

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

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<b>T.D., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1119</b>
	)	<b>Issued: January 29, 2021</b>
<b>U.S. POSTAL SERVICE, OMAHA POSTAL</b>	)	
<b>DISTRIBUTION CENTER, Omaha, NE,</b>	)	
<b>Employer</b>	)	
_____	)	

*Appearances:* *Case Submitted on the Record*  
*Paul H. Felser, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

**ORDER REMANDING CASE**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 8, 2020 appellant, through counsel, filed a timely appeal from a November 14, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1119.

On May 4, 2016 appellant, then a 57-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that he sustained a right lower back injury on April 24, 2016 when he stood upright after sweeping mail on the second to bottom tier of a mail sorting machine while in the performance of duty.

Appellant has a prior traumatic injury claim regarding the lumbar spine. On June 3, 2015 he filed Form CA-1 alleging that he sustained a low back injury on May 22, 2015 when loading

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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.

mail from a nutting cart to a belt while in the performance of duty. OWCP assigned that claim File No. xxxxxx907. On June 29, 2015 it accepted that claim for right-sided sciatica. OWCP paid appellant wage-loss compensation, commencing July 11, 2015. On July 24, 2015 it expanded its acceptance of the claim to include a right-sided L5-S1 disc herniation. Appellant underwent an OWCP-authorized right L5-S1 lumbar microdiscectomy on September 24, 2015. OWCP paid him wage-loss compensation through his return to full duty work on January 12, 2016.

In support of his claim in OWCP File No. xxxxxx449, appellant provided reports from Dr. Douglas J. Long, a Board-certified neurosurgeon, dated from November 17, 2009 through May 18, 2016, diagnosing a right-sided L5-S1 disc herniation sustained on May 22, 2015, while at work and a right-sided L4-5 disc herniation sustained on April 24, 2016, while at work.

By decision dated June 24, 2016 in File No. xxxxxx449, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the accepted the April 24, 2016 employment incident.

On June 28, 2016 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearing and Review. A hearing was held on February 6, 2017. During the hearing, counsel contended that appellant's claims under OWCP File Nos. xxxxxx449 and xxxxxx907 should be doubled, to provide a complete and consistent medical and factual background for appellant's claim under File No. xxxxxx449. OWCP also received a July 2, 2016 report by Dr. Long, noting that the accepted April 24, 2016 employment incident caused a new disc herniation on the right at L4-5 with L5 nerve root displacement.

By decision dated March 28, 2017 in File No. xxxxxx449, OWCP's hearing representative affirmed OWCP's June 24, 2016 decision. He found that Dr. Long did not differentiate between the effects of the accepted May 22, 2015 lumbar disc displacement and September 24, 2015 surgery accepted under File No. xxxxxx907 and the accepted April 24, 2016 employment incident under File No. xxxxxx449.

On March 20, 2018 appellant, through counsel, requested reconsideration. He submitted a July 21, 2017 report by Dr. Long, who opined that bending over at work on April 24, 2016 aggravated a preexisting disc herniation at L4-5.

By decision dated June 18, 2018, OWCP denied modification of the March 28, 2017 decision.

On June 17, 2019 appellant, through counsel, again requested reconsideration. He provided a May 20, 2019 report by Dr. Long, who opined that the April 24, 2016 employment incident unequivocally caused an acute lumbar pathology with right-sided sciatica.

In an October 10, 2019 letter, OWCP requested that Dr. Long submit a supplemental report discussing the relationship between the lumbar injury accepted under File No. xxxxxx907 and in the present claim under File No. xxxxxx449. It afforded Dr. Long 30 days to submit this evidence. OWCP did not receive additional evidence from Dr. Long within the period allotted.

By decision dated November 14, 2019, OWCP denied modification of its June 18, 2018 decision, as Dr. Long's May 20, 2019 report did not differentiate between the sequelae of the lumbar injury accepted under File No. xxxxx907 and the lumbar injury claimed under File No. xxxxx449.

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 cross-referencing between files and where two or more injuries occur to the same part of the body.<sup>2</sup> 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.<sup>3</sup>

In the instant case, appellant is alleging an April 24, 2016 lumbar injury in File No. xxxxxx449 following an accepted May 22, 2015 lumbar injury and surgery in File No. xxxxxx907. However, OWCP has not administratively combined the present claim with his prior claim pertaining to lumbar conditions.

For a full and fair adjudication, the Board finds that the November 14, 2019 decision must be set aside and this case remanded to OWCP to administratively combine OWCP File No. xxxxxx449 with OWCP File No. xxxxx907. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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

<sup>3</sup> *Id.*; *W.W.*, Docket No. 19-0884 (issued June 16, 2020); *see 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 14, 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: January 29, 2021  
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