

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

P.J., Appellant)	
)	
and)	Docket No. 20-0103
)	Issued: November 16, 2020
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SAFETY)	
ADMINISTRATION, FEDERAL AIR)	
MARSHAL SERVICE,)	
Egg Harbor Township, NJ, Employer)	
)	

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 October 16, 2019 appellant filed a timely appeal from an October 2, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 20-0103.

On February 20, 2019 appellant, then a 47-year-old federal air marshal, filed an occupational disease claim (Form CA-2) alleging that on January 16, 2019 he experienced shortness of breath and chest pains, due to factors of his federal employment. He noted that he had been on limited duty since November 2018, following a shoulder repair in August 2018. Appellant also explained that on February 17, 2019, he was diagnosed with a pulmonary embolism

¹ The Board notes that appellant submitted additional evidence with his 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.*

(PE) in “both the right and left side of his lung” and deep vein thrombosis (DVT) in his left leg. He stopped work on February 17, 2019.²

Appellant completed an OWCP development questionnaire, explaining that he had experienced difficulty breathing since October 2018, following his left shoulder surgery on August 14, 2018. OWCP also received a number of medical reports in support of the claim.

By decision dated April 26, 2019, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish employment factors in the performance of duty, as alleged. It noted that the diagnosed conditions may be related to his August 14, 2018 left shoulder surgery, which was performed due to accepted conditions in a previous claim, and the present claim had not identified new employment factors which caused the new conditions. OWCP advised appellant that injuries or conditions arising out of, or as a result of medical treatment for a work injury were deemed to be consequential to that work injury. It further noted that for further consideration regarding his new medical conditions, he must submit a written request with the pertinent medical records for review of a consequential injury under the appropriate case number.

On July 8, 2019 appellant requested reconsideration and submitted new medical evidence. He argued that his left shoulder condition under his previously accepted claim in OWCP File No. xxxxxx353, required a second surgery on August 14, 2018. Appellant indicated that on February 16, 2019 he could not breathe and had chest pains due to the PE in his lungs and the DVT in his left leg. He alleged that Dr. Trevor Feinstein, a Board-certified hematologist, provided an opinion that his PE and DVT were due to his left shoulder surgery.

² The present claim was assigned OWCP File No. xxxxxx321. The Board notes that appellant has a number of prior claims. On May 18, 2004 appellant filed a claim for a May 6, 2004 traumatic injury (Form CA-1) to his right wrist. On October 4, 2004 OWCP accepted the claim for a right wrist sprain under OWCP File No. xxxxxx445. On May 18, 2004 appellant filed a claim for a May 13, 2004 traumatic injury to his right knee. OWCP processed the claim as a short form closure under OWCP File No. xxxxxx446. On March 26, 2008 appellant filed a claim for a traumatic injury to his right shoulder on even date. OWCP assigned File No. xxxxxx492. It denied the claim on March 4, 2016, and on January 6, 2017, an OWCP hearing representative affirmed the denial of the claim. In an August 1, 2017 decision, the Board affirmed the January 6, 2017 decision. Docket No. 17-0722 (issued August 1, 2017). On January 8, 2009 appellant filed a claim for a January 7, 2009 traumatic injury to his right wrist. On January 26, 2009 OWCP accepted the claim for right wrist sprain under OWCP File No. xxxxxx891. On January 16, 2009 appellant filed a claim for a January 7, 2009 traumatic injury to his right knee. OWCP accepted the claim for right knee sprain/strain and right patellar tendinitis under OWCP File No. xxxxxx108. On May 4, 2015 appellant filed a claim for an occupational disease for noise-induced right ear hearing loss. OWCP assigned File No. xxxxxx586. On July 30, 2015 it denied the claim. In a December 23, 2015 decision, the Board affirmed the denial. Docket No. 15-1816 (issued December 23, 2015). On May 3, 2016 OWCP denied modification of its prior decision. On November 17, 2016 appellant filed a claim for a traumatic injury on even date to his left shoulder. OWCP assigned File No. xxxxxx353. On February 14, 2017 OWCP accepted the claim for sprain of the left rotator cuff. Appellant initially underwent an authorized left shoulder rotator cuff repair on June 5, 2017. He underwent an authorized left shoulder rotator cuff debridement and decompression on August 14, 2018. On March 7, 2018 appellant filed a claim for May 9, 2017 a traumatic injury to his right shoulder. He alleged that he had injured his left shoulder on “November 16, 2017” and following left shoulder surgery, he increasingly used his right arm and developed right shoulder symptoms. OWCP assigned File No. xxxxxx992. On June 25, 2018 it accepted the claim for bicipital tendinitis, right shoulder. OWCP authorized a right shoulder arthroscopic procedure on July 26, 2018, however the record does not reflect that the authorized procedure to the right shoulder was performed. Appellant’s claims have not been administratively combined.

By decision dated October 2, 2019, OWCP denied modification of its prior decision. It again explained that no new employment factors were identified that caused appellant's condition, that he appeared to have a consequential injury relating to a prior claim, and that the consequential injury claim should be filed under the appropriate file number.

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.³ For example, if a new injury 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.⁴ In the instant case, appellant had a prior occupational disease claim for his left shoulder in OWCP File No. xxxxxx353. He then filed the present occupational disease claim for conditions arising from the surgery for treatment of his accepted left shoulder conditions.

For a full and fair adjudication, the Board finds that the new claim should be administratively combined with the previously accepted claim, pursuant to OWCP procedures. Therefore, the case must be remanded to OWCP to administratively combine the case records for OWCP File No. xxxxxx353 and File No. xxxxxx321. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of appellant's claim.

CONCLUSION

The Board finds that this case is not in posture for decision.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁴ *Id.*; see *P.B.*, Docket No. 19-1532 (issued April 30, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

ORDER

IT IS HEREBY ORDERED THAT the October 2, 2019 merit decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this order of the Board.

Issued: November 16, 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