indicated in the October 11, 2018 decision that she had reviewed the medical evidence in File Nos. xxxxxx664 and xxxxxx915 in reaching her October 11, 2018 decision and that the claims should be combined. However, the claims were not combined at the time of the hearing and have not yet been combined. There is, therefore, no decision issued by OWCP which properly reviewed the combined case records as the current claim file, OWCP File No. xxxxxx902, does not contain medical evidence located in the other claim files.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with File Nos. xxxxxx664 and xxxxxx915.⁶ Following this and other such further development as it deems necessary, OWCP shall issue a *de novo* decision. Accordingly,

³ This decision superseded a previous decision of the same date.

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

⁵ *Id.*; *E.P.*, Docket No. 18-1333 (issued March 22, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

⁶ *Id.*

IT IS HEREBY ORDERED THAT the October 11, 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 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