

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

C.M., Appellant	)	
	)	
and	)	<b>Docket No. 20-1451</b>
	)	<b>Issued: July 26, 2021</b>
	)	
<b>DEPARTMENT OF THE INTERIOR, U.S. FISH</b>	)	
<b>&amp; WILDLIFE SERVICE, Valley Stream, NY,</b>	)	
<b>Employer</b>	)	
	)	

*Appearances:*  
*Behich Mustafa*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge

On July 29, 2020 appellant, through her representative, filed a timely appeal from a March 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1451.

On March 14, 2019 appellant, then a 45-year-old wildlife inspector, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2017 she sustained a back injury when she attempted to open a container with a tool that slipped causing her to twist/lunge while in the performance of duty. She also claimed that her back injury was related to her prior June 1, 2016 work-related injuries of lumbosacral strain and sprain, bulging disc at L4-L5, post-traumatic lumbar facet

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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.

syndrome, and S1 lumbar radiculopathy.<sup>2</sup> Appellant did not stop work. She submitted medical evidence in support of her claim. OWCP assigned that case File No. xxxxxx640.

Appellant completed an OWCP development questionnaire on April 20, 2019 and again noted that, prior to her claimed May 12, 2017 employment-related injury, she was diagnosed as having sprain of ligaments of the lumbar spine, a bulging lumbar disc, and lumbar pain with radiculopathy. She indicated that she was also diagnosed as having osteoarthritis of the lumbar spine, degenerative disc disease, and lumbago syndrome. Appellant related that some of these conditions had been accepted as employment-related under OWCP File No. xxxxxx670. She maintained that relevant medical records were available in that file and related to her June 1, 2016 employment injury.

OWCP, by decision dated May 14, 2019, denied appellant's traumatic injury claim, finding that the evidence of record failed to establish that her diagnosed medical conditions were causally related to the accepted May 12, 2017 employment incident.

On August 2, 2019 appellant, through her representative, requested reconsideration and submitted new evidence. Appellant's representative contended that OWCP, in its May 14, 2019 decision, made no reference to the medical evidence contained in OWCP File No. xxxxxx670, which related to appellant's accepted June 1, 2016 employment injury. He further contended that contrary to OWCP's finding that a May 15, 2017 medical report by Dr. Laximidhar Diwan, a Board-certified orthopedic surgeon, was of diminished probative value because he was not fully aware of appellant's history of injury on May 12, 2017 and medical background, Dr. Diwan had continuously treated appellant since April 10, 2017 and obtained and reviewed her prior medical records dating back to June 1, 2016 as indicated in his accompanying letter dated April 10, 2017. Appellant's representative asserted that the case record in OWCP File No. xxxxxx670 played a significant role in the adjudication of appellant's current case under OWCP File No. xxxxxx640. Thus, he requested that OWCP administratively combine OWCP File No. xxxxxx670 with the present claim, OWCP File No. xxxxxx640.

By decision dated August 8, 2019, OWCP denied modification of its May 14, 2019 decision.

On February 28, 2020 appellant, through her representative, again requested reconsideration. He reiterated that OWCP should administratively combine the current case record, OWCP File No. xxxxxx640, with appellant's traumatic lumbar injury claim under OWCP File No. xxxxxx670. Appellant's representative also continued to submit new medical evidence.

OWCP, in a March 10, 2020 decision, denied modification of its August 8, 2019 decision.

The Board has duly considered the matter and concludes that this case is not in posture for decision. OWCP's procedures provide that cases should be administratively combined when

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<sup>2</sup> Appellant has a prior claim for a June 1, 2016 traumatic injury, which OWCP accepted for sprain of the lumbosacral spine, strain of the lumbosacral spine, bulging disc at L4-L5, post-traumatic lumbar facet syndrome, and left S1 lumbar radiculopathy under OWCP File No. xxxxxx670. OWCP has not administratively combined that claim with the current claim, OWCP File No. xxxxxx640.

correct adjudication of the issues depends on frequent cross-referencing between files.<sup>3</sup> For example, if a new injury 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>4</sup> In the instant case, appellant had a prior traumatic injury claim for her back in OWCP File No. xxxxxx670. She then filed the present traumatic injury claim for the same body part, assigned OWCP File No. xxxxxx640, and related her current injury to her prior accepted back conditions in OWCP File No. xxxxxx670. The evidence pertaining to OWCP File No. xxxxxx670, however, is not part of the case record presently before the Board.

For a full and fair adjudication, the Board finds that the new claim should be administratively combined with the previously accepted claim, pursuant to OWCP's procedures. Therefore, the case must be remanded to OWCP to administratively combine the case records for OWCP File Nos. xxxxxx670 and xxxxxx640. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of appellant's claim.

**IT IS HEREBY ORDERED THAT** the March 10, 2020 merit 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: July 26, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

<sup>4</sup> *Id.*; see *P.B.*, Docket No. 19-1532 (issued April 30, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).