

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

V.G., Appellant)	
)	
and)	Docket No. 19-0670
)	Issued: April 30, 2020
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL)	
CORRECTION CENTER, Coleman, FL,)	
Employer)	
)	

Appearances:
Wayne Johnson, Esq., for the appellant¹
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 February 5, 2019 appellant, through counsel, filed a timely appeal from a November 30, 2018 decision of the Office of Workers' Compensation Programs (OWCP) under File No. xxxxxx127. The Clerk of the Appellate Boards docketed the appeal as No. 19-0670.

On April 7, 2015 appellant, then a 54-year-old correctional counselor, filed a traumatic injury claim (Form CA-1) alleging that, on April 5, 2015 he injured his lower back when he reached for a box of printer paper, twisted, and placed the box on a table while in the performance of duty. He reported experiencing lumbar pain radiating into the bilateral lower extremities. OWCP accepted the claim for lumbar facet joint syndrome, lumbar facet degeneration, lumbar spondylosis without myelopathy or radiculopathy, and a sacroiliac joint sprain under File No. xxxxxx127.

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.

Appellant also had previously accepted claims for lumbago related to a July 10, 2005 incident under OWCP File No. xxxxxx220, and a left meniscal tear on September 11, 2011 under OWCP File No. xxxxxx386. By decision dated September 27, 2016 under File No. xxxxxx386, OWCP granted appellant a schedule award for 24 percent permanent impairment of the left lower extremity due to the accepted meniscal tear.

On July 6, 2017 appellant filed a schedule award (Form CA-7) claim in the instant case, OWCP File No. xxxxxx127. He submitted an impairment rating discussing lumbar radiculopathy affecting the left lower extremity under OWCP File No. xxxxxx127 and OWCP File No. xxxxxx220.² OWCP routed the present case to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), and noted that appellant had previously been awarded compensation for 24 percent permanent impairment of the left lower extremity under File No. xxxxxx386.

In an October 26, 2017 report, Dr. Katz opined that an impairment rating of the left lower extremity under OWCP File No. xxxxxx127 required consideration of the left meniscal tear accepted under OWCP File No. xxxxxx386, but he had not reviewed medical evidence from the prior claim. He assessed 34 percent permanent impairment of the left lower extremity due to sensory and motor deficits of the L4 nerve root. Dr. Katz combined the prior schedule award for 24 percent permanent impairment of the left lower extremity under OWCP File No. xxxxxx386 to equal 10 percent additional impairment of the left lower extremity under the present case.

By decision dated November 2, 2017 under File No. xxxxxx127, OWCP granted appellant a schedule award for an additional 10 percent permanent impairment of the left lower extremity. Following counsel's May 30, 2018 request for reconsideration, OWCP affirmed its November 2, 2017 schedule award determination by decision dated November 30, 2018.

The Board has duly considered the matter and finds that the case is not in posture for decision. OWCP's procedures provide that cases should be combined where correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.³ Appellant sustained two accepted employment injuries to the lumbar spine, including one injury affecting the lower extremities, and a traumatic injury to his left lower extremity. For a full and fair adjudication, the claims in OWCP File Nos. xxxxxx127, xxxxxx220, and xxxxxx386 should be administratively combined.

Under its procedures, OWCP has determined that cases should be combined where a new injury case is reported for an employee who previously filed an injury claim for the same part of

² Appellant filed a formal schedule award claim (Form CA-7) under OWCP File No. xxxxxx220 on February 11, 2019, denied by decision dated August 21, 2019. This claim is not before the Board on the present appeal.

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

the body and where correct adjudication depends on cross-referencing between files.⁴ This will allow OWCP to consider all relevant claim files in developing this schedule award claim.⁵

Accordingly, the Board will remand the case to OWCP to administratively combine the case records for File Nos. xxxxxx127, xxxxxx220, and xxxxxx336. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* merit decision on appellant's schedule award claim.

IT IS HEREBY ORDERED THAT the November 30, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.⁶

Issued: April 30, 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

⁴ *Id.* at Chapter 2.400.8(c)(1); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

⁵ *Id.*

⁶ The Board notes that, by decision dated August 21, 2019 under File No. xxxxxx220, OWCP denied appellant's claim for a schedule award for permanent impairment of the lower extremities caused by spinal nerve root impairment. However, appellant, through counsel, filed an appeal to the Board on February 5, 2019, prior to the August 21, 2019 decision. The Board notes that as OWCP issued its August 21, 2019 decision during the pendency of this appeal that decision is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).