

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

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O.R., Appellant)	
)	
and)	Docket Nos. 19-1234;
)	19-1241; 20-0373; 20-0506;
)	20-0533
DEPARTMENT OF HOMELAND SECURITY,)	Issued: June 23, 2020
TRANSPORTATION SECURITY)	
ADMINISTRATION, Miami, FL, Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

**ORDER GRANTING MOTION TO REVERSE IN DOCKET NO.
19-1234, ORDER REMANDING CASE IN DOCKET NOS. 19-1241,
20-0373, AND 20-0506, AND ORDER DISMISSING APPEAL IN DOCKET
NO. 20-0533**

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

On May 14 and 17 and December 6, 2019, and January 6 and 11, 2020 appellant respectively filed timely appeals from November 20, 2018, April 25 and December 2 and 30, 2019, and January 7, 2020 decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards respectively docketed these appeals as Nos. 19-1234, 19-1241, 20-0373, 20-0506, and 20-0533.

On April 23, 2013 appellant, then a 29-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging a back injury on April 22, 2013 when lifting bags while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx033 and accepted it for a lumbar sprain, herniated disc at L5-S1, and right-sided lumbosacral neuritis/radiculitis as work related. It issued several decisions denying appellant's claim for a work-related recurrence of disability, including the most recent dated November 20, 2018 in which it determined that appellant had not established disability on or after October 10, 2014 causally related to the accepted April 22, 2013 employment injury.

On May 12, 2017 appellant filed a Form CA-1 alleging a May 14, 2013 back injury when dragging luggage while in the performance of duty. OWCP assigned that claim File No. xxxxxx403 and accepted it for aggravation of a herniated disc at L5-S1 as work related. Also on May 12, 2017 appellant filed a Form CA-1 alleging an August 6, 2014 right knee injury when engaging in lunging exercises as part of a physical therapy session for his back conditions. OWCP assigned that claim File No. xxxxxx404 and issued July 7 and September 20, 2017 decisions denying the claim. Appellant timely appealed the latter decision to the Board and, by order dated April 9, 2018, the Board set aside and remanded the case for OWCP to incorporate evidence from OWCP File No. xxxxxx033 into OWCP File No. xxxxxx404. On remand, by decision dated July 9, 2018, OWCP denied appellant's claim for an August 6, 2014 right knee injury, finding appellant had not established causal relationship between the accepted August 6, 2014 employment incident and a diagnosed right knee condition. Appellant appealed to the Board and, by decision dated August 2, 2019, the Board affirmed OWCP's July 9, 2018 decision. After a request for reconsideration with OWCP, by decision dated December 2, 2019, OWCP continued to deny appellant's claim for an August 6, 2014 employment injury due to his failure to establish causal relationship. Appellant later requested that his claim under OWCP File No. xxxxxx403 be expanded to include the right knee injury as a consequence of his accepted April 22 and May 14, 2013 back injuries. By decision dated May 16, 2018, OWCP denied appellant's consequential injury claim, finding that the weight of the medical opinion evidence rested with the April 12, 2018 opinion of Dr. Clinton G. Bush, III, a Board-certified orthopedic surgeon who served as an OWCP referral physician. Appellant appealed to the Board and, by order dated September 17, 2019, the Board remanded the case to OWCP and directed it to administratively combine the files for OWCP File Nos. xxxxxx033, xxxxxx403, and xxxxxx404. On remand, OWCP combined these case files and issued a December 30, 2019 decision again denying appellant's consequential injury claim. It reviewed additional evidence from the newly combined files, but determined that the weight of the medical opinion evidence continued to rest with Dr. Bush's opinion.

On October 2, 2018 appellant filed a Form CA-1 alleging that he sustained a low back injury on December 9, 2014 while in the performance of duty. He noted that his workload had increased over the holidays and that his engaging in repetitive lifting, dragging, and pushing of oversized and heavy bags "caused me to aggravate lumbar spine at work." OWCP assigned that claim OWCP File No. xxxxxx125. By decision dated December 12, 2018, OWCP denied the claim as untimely filed. Appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review. After a hearing was held on March 18, 2019, OWCP's hearing representative issued an April 25, 2019 decision affirming the December 12, 2018 decision.

