

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

N.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Katy, TX, Employer**

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**Docket No. 19-1825
Issued: May 15, 2020**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 28, 2019 appellant filed a timely appeal from an April 5, 2019 merit decision and an August 5, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1825.

On November 15, 2018 appellant, then a 29-year-old postal worker, filed a notice of recurrence of disability claim (Form CA-2a) alleging that on October 26, 2018 she felt pain in her lower back from pulling pallets of mail on a pallet jack and constantly bending, separating mail, and dropping tubs of mail.¹ She indicated that the date of her original injury was on June 23, 2017, and that her back pain had been on and off since she returned to work. Appellant also related that she was in an off-duty car accident on October 27, 2018.

In a February 14, 2019 development letter under the current file number, OWCP informed appellant that it was in receipt of her traumatic injury claim for an October 26, 2018 employment injury, and that additional evidence was required in support of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for

¹ The notice of recurrence was originally filed under OWCP File No. xxxxxx309, which was a traumatic injury claim accepted for a sprain of the ligaments of the lumbar spine. The recurrence claim was converted by OWCP to a claim for a new traumatic injury, assigned OWCP File No. xxxxxx594 which is the claim presently before the Board.

her completion. OWCP afforded appellant 30 days to submit the requested evidence. No evidence was received.

By decision dated April 5, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that she sustained an injury in the performance of duty on October 26, 2018, as alleged.

On April 29, 2019 appellant requested an oral hearing. In a June 10, 2019 letter, an OWCP hearing representative notified appellant that a telephonic hearing was scheduled for Friday, July 24, 2019 at 1:30 p.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode. OWCP's hearing representative mailed the letter to appellant's last known address of record. Appellant did not appear for the hearing.

By decision dated August 5, 2019, OWCP determined that appellant had abandoned her request for an oral hearing. It indicated that appellant received a 30-day advanced written notice of the hearing scheduled for July 24, 2019, and that she failed to appear. OWCP further noted that there was no indication in the record that appellant contacted it to request a postponement or provide an explanation to OWCP for her failure to appear at the hearing within 10 days of the scheduled hearing. Consequently, appellant was deemed to have abandoned her request for an oral hearing.

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 issues depends on frequent cross-referencing between files.² For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.³ Herein, appellant has an accepted claim for sprain of the ligaments of the lumbar spine under OWCP File No. xxxxxx309. Injuries to that same body part is also the subject of the present claim, OWCP File No. xxxxxx594. The evidence pertaining to OWCP File No. xxxxxx309, however, is not part of the case record presently before the Board. For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx309.

Additionally, the Board finds that OWCP failed to follow its own procedures when it converted appellant's notice of recurrence of disability claim (Form CA-2a) into a traumatic injury claim (Form CA-1). OWCP's procedures provide that if a claimant submitted an incorrect form and OWCP can nevertheless determine the benefits claimed, it should convert the claim to the correct type and notify appellant and the employing establishment (and any representative, if applicable) *via* letter that the claim has been converted to a different type of injury than what was originally claimed and explain the reasons for the conversion.⁴ On remand, OWCP must notify

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

³ *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Forms Used for Initial Claims*, Chapter 2.800.3(c)(2)(a) (January 2011).

appellant and the employing establishment that her recurrence claim filed on November 15, 2018 has been converted to a traumatic injury claim, and it must explain the reasons for the conversion. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the August 5 and April 5, 2019 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this order of the Board.

Issued: May 15, 2020
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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