

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

O.A., Appellant)
and) Docket No. 19-1362
U.S. POSTAL SERVICE, ANSONIA STATION,) Issued: October 2, 2020
New York, NY, Employer)

)

Appearances:

Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On June 7, 2019 appellant, through counsel, filed a timely appeal from an April 2, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-1362.²

On July 27, 2017 appellant, then a 49-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured both knees and her back when an employing establishment elevator dropped from the third to the first floor, causing her to fall while in the

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.

² The Board notes that, following the April 2, 2019 decision, OWCP received additional evidence. 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.*

performance of duty. She stopped work on the date of injury. Appellant returned to full-duty work on September 11, 2017. On January 9, 2017 accepted her claim for bilateral knee contusions.³

On January 4, 2018 Dr. Steven Struhl, a Board-certified orthopedic surgeon, performed a right knee arthroscopy due to chondral lesions of the patella and trochlea as well as medial formal condyle and synovitis.

Beginning on February 9, 2018 appellant filed a claim for compensation (Form CA-7) and wage-loss due to leave without pay (LWOP) from February 5 through 9, 2018. She subsequently filed additional Form CA-7 claims for compensation for wage loss due to leave without pay from February 10 through April 6, 2018. In support of her claims for compensation, appellant submitted medical evidence from Dr. Struhl and Dr. Joyce Goldenberg, a Board-certified psychiatrist.

By decision dated September 6, 2018, OWCP denied appellant's claims for wage-loss compensation for disability commencing February 5, 2018. On September 14, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative and submitted additional medical evidence. An oral hearing was held on February 1, 2019. By decision dated April 2, 2019, OWCP's hearing representative affirmed the September 6, 2018 decision, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's accepted July 27, 2017 employment injury and her claimed disability commencing February 5, 2018.

The Board, having duly considered the matter, finds that this case is not in posture for decision.

Appellant has prior claims before OWCP involving both her knees. Under OWCP File No. xxxxxx119 OWCP accepted that appellant sustained patellar tendinitis due to a September 5, 2009 employment injury; under OWCP File No. xxxxxx545 OWCP accepted that appellant sustained chondromalacia patellae, patellar tendinitis, sprain of left knee (collateral ligament), and closed fracture of the patellae due to a November 30, 2009 employment injury; under OWCP File No. xxxxxx842 OWCP accepted that appellant sustained a contusion of the right knee due to a May 30, 2010 employment injury. Appellant's prior claims have not been administratively combined with the present claim, OWCP File No. xxxxxx060.

OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and when two or more injuries occur to the same part of the body.⁴ As appellant's present claim in OWCP File No. xxxxxx060, as well as File Nos. xxxxxx119, xxxxxx545, and xxxxxx842 all involve injuries to appellant's knees, these claims must be administratively combined for a full and fair adjudication of her present claims for compensation. This will allow OWCP to consider all relevant claim files and accompanying evidence in adjudicating appellant's claims.

³ OWCP denied modification of a prior decision which denied expansion of the claim to include internal derangement of the knees as causally related to her accepted July 27, 2017.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000); *see also* V.B., Docket No. 19-1942 (April 30, 2020).

Accordingly, the Board will remand the case to OWCP to administratively combine appellant's claims involving her knees. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* merit decision.

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

Issued: October 2, 2020
Washington, DC

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

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

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