

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

R.M., Appellant)	
)	
and)	Docket No. 20-0485
)	Issued: October 29, 2020
DEPARTMENT OF HOMELAND SECURITY,)	
FEDERAL PROTECTIVE SERVICE,)	
NATIONAL CAPITAL REGION,)	
Washington, DC, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 2, 2020 appellant, through counsel, filed a timely appeal from a November 22, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned this appeal Docket No. 20-0485.

On August 7, 2018 appellant, then a 53-year-old police officer, filed an occupational disease claim (Form CA-2) alleging that he had sustained left knee injuries due to factors of his federal employment. OWCP assigned File No. xxxxxx600. Appellant alleged that in 2004 he sustained a left knee injury while on duty during a traffic accident.² He also indicated that he filed a traumatic injury claim for a June 20, 2016 left knee injury he sustained during rapid response

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 is unable to identify any OWCP file number associated with this claim.

training when he attempted to scale a six-foot wooden wall, and struck his left knee on a large steel bolt.³

By decision dated November 21, 2018, OWCP denied the occupational disease claim finding that it was a duplicate of a previously denied June 8, 2018 traumatic injury claim under OWCP File No. xxxxxx324. It concluded, therefore, that the requirements had not been met to establish that “an occupational disease work injury occurred” as defined by FECA.

On January 30, 2019 appellant requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review. By decision dated February 13, 2019, the hearing representative denied the hearing request as untimely filed. After exercising her discretion, she further denied the request finding that the issue could be resolved through a request for reconsideration.

On September 11, 2019 appellant, through counsel, requested reconsideration.

By decision dated November 22, 2019, OWCP denied modification of its prior decision.

The Board, having duly considered the matter, 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 files.⁴ For example, 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.⁵

In the instant case, appellant is alleging a left knee condition resulting in a total left knee replacement. The record reflects that OWCP has not administratively combined the present claim with his prior claim, File No. xxxxxx324, pertaining to his left knee condition.

For a full and fair adjudication, the Board finds that this case must be remanded to OWCP to administratively combine the present claim with OWCP File No. xxxxxx324. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

³ OWCP File No. xxxxxx324.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁵ *Id.*; *P.B.*, Docket No. 19-1532 (issued April 30, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

IT IS HEREBY ORDERED THAT the November 22, 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 29, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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