

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

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**L.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Peoria, AZ, Employer**

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**Docket No. 19-1490  
Issued: January 29, 2020**

*Appearances:*  
*Toby Rubenstein, for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

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

On July 1, 2019 appellant, through her representative, filed a timely appeal from a January 11, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1490.<sup>2</sup>

On January 12, 2018 appellant, then a 55-year-old rural mail carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a trigger thumb which she attributed to factors of her federal employment including repetitive motion of the right hand and thumb when casing and carrying mail. She indicated that she first became aware of her condition on November 27, 2017. Appellant also noted that she had been receiving care under a previously

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<sup>1</sup> 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.

<sup>2</sup> The Board notes that appellant's representative submitted additional evidence on appeal. 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.*

accepted claim file<sup>3</sup> and that she required a surgical procedure. However, she had been advised that her current symptoms were different and, thus, required a new case/claim. OWCP assigned the current claim File No. xxxxxx960.

After further development of the current claim, by decision dated May 3, 2018, OWCP found that appellant had not met her burden of proof to establish that her right thumb condition was causally related to the accepted factors of her federal employment.

On August 31, 2018 appellant, through her representative, requested reconsideration. She contended that OWCP should have accepted her current occupational disease claim for right trigger thumb as it had previously accepted right trigger thumb under File No. xxxxxx501 based on the same medical evidence.

By decision dated January 11, 2019, OWCP denied modification of its prior decision. It noted that appellant already had an open claim for right trigger thumb for which she remained entitled to medical benefits. OWCP further explained that, if surgery was required, she should pursue the issue under her accepted claim rather than file a new claim.

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 combined where correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.<sup>4</sup> Under OWCP File No. xxxxxx501, appellant has an accepted claim for a right wrist/hand/thumb condition. However, the case record associated with that prior claim is not currently before the Board.

Under its procedures, OWCP has determined that cases should be combined where a new injury case is reported for an employee who previously filed an injury claim for the same part of the body and where correct adjudication depends on cross-referencing between files.<sup>5</sup> The Board finds that for a full and fair adjudication, the claims in File Nos. xxxxxx501 and xxxxxx960 must

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<sup>3</sup> Appellant has a prior claim for a January 1, 2017 traumatic injury to her right wrist, hand, and thumb, assigned File No. xxxxxx501. OWCP has accepted that claim for right trigger thumb and radial styloid tenosynovitis (de Quervain's).

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

<sup>5</sup> *Id.* at Chapter 2.400.8(c)(1); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

be administratively combined. This will allow OWCP to consider all relevant claim files and accompanying evidence in developing the current occupational disease claim.<sup>6</sup>

Accordingly, the Board will remand the case to OWCP to administratively combine File Nos. xxxxxx501 and xxxxxx960. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the January 11, 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: January 29, 2020  
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> *Id.*