

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

_____)	
B.O., Appellant)	
)	
and)	Docket No. 18-1100
)	Issued: February 24, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Alton, IL, Employer)	
_____)	

Appearances:
Stephanie N. Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On May 7, 2018 appellant, through counsel, filed a timely appeal from a November 27, 2017 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 18-1100.

On September 18, 2012 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 17, 2012 she injured her low back, right shoulder, and right hip while in the performance of duty. OWCP accepted the claim for a right hip strain and assigned the claim File No. xxxxxx170.

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 has several prior claims for employment-related right lower extremity injuries, all accepted by OWCP, as follows: in File No. xxxxxx657,² a right ankle fracture sustained on February 23, 2001; in File No. xxxxxx285, right knee osteoarthritis sustained on or before March 14, 2002; in File No. xxxxxx590, right plantar fibromatosis sustained on or before February 15, 2005; in File No. xxxxxx547, a right knee abrasion sustained on August 30, 2007; and in File No. xxxxxx125, a right lateral meniscal tear sustained on June 11, 2008.

On May 16, 2014 appellant underwent a right hip arthroplasty authorized under the present claim, OWCP File No. xxxxxx170. OWCP subsequently expanded acceptance of this claim to include a right hip and thigh sprain, right hip joint replacement, osteoarthritis of the right pelvis/thigh, and right hip pain.

On May 12, 2015 appellant filed a claim under OWCP File No. xxxxxx170 for an increased schedule award (Form CA-7).

By decision dated April 13, 2016 under File No. xxxxxx170, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body causally related to the accepted right hip injury. Appellant subsequently requested an oral hearing.

By decision dated March 28, 2017, a representative of OWCP's Branch of Hearings and Review set aside OWCP's April 13, 2016 schedule award denial and remanded the case for further development. On remand Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), opined in an April 19, 2017 report that an impairment rating of the right lower extremity under OWCP File No. xxxxxx170 required consideration of the right meniscal tear accepted under OWCP File No. xxxxxx125.³

By decision dated July 25, 2017 under File No. xxxxxx170, OWCP granted appellant a schedule award for 32 percent permanent impairment of the right lower extremity in addition to the seven percent previously award under File Nos. xxxxxx657 and xxxxxx590, for a total of 39 percent permanent impairment of the right lower extremity. On August 28, 2017 appellant, through counsel, requested a review of the written record by an OWCP hearing representative.

² By decision dated May 5, 2008 under File No. xxxxxx657, OWCP granted appellant a schedule award for four percent permanent impairment of the right lower extremity. By decision dated June 4, 2009, under File No. xxxxxx657, OWCP granted appellant an increased schedule award for an additional two percent permanent impairment of the right lower extremity, for a total of six percent permanent impairment.

³ By decision dated July 12, 2017 under File No. xxxxxx590, OWCP granted appellant a schedule award for an additional one percent permanent impairment of the right lower extremity. When added to the six percent previously awarded under OWCP File No. xxxxxx657, this resulted in seven percent permanent impairment of the right lower extremity.

By decision dated November 27, 2017 under File No. xxxxxx170, an OWCP hearing representative affirmed the July 25, 2017 schedule award determination. He directed OWCP to administratively combine File Nos. xxxxxx657 and xxxxxx590 with the present claim to provide a complete and accurate factual and medical history.⁴

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 administratively combined where correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.⁵ Because they all involve schedule awards for accepted injuries to appellant's right lower extremity, for a full and fair adjudication, the claims in OWCP File Nos. xxxxxx657, xxxxxx285, xxxxxx590, xxxxxx547, xxxxxx125, and xxxxxx170 must be administratively combined. This will allow OWCP to consider all relevant claim files in developing appellant's schedule award claim.⁶ Moreover, to consider appellant's appeal at this stage would involve a piecemeal adjudication of the issue in this case and raise the possibility of inconsistent or piecemeal results. It is the Board's policy to avoid such an outcome.⁷

Accordingly, the Board will remand the case to OWCP to administratively combine the case records for File Nos. xxxxxx657, xxxxxx285, xxxxxx590, xxxxxx547, xxxxxx125, and xxxxxx170. Following this and such development as deemed necessary, OWCP shall issue a *de novo* merit decision on appellant's schedule award claim.

⁴ The Board notes, however, that the electronic case record as transmitted to the Board demonstrates that OWCP has not administratively combined the claim files as directed by the hearing representative.

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁶ *Id.*

⁷ *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *W.S.*, Docket No. 15-0969 (issued October 5, 2015).

IT IS HEREBY ORDERED THAT the November 27, 2017 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: February 24, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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