

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

C.H., Appellant)	
)	
and)	Docket No. 19-0642
)	Issued: October 22, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
WANAMAKER BRANCH, Indianapolis, IN,)	
Employer)	
)	

Appearances:
Michael A. Beason, 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 January 28, 2019 appellant, through counsel, filed a timely appeal from an August 22, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 19-0642.

On April 9, 2018 appellant, then a 47-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 2018 she injured her right hand/wrist as a result of lifting a heavy package and newspapers while in the performance of duty. She stated that the

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.

weight of the package was “too much” after a previous work-related injury. OWCP assigned the claim File No. xxxxxx818.²

In an April 27, 2018 statement, appellant indicated that picking up a heavy package five times on February 22, 2018 irritated a prior injury that had not completely healed. She noted her belief that the current injury was related to her accepted November 6, 2017 employment injury, but she had been advised it would be treated as a new claim.

By decision dated May 15, 2018, OWCP denied appellant’s claim finding that she has not met her burden of proof to establish causal relationship between her diagnosed right upper limb radial nerve lesion and the accepted February 22, 2018 employment incident. It noted that “[b]ased on the medical evidence received in this case as well as past claims, [appellant had] ... preexisting ... fibromyalgia and [was] previously evaluated for a radial nerve injury prior to [February 22, 2018].” OWCP further found that the “medical reports submitted note a history of right carpal tunnel release on [January 5, 2016] and previous hand surgeries...”

On May 25, 2018 appellant requested reconsideration of the merits of her claim.

By decision dated August 22, 2018 OWCP reviewed the merits of the claim, but denied modification of the May 15, 2018 decision.

Pursuant to 20 C.F.R. § 501.2(c)(1), 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. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes, or drawings.³ Evidence may not be incorporated by reference.⁴ Evidence contained in another of the claimant’s case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.⁵ All evidence that forms the basis of a decision must be in that claimant’s case record.⁶

In adjudicating the present traumatic injury claim, File No. xxxxxx818, OWCP specifically referenced medical evidence from appellant’s prior claim(s), noting that the evidence demonstrated that she had preexisting fibromyalgia, had previously been evaluated for a radial nerve injury, had undergone a right carpal tunnel release on January 5, 2016, and had other hand surgeries. However, the medical record under OWCP File No. xxxxxx818 does not reference either fibromyalgia, a previous radial nerve injury, or prior hand surgeries.

² Under OWCP File No. xxxxxx945, appellant has an accepted traumatic injury claim for right upper arm/shoulder strain, which arose on November 6, 2017.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5(a) (June 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

As the above-referenced medical evidence cannot be found in the current case record as transmitted to the Board, the Board finds that it is not in a position to make an informed decision regarding appellant's entitlement to FECA benefits.⁷

Therefore, the Board finds that the case shall be remanded to OWCP to administratively combine the present case with File No. xxxxxx945, and any other relevant prior OWCP files, and for further reconstruction and development as it may deem necessary. After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision.⁸

IT IS HEREBY ORDERED THAT the August 22, 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: October 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

⁷ See *J.M.*, Docket No. 17-0558 (issued May 16, 2018); *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

⁸ See *T.M.*, Docket No. 18-0887 (issued February 21, 2019).