

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

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**J.D., Appellant**

**and**

**DEPARTMENT OF THE ARMY, ANNISTON  
ARMY DEPOT, Anniston, AL, Employer**

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**Docket No. 19-1585  
Issued: October 9, 2020**

*Appearances:*

*Lauren Shine, Esq., for the appellant<sup>1</sup>*

*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

VALERIE D. EVANS-HARRELL, Alternate Judge

On July 11, 2019 appellant, through counsel, filed a timely appeal from a January 17, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> The Clerk of the Appellate Boards docketed the appeal as No. 19-1585.

On July 11, 2012 appellant, then a 39-year-old materials handler, filed an occupational disease claim (Form CA-2) alleging that he developed left elbow neuritis due to factors of his federal employment, including repetitive typing. He noted that he first became aware of his condition and realized it was causally related to his federal employment on June 21, 2012. Appellant did not initially stop work. On August 8, 2012 OWCP accepted the claim for lesion of

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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.

<sup>2</sup> Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). Given the disposition by the Board in this order, oral argument is denied.

the left ulnar nerve and assigned the current claim File No. xxxxxx724. On August 29, 2012 appellant underwent release of the left ulnar nerve at the cubital tunnel.

The record reflects that appellant has a prior December 16, 2005 traumatic injury claim, which was accepted for left shoulder strain, left shoulder tendinitis, and left carpal tunnel syndrome (CTS) under OWCP File No. xxxxxx108.<sup>3</sup> Appellant also filed an occupational disease claim in 2009 which was accepted for right CTS under OWCP File No. xxxxxx383.<sup>4</sup>

Under the present claim, OWCP File No. xxxxxx724, the employing establishment offered appellant a modified assignment as a security clerk on March 8, 2017 and he resumed work on April 17, 2017. On October 18, 2017 appellant stopped work alleging that he was unable to use his hands. On October 24, 2017 he submitted a claim for compensation for wage loss (Form CA-7) for disability beginning October 29, 2017.

By decision dated December 7, 2017, OWCP denied appellant's compensation claim for disability beginning October 29, 2017. On January 3, 2018 he requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

On December 18, 2017 appellant returned to his modified position. On April 4, 2018 he filed a claim for compensation for lost wages from April 4 to 18, 2018 under OWCP File No. xxxxxx724.<sup>5</sup> OWCP developed the claim as a recurrence of disability beginning April 4, 2018.

By decision dated April 18, 2018 a representative of the Branch of Hearings and Review affirmed the decision dated December 7, 2017.

By decision dated May 17, 2018, OWCP denied appellant's claim for a recurrence of disability commencing April 4, 2018 under File No. xxxxxx724. On June 9, 2018 appellant, through counsel, requested an oral hearing before an OWCP hearing representative.<sup>6</sup>

By decision dated January 17, 2019, an OWCP hearing representative affirmed the decision dated May 17, 2018.

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

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<sup>3</sup> The record reveals that OWCP File No. xxxxxx108 is combined with OWCP File No. xxxxxx664 and OWCP File No. xxxxxx383 with OWCP File No. xxxxxx108 designated as the master file. These claims are not in the record before the Board.

<sup>4</sup> This claim is not in the record before the Board.

<sup>5</sup> On April 10, 2018 appellant also filed a claim for wage-loss compensation benefits under OWCP File No. xxxxxx108 for the same period.

<sup>6</sup> By decision dated August 10, 2018, OWCP denied appellant's claim for wage-loss compensation for disability for the period April 4 to 18, 2018 under File No. xxxxxx108. Appellant requested an oral hearing. By decision dated December 18, 2018, an OWCP hearing representative affirmed the April 10, 2018 decision.

occur to the same part of the body.<sup>7</sup> As the claims in the following OWCP files all involve appellant's bilateral upper extremities, OWCP File Nos. xxxxxx724, xxxxxx108, xxxxxx664, and xxxxxx383,<sup>8</sup> the Board finds that 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 developing appellant's current occupational disease claim.

As appellant has pursued compensation benefits under OWCP File Nos. xxxxxx724 and xxxxxx108 for the same period of wage loss, there are medical reports and factual information that bear directly on the matter before OWCP in File Nos. xxxxxx108, xxxxxx664, and xxxxxx383. While the record currently before the Board does contain some medical records from the other files, it does not contain all of the relevant medical and factual evidence upon which the Board could adjudicate appellant's present claim.

Accordingly, the Board will remand the case to OWCP to administratively combine the case records for OWCP File Nos. xxxxxx724, xxxxxx108, xxxxxx664 and xxxxxx383. Additional OWCP files involving appellant's bilateral upper extremities, if any, should also be administratively combined with the aforementioned OWCP files. Following this and other such development as deemed necessary, OWCP shall issue a *de novo* merit decision.

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<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

<sup>8</sup> The Board notes that, in these claims, OWCP granted schedule awards for total 34 percent permanent impairment of the left arm in File No. xxxxxx724; 24 percent permanent impairment of the left arm in File No. xxxxxx108; and 2 percent permanent of the right arm in File No. xxxxxx383.

**IT IS HEREBY ORDERED THAT** the January 17, 2019 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: October 9, 2020  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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