

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

K.T., Appellant)	
)	
and)	Docket No. 20-0893
)	Issued: November 16, 2020
U.S. POSTAL SERVICE, NAPLES POST)	
OFFICE, Naples, FL, Employer)	
)	

Appearances:
Joanne Marie Wright, for the appellant¹
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 March 17, 2020 appellant, through her representative, filed a timely appeal from an October 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0893.

On June 8, 2018 appellant, then a 49-year-old city carrier assistant, filed a notice of recurrence (Form CA-2a) under OWCP File No. xxxxxx755 alleging that on June 5, 2018 she sustained a recurrence of disability causally related to her accepted March 17, 2018 employment injury, which was accepted for right ankle sprain. She explained that she continued to have issues with her right foot and ankle after returning to work on May 29, 2018 and that continuous walking had aggravated her accepted right foot and ankle condition. OWCP converted appellant's recurrence claim to a new occupational disease claim, assigned OWCP File No. xxxxxx253. It

¹ 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.

noted that the mechanism of her original injury on March 17, 2018 was stepping out of a vehicle and rolling her right foot and ankle.

By decision dated August 21, 2018, OWCP denied appellant's claim, finding that she had not established fact of injury as she had not submitted sufficient factual evidence to support that the alleged event occurred as described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP thereafter received a report dated June 9, 2018, wherein Dr. Alan B. Claunch, emergency medicine specialist, noted appellant's complaints of right foot pain. Appellant told him that she had a previous work-related right foot injury and that she had twisted her foot the previous day and had swelling to the lateral aspect of the right foot. Dr. Claunch diagnosed right foot contusion.

On August 20, 2019 appellant requested reconsideration.

In an attached statement dated August 20, 2019, appellant explained that she returned to work on May 29, 2018, but after hours of standing on her feet, she began to experience pain and swelling. She alleged that she became totally disabled by June 6, 2018, due to aggravation of her preexisting condition, caused by her employment duty of standing and walking for over eight hours per day. Appellant alleged that she sustained a recurrence of disability within 90 days of her return to work and that the medical evidence supported a worsening of her accepted ankle condition. She requested that OWCP File Nos. xxxxxx755 and xxxxxx253 be combined for proper adjudication.

OWCP received records from Dr. Michael Black, a podiatric surgery specialist, wherein he summarized his treatment of appellant from March 28 through September 5, 2018. At the top of the summary of treatment, Dr. Black diagnosed a sprain of other ligament of the right ankle dated March 28, 2018. On June 20, 2018 he noted that appellant had sustained a new injury on June 8 or 9, 2018 with a diagnosis of right foot contusion. On August 7, 2018 Dr. Black explained that the new injury reported on June 20, 2018 was likely a result of the aggravation of her initial injury at work, as the subacute finding on a magnetic resonance imaging scan was less likely to represent a new acute injury.

By decision dated October 7, 2019, OWCP reviewed the merits of appellant's claim and modified its prior decision, finding that she had established fact of injury and that she was within the performance of duty. The claim remained denied, however, because she had not submitted sufficient evidence to establish a causal relationship between her diagnosed condition and accepted factors of her federal employment.

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.² Under OWCP File No. xxxxxx755, appellant has an accepted claim for a right foot

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

and ankle 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 administratively combined where a new injury 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.³ The Board finds that, for a full and fair adjudication, the claims in File Nos. xxxxxx755 and xxxxxx253 must be administratively combined. This will allow OWCP to consider all relevant claim files and accompanying evidence in developing the current occupational disease claim.⁴

Accordingly, the Board will remand the case to OWCP to administratively combine File Nos. xxxxxx755 and xxxxxx253. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the October 7, 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 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

³ *Id.* at Chapter 2.400.8(c)(1); *D.M.*, Docket No. 19-1929 (issued August 3, 2020); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

⁴ *Id.*