

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

C.C., Appellant)	
)	
and)	Docket No. 19-1140
)	Issued: June 15, 2020
DEPARTMENT OF VETERANS AFFAIRS, VA)	
LOMA LINDA HEALTHCARE SYSTEM,)	
Loma Linda, CA, Employer)	
)	

Appearances:
Stephanie N. Leet, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 22, 2019 appellant, through counsel, filed a timely appeal from a February 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 19-1140.

On April 6, 2018 appellant, then a 66-year-old dialysis technician/office worker, filed an occupational disease claim (Form CA-2) alleging an injury to her back that occurred after she tried to return to work. She asserted that she experienced pain which worsened every day and muscle

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, although appellant included January 15, 2019 as the date of the decision he was appealing, this is an apparent typographical error as the only OWCP decision is dated February 15, 2019.

spasms which occurred with increasing frequency. OWCP assigned the claim OWCP File No. xxxxxx066.

Under a separate claim, OWCP File No. xxxxxx337, OWCP previously accepted that on February 1, 2011 appellant sustained a back sprain.

By decision dated June 21, 2018, OWCP denied appellant's occupational disease claim finding appellant had not established fact of injury. It concluded that "the evidence does not support that the injury and/or event(s) occurred" and that the "requirements have not been met for establishing that you sustained an injury as defined by the [Federal Employees' Compensation Act]."

On July 20, 2018 appellant requested a telephonic hearing with a representative of OWCP's Branch of Hearings and Review and, during a December 4, 2018 hearing, she testified regarding the nature of her job duties and back symptoms. By decision dated February 15, 2019, OWCP's hearing representative affirmed the June 21, 2018 decision as modified to reflect that appellant established fact of injury, but had not submitted medical evidence sufficient to establish a diagnosed medical condition causally related to the accepted employment factors.³

The Board has duly considered the matter and finds that the 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.⁴ Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.⁵ Evidence contained in another of the claimant's case files may be used, however, a copy of that evidence should be placed into the case file being adjudicated.⁶ All evidence that forms the basis of a decision must be in that claimant's case record.⁷

In adjudicating appellant's present claim, OWCP File No. xxxxxx066, OWCP specifically referenced medical evidence obtained from appellant's earlier claim, OWCP File No. xxxxxx337. However, it did not combine the case records related to appellant's back injury claim or incorporate the referenced evidence into the current case record.⁸ As noted, all evidence that forms the basis

³ OWCP's hearing representative referenced medical evidence from OWCP File Nos. xxxxxx066 and xxxxxx337, and recommended that the two claim files be administratively combined. The Board notes that the two claim files have not been administratively combined.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* See also *G.O.*, Docket No. 18-1483 (issued June 20, 2019).

⁸ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000) (cases should be doubled/combined when correct adjudication of the issues depends on frequent cross-reference between files).

of a decision must be included in the case record.⁹ Because OWCP neglected to include evidence that helped to form the basis for its determination regarding appellant's back injury claim in the current case record, *i.e.*, evidence from OWCP File No. xxxxxx337, the Board is not in a position to make an informed decision regarding appellant's entitlement to compensation benefits.¹⁰ Therefore, the case shall be remanded to OWCP to consolidate OWCP File Nos. xxxxxx066 and xxxxxx337. After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's back injury claim.

IT IS HEREBY ORDERED THAT the February 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: June 15, 2020
Washington, DC

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

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

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

⁹ See *supra* note 7.

¹⁰ 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).