

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

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<b>B.G., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0602</b>
	)	<b>Issued: March 26, 2020</b>
<b>DEPARTMENT OF HOMELAND SECURITY,</b>	)	
<b>CUSTOMS &amp; BORDER PROTECTION,</b>	)	
<b>BORDER PATROL, San Diego, CA, Employer</b>	)	
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*Appearances:*  
*Daniel M. Goodkin, Esq., for the appellant<sup>1</sup>*  
*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  
PATRICIA H. FITZGERALD, Alternate Judge

On January 22, 2019 appellant, through counsel, filed a timely appeal from a December 10, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0602.

On September 23, 2016 appellant, then a 26-year-old border patrol agent, filed an occupational disease claim (Form CA-2) alleging that she sustained an emotional condition due to factors of her federal employment. She stopped work on April 3, 2013. Appellant also indicated that she became aware of her emotional condition and its relation to her employment on April 3, 2013. OWCP assigned this claim File No. xxxxxx673.

Under OWCP File No. xxxxxx881, OWCP had denied appellant's prior emotional condition claim, which allegedly arose on or about April 3, 2014 due to managerial harassment.

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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.

The factual history of that claim appears to be part of the basis of the current claim, however, the relevant evidence and decisions referenced in that case are not accessible by Board.

By decision dated March 29, 2017, OWCP denied her emotional condition claim. Appellant subsequently requested reconsideration and OWCP denied modification by decisions dated December 19, 2017 and December 10, 2018. In the December 10, 2018 decision denying modification, the claims examiner specifically referenced appellant's prior emotional claim in OWCP File No. xxxxxx881 and found that appellant's statement of alleged factors in the current claim were inconsistent with the factual history presented in OWCP File No. xxxxxx881. While the current record contains a medical report and a narrative statement prepared by appellant from OWCP File No. xxxxxx881, the evidence and a copy of the relevant decision(s) issued by OWCP under File No. xxxxxx881 are not currently accessible by the Board.

The Board finds that this 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.<sup>2</sup> Evidence may not be incorporated by reference. A copy of that evidence should be placed into the case file being adjudicated.<sup>3</sup> All evidence that forms the basis of a decision must be in that claimant's case record.<sup>4</sup>

In adjudicating appellant's current emotional claim, OWCP specifically referenced information and decisions obtained from her other OWCP claim, File No. xxxxxx881, to discredit her statement of alleged factors. However, it has not administratively combined the above-referenced case records.<sup>5</sup> The Board is therefore not in a position to make an informed decision regarding whether OWCP properly denied appellant's current emotional condition claim.<sup>6</sup> The Board finds that this case must be remanded to be administratively combined with File No. xxxxxx881. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000) (cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files).

<sup>6</sup> See *T.C.*, Docket No. 19-1013 (issued December 31, 2019); *L.H.*, Docket No. 17-1960 (issued August 16, 2018); *K.P.*, Docket No. 15-1945 (issued February 10, 2016).

**IT IS HEREBY ORDERED THAT** the December 10, 2018 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: March 26, 2020  
Washington, DC

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

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

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