With regard to Docket No. 19-1234 appellant filed a timely appeal on May 14, 2019 of OWCP's April 25, 2019 decision under OWCP File No. xxxxxx125. On December 3, 2019 the Director of OWCP filed a motion, requesting that the Board reverse the April 25, 2019 decision as appellant had established his claim for an additional back injury had been timely filed. The Director maintained that appellant had presented statements and materials indicating that he was suffering ongoing back pain related to heavy lifting at work and stress from conflicts with management, and asserted that the information appellant provided was sufficient to put his immediate supervisor reasonably on notice within 30 days that he sustained an injury while in the performance of duty, satisfying the test for actual knowledge of injury with regard to timely filing of the claim. The Clerk of the Appellate Boards served appellant with a copy of the Director's motion to reverse on December 4, 2019. In a response dated December 19, 2019, appellant agreed

with the arguments in the Director's motion. For the reasons espoused by the Director, the motion to reverse is granted.

With regard to the appeals docketed as Nos. 19-1241, 20-0373, and 20-0506 the Board finds that the cases are 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.¹ Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.² Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.³ All evidence that forms the basis of a decision must be in that claimant's case record.⁴

The Board finds that, for a full and fair adjudication of appellant's claims, the case records under OWCP File Nos. xxxxxx033, xxxxxx403, and xxxxxx404 must be administratively combined with OWCP File Nos. xxxxxx125. The Board notes that, in adjudicating appellant's multiple claims, OWCP failed to evaluate all relevant evidence necessary for making its determinations. OWCP's procedures provide that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files, such as when multiple claims involve the same body part or parts.⁵ Combination of OWCP File Nos. xxxxxx033, xxxxxx403, xxxxxx404, and xxxxxx125 is necessary given that appellant's interrelated multiple claims concern claimed injuries to his low back/right lower extremity. Therefore, the cases shall be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx033, xxxxxx403, xxxxxx404, and xxxxxx125. After OWCP has developed the record consistent with the above-noted directive, it shall issue a *de novo* decision, or *de novo* decisions, regarding appellant's claims.

With regard to Docket No. 20-0533 the Board finds that the appeal must be dismissed as there is no other final adverse decision over which the Board can take jurisdiction. On January 11, 2020 appellant filed an appeal from a January 7, 2020 decision which had vacated OWCP's December 30, 2019 decision denying appellant's consequential right knee injury claim. However, on January 6, 2020 appellant had appealed to the Board from the December 30, 2019 decision. The Board finds that as OWCP issued its January 7, 2020 decision during the pendency of the appeal in Docket No. 20-0506 that decision is null and void as the Board and OWCP may not

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

² *Id.*

³ *Id.*

⁴ *Id.* See also *G.D.*, Docket No. 19-1969 (issued May 4, 2020); *G.O.*, Docket No. 18-1483 (issued June 20, 2019).

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

simultaneously have jurisdiction over the same issue.⁶ The Board's jurisdiction is limited to the review of final adverse OWCP decisions issued under FECA.⁷ The Board's review authority is further limited to final adverse decisions issued within 180 days prior to the date of the appeal.⁸ Because OWCP issued its January 7, 2020 decision after appellant had filed his appeal to the Board on the same issue in Docket No. 20-0506, there is no final adverse decision over which the Board may take jurisdiction and appellant's appeal in Docket No. 20-0533 must be dismissed.⁹

IT IS HEREBY ORDERED THAT the Director's December 3, 2019 motion to reverse in Docket No. 19-1234 is granted and the April 25, 2019 decision of the Office of Workers' Compensation Programs is thereby reversed. The November 20, 2018 and December 2 and 30, 2019 decisions of the Office of Workers' Compensation Programs in Docket Nos. 19-1241, 20-0373, and 20-0506 are set aside and the cases are remanded to OWCP for proceedings consistent with this order of the Board. The appeal in Docket No. 20-0533 is dismissed.

Issued: June 23, 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

⁶ 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).

⁷ See 20 C.F.R. §§ 501.2(c) and 501.3(a).

⁸ *Id.*

⁹ The Board's decisions and orders are "final upon the expiration of 30 days from the date of their issuance." *Id.* at § 501.6(d).