

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

E.J., Appellant)	
)	
and)	Docket No. 20-1556
)	Issued: July 27, 2021
DEPARTMENT OF THE NAVY, MARINE)	
CORPS AIR STATION MIRAMAR,)	
San Diego, CA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
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 August 27, 2020 appellant, through counsel, filed a timely appeal from a July 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP) under OWCP File No. xxxxxxx951. The Clerk of the Appellate Boards docketed the appeal as 20-1556.

On October 20, 2010 appellant, then a 57-year-old verifying official, filed a traumatic injury claim (Form CA-1) alleging that on October 4, 2010 she injured her hands, shoulders, and knees due to bending, stretching, lifting, reaching, typing, and sitting while in the performance of duty. On May 6, 2016 OWCP accepted appellant's claim for temporary aggravation of bilateral primary osteoarthritis of the knees resolved no later than January 25, 2016.

Appellant also had a previously accepted occupational disease claim (Form CA-2) under OWCP File No. xