

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

F.J., Appellant)	
)	
and)	Docket No. 19-1918
)	Issued: November 30, 2020
U.S. POSTAL SERVICE, MIAMI)	
INTERNATIONAL SERVICE CENTER,)	
Miami, FL, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

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

On September 19, 2019 appellant filed a timely appeal from a July 12, 2019 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 19-1918.

On April 5, 2018 appellant, then a 28-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her right shoulder, neck, and upper and mid back when pushing a bulk mail container weighing more than 70 pounds and lifting heavy mail while in the performance of duty. On the reverse side of the claim form appellant’s supervisor acknowledged that she was injured in the performance of duty, but indicated that appellant’s injury was caused by failing to follow safety procedures when pulling full containers of materials instead of pushing the containers. OWCP assigned File No. xxxxxx949. In a separate traumatic injury claim form (Form CA-1) dated April 5, 2018, but received by the employing establishment on October 22, 2018, appellant alleged that on March 29, 2018 she injured her right shoulder, neck,

¹ The Board notes that, following the July 12, 2019 decision, OWCP received additional evidence and appellant 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.*

and upper and mid back also while in the performance of duty. OWCP assigned this claim File No. xxxxxx669.

In support of her claim, appellant submitted a medical report dated April 6, 2018, indicating that she sought medical treatment from Dr. Andrew Gordon, a Board-certified neurologist, who noted that appellant worked as a mail handler and that on March 28, 2018 she was pushing, pulling, and lifting heavy objects weighing 70 pounds or more and felt a popping sensation in her right shoulder. Dr. Gordon noted, however, an April 5, 2018 date of injury. In a separate note dated April 6, 2018, Dr. Gordon indicated that appellant reported a new injury from lifting a heavy mailbox and injuring her right shoulder and again noted an April 5, 2018 date of injury. He explained that her pain became moderate over time while she continued to work, lifting and pulling heavy materials, and that she had sought treatment at a hospital on April 5, 2018.

OWCP also received April 9, 2018 notes from Lisa Ally, a physician assistant, who examined appellant due to right shoulder pain and listed a date of injury as April 5, 2018, and Tameka A. Fuller-Thompson, a physical therapist, who also examined appellant due to her shoulder pain, noting that her pain began on March 28, 2018 due to lifting a heavy package.

OWCP received additional medical documentation noting a date of injury of April 5, 2018.

By decision dated May 31, 2018, OWCP denied appellant's traumatic injury claim finding that the factual evidence of record was insufficient to establish that the April 5, 2018 injury occurred as alleged.

On July 5, 2018 appellant requested an oral hearing and a review of the written record by an OWCP hearing representative. By decision dated December 10, 2018, OWCP denied modification of the May 31, 2018 decision finding that appellant provided "two different dates of injury", March 29 and April 5, 2018, and that there were inconsistencies in her description of the employment injuries. OWCP concluded, therefore, that as her statements were inconsistent regarding the facts of the alleged incident, the requirements had not been met to establish an injury as defined by FECA.

On June 21, 2019 appellant requested reconsideration of the December 10, 2018 decision and submitted additional medical documentation in support of her claim. By decision dated July 12, 2019, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

The Board finds 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 case files.² For example,

² *R.R.*, Docket No. 19-0368 (issued November 26, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8c (February 2000).

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

As the claims in the following OWCP File Nos. xxxxxx669 and xxxxxx949 involve the same shoulder, neck, and upper mid-back conditions with differing dates of incident of March 29 and April 5, 2018, they must be administratively combined for a full and fair adjudication of appellant's present claim. This will allow OWCP to consider all relevant claim files and accompanying evidence in adjudicating appellant's current traumatic injury claim.

Accordingly, the Board will remand the case to OWCP to administratively combine the OWCP File Nos. xxxxxx669 and xxxxxx949. Following this and such other further development as deemed necessary, OWCP shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the July 12, 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: November 30, 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

³ *Id.*