

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

C.Y., Appellant)	
)	
and)	Docket No. 20-1079
)	Issued: December 7, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Kissimmee, FL, Employer)	
)	

Appearances:
Joanne Marie Wright, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 27, 2020 appellant, through her representative, filed a timely appeal from an April 13, 2020 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1079.²

On March 26, 2014 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 21, 2014 he sustained injury to his neck, shoulders, hands, low back, and feet when bending/twisting his body to handle mail while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx919 and accepted it for permanent

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 The Board notes that following the April 13, 2020 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.*

aggravation of left shoulder tendinitis, permanent aggravation of internal derangement of both shoulders, permanent aggravation of left shoulder impingement, permanent aggravation of left rotator cuff tear, permanent aggravation of cervical disc syndrome, and permanent aggravation of lumbar disc syndrome.

OWCP had previously accepted, under OWCP File No. xxxxxx575, that appellant sustained a traumatic injury on June 21, 2007 in the form of left shoulder tendinitis. It also had previously accepted, under OWCP File No. xxxxxx546, that he sustained a traumatic injury on November 26, 2012, in the form of permanent aggravation of left rotator cuff tear, left shoulder impingement, internal derangement of both shoulders, cervical disc syndrome, and lumbar disc syndrome.

In a September 8, 2015 letter, appellant requested, through her representative, that OWCP expand the accepted conditions in appellant's case to include the diagnosed emotional conditions of major depression and generalized anxiety disorder with panic attacks. In a November 9, 2015 statement, appellant alleged that his diagnosed emotional conditions were caused by pain and other residuals from his accepted June 21, 2007, November 26, 2012, and March 21, 2014 employment injuries.

OWCP denied appellant's expansion claim by decisions dated March 18, 2016, April 18, 2017, May 15, 2018, January 3, 2019, and April 13, 2020. In its January 3, 2019 and April 13, 2020 decisions, it found that the evidence submitted by appellant failed to satisfy the element of causal relationship for the claimed conditions of major depression and generalized anxiety disorder with panic attacks because it "does not clearly differentiate any effects stemming specifically out of the March 21, 2014 work incident from any effects from your multiple other claims." Moreover, OWCP indicated in its May 15, 2018 and January 3, 2019 decisions that Dr. Gary K. Arthur, an attending Board-certified psychiatrist, noted in a June 2, 2017 report that he had reviewed a number of medical reports, which he considered significant in evaluating the question of whether appellant sustained an emotional condition causally related to his accepted employment injuries. These reports included a July 20, 2015 report of Dr. Richard Smith, an OWCP referral physician. OWCP found that Dr. Arthur's report was insufficient to establish appellant's expansion claim.

The Board finds that this case is not in posture for 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, nor may evidence from another claimant's case file be used.⁴ Evidence contained in another of the claimant's case files

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

⁴ *Id.*

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

As noted above, appellant has requested that the accepted conditions in his case be expanded to include emotional conditions caused by pain and other residuals from his accepted June 21, 2007; November 26, 2012; and March 21, 2014 employment injuries. In adjudicating appellant's present claim under OWCP File No. xxxxxx919, OWCP referenced medical evidence obtained from earlier claims under OWCP File Nos. xxxxxx575 and xxxxxx546. In denying appellant's expansion claim, OWCP made a finding that appellant has not developed an emotional condition causally related to his three accepted traumatic injuries (*i.e.*, those sustained on June 21, 2007, November 26, 2012, and March 21, 2014) without the benefit of reviewing numerous medical records from two of the accepted employment injuries (*i.e.*, those sustained on June 21, 2007 and November 26, 2012). For example, in its May 15, 2018 and January 3, 2019 decisions denying appellant's expansion claim, OWCP referenced Dr. Arthur's evaluation of a July 20, 2015 second opinion report of Dr. Smith, a report which is not in the present case file.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-reference between files.⁷ However, OWCP did not administratively combine the case records related to appellant's earlier claims or incorporate the referenced evidence into the current case record. As noted, all evidence that forms the basis of a decision must be included in the case record.⁸

Because OWCP neglected to include evidence in the current case record that helped to form the basis for its determination regarding appellant's expansion claim, including evidence from OWCP File No. xxxxxx575, regarding the June 21, 2007 employment injury, and from OWCP File No. xxxxxx546, regarding the November 26, 2012 employment injury, the Board is not in a position to make an informed decision regarding appellant's claim.⁹ Therefore, the case shall be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx575 and xxxxxx546 with the present claim, OWCP File No. xxxxxx919. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision regarding expansion of the acceptance of appellant's claim to include emotional conditions caused by pain and other residuals from his accepted June 21, 2007, November 26, 2012, and March 21, 2014 employment injuries.

⁵ *Id.*

⁶ *Id.* See also *G.O.*, Docket No. 18-1483 (issued June 20, 2019).

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

⁸ See *supra* note 6.

⁹ See *L.H.*, Docket No. 17-1960 (issued August 16, 2018); *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

IT IS HEREBY ORDERED THAT the April 13, 2020 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.

Issued: December 7, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board