

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

C.C., Appellant)	
)	
and)	Docket Nos. 19-1028 and
)	20-0975
DEPARTMENT OF HOMELAND SECURITY,)	Issued: June 12, 2020
IMMIGRATION & CUSTOMS)	
ENFORCEMENT, Rouses Point, NY, Employer)	
)	

Appearances:
Alan J. Shapiro, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 10, 2019 appellant, through counsel, filed a timely appeal from a February 22, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP), in File No. xxxxxx515, which the Clerk of the Appellate Boards docketed as No. 19-1028. On the same date appellant also timely appealed from a March 15, 2019 merit decision, in File No. xxxxxx028, which the Clerk of the Appellate Boards docketed as No. 20-0975.

On November 25, 2012 appellant, then a 48-year-old special agent/criminal investigator, filed a traumatic injury claim (Form CA-1) alleging that he injured his right shoulder while exercising in the performance of duty.² By decision dated November 15, 2012, OWCP denied

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 This claim was assigned OWCP File No. xxxxxx028.

appellant's traumatic injury claim. Following multiple requests for reconsideration, by decision dated March 15, 2019, OWCP denied modification of its denial.

On February 16, 2016 appellant filed an occupational disease claim (Form CA-2) alleging that he developed numbness and pain in his right hand, forearm, and elbow due to factors of his federal employment.³ By decision dated May 18, 2016, it denied appellant's claim. Appellant subsequently exercised his appeal rights. Ultimately, by decision dated February 22, 2019, a hearing representative affirmed the denial of the occupational disease claim noting that appellant had a history of bilateral shoulder surgeries under OWCP File No. xxxxxx028, which appellant's physician failed to consider when addressing the cause of his current right upper extremity condition(s). The hearing representative recommended that OWCP File Nos. xxxxxx028 and xxxxxx515 be administratively combined.

The Board has duly considered the matter and concludes that this case is not in posture for decision. OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issue(s) depends on frequent cross-referencing between files.⁴ For example, if a new injury is reported for an employee who previously filed a claim for a similar condition or the same part of the body, doubling is required.⁵ Here, appellant filed two claims involving his right upper extremity. OWCP's hearing representative indicated in the February 22, 2019 decision in OWCP File No. xxxxxx515 that she reviewed medical evidence in OWCP File No. xxxxxx028 in reaching her decision and recommended that the claims be combined. However, the claims were not combined at the time of the hearing and have yet to be combined. Therefore, the Board is unable to review the necessary information upon which the hearing representative relied.⁶

For a full and fair adjudication, the case must be returned to OWCP to administratively combine File Nos. xxxxxx515 and xxxxxx028. Following this and such further development as it deems necessary, OWCP shall issue a *de novo* decision. Accordingly,

³ This claim was assigned OWCP File No. xxxxxx515.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000); *see also R.S.*, Docket No. 19-0416 (issued November 26, 2019).

⁵ *Id.*; *E.P.*, Docket No. 18-1333 (issued March 22, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

⁶ 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. Evidence may not be incorporated by reference, nor may evidence from another individual's case file be used. Evidence contained in another of the claimant's case file(s) may be used, but a copy of that evidence should be placed into the case file being adjudicated. All evidence that forms the basis of a decision must be in that claimant's case record. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

IT IS HEREBY ORDERED THAT the February 22 and March 15, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the cases are remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 12, 2020
Washington, DC

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

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

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