

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

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<b>S.D., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 19-0590</b>
	)	<b>Issued: August 28, 2020</b>
<b>U.S. POSTAL SERVICE, POST OFFICE, Bellmawr, NJ, Employer</b>	)	
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*Appearances:*  
Thomas R. Uliase, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
CHRISTOPHER J. GODFREY, Deputy Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On January 21, 2019<sup>2</sup> appellant, through counsel, filed a timely appeal from an October 29, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-0590.<sup>3</sup>

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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> On June 25, 2019 the Board issued an order dismissing appeal in this matter. See *Order Dismissing Appeal*, Docket No. 19-0590 (issued June 25, 2019). Appellant, through counsel, subsequently filed a petition for reconsideration contending that her appeal was mistakenly dismissed after the Board received a dismissal request from a different appellant with the same name. By order dated May 18, 2020, the Board granted appellant's petition for reconsideration and reinstated the current appeal. *Order Granting Petition for Reconsideration and Reinstating Appeal*, Docket No. 19-0590 (issued May 18, 2020).

<sup>3</sup> The Board notes that, following the issuance of the October 29, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "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. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On January 3, 2017 appellant, then a 61-year-old mail handler, filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability on that date as a result of her previously accepted December 6, 2016 traumatic injury under OWCP File No. xxxxxx708.<sup>4</sup> She alleged that she experienced lower back pain in the same location where she was previously injured. Following her December 6, 2016 employment injury, appellant returned to full-duty work until January 3, 2017.

In a development letter dated March 13, 2017, OWCP informed appellant that her new traumatic injury claim initially appeared to be for a minor injury that resulted in minimal or no lost time from work and that continuation of pay was not controverted by the employing establishment, and thus, limited expenses had, therefore, been authorized. However, a formal decision was required. OWCP provided a questionnaire for appellant's completion regarding the circumstances surrounding her claimed injury and requested that she submit a narrative medical report from her physician. It afforded her 30 days to respond.

In a March 20, 2017 statement in response to OWCP's factual development questionnaire, appellant reported that she was driving a tow motor and pulling empty hampers to her area when her back started to hurt in the same area as her previous injury. She noted that she immediately reported her injury to her supervisor. Appellant submitted medical evidence.

By decision dated April 18, 2017, OWCP denied appellant's traumatic injury claim finding that the medical evidence of record was insufficient to establish a diagnosed lumbar condition causally related to the accepted January 3, 2017 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 3, 2017 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional evidence.

By decision dated November 7, 2017, OWCP's hearing representative affirmed the April 18, 2017 decision. He found that the medical evidence submitted was insufficient to establish that appellant's lumbar and thoracic conditions were causally related to the accepted January 3, 2017 employment incident.<sup>5</sup>

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<sup>4</sup> Appellant's claim in OWCP File No. xxxxxx708 pertained to a December 6, 2016 traumatic back injury when a tow motor rear-ended the tow motor she was operating at work. It was accepted for lumbar and thoracic sprains. Appellant's claims have not been administratively combined.

<sup>5</sup> On February 28, 2018 appellant, through counsel, requested reconsideration and submitted a statement describing her work duty of driving a tow motor. By decision dated March 5, 2018, OWCP denied appellant's request for reconsideration finding that the evidence submitted was irrelevant or immaterial and, thus, insufficient to warrant a merit review of her claim. On March 23, 2018 appellant, through counsel, again requested reconsideration. She submitted additional medical evidence. OWCP, by decision dated June 19, 2018, denied modification of the November 7, 2017 decision, finding that the medical evidence submitted failed to provide a rationalized opinion explaining how appellant's diagnosed condition was aggravated by the accepted January 3, 2017 employment incident. On July 31, 2018 appellant, through counsel, requested reconsideration of the March 5 and June 19, 2018 decisions.

OWCP, by decision dated October 29, 2018, denied modification of its most recent merit decision, dated June 19, 2018.<sup>6</sup>

The Board, having duly considered the matter, finds that this case is not in posture for decision. OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and when two or more injuries occur to the same part of the body.<sup>7</sup> As the instant claim under OWCP File No. xxxxxx562 and the claim under OWCP File No. xxxxxx708 both involve injuries to appellant's back, these claims must be administratively combined for a full and fair adjudication of her present claim. This will allow OWCP to consider all relevant claim files and accompanying evidence in developing appellant's current traumatic injury claim.

Accordingly, the Board will remand the case to OWCP to administratively combine the OWCP File Nos. xxxxxx562 and xxxxxx708. Additional OWCP files involving appellant's back, if any, should also be administratively combined with the aforementioned OWCP files. Following this and other such development as deemed necessary, OWCP shall issue a *de novo* merit decision.

**IT IS HEREBY ORDERED THAT** the October 29, 2018 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this order of the Board.

Issued: August 28, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> OWCP did not review the March 5, 2018 nonmerit decision as it subsequently performed a merit review in its June 19, 2018 decision.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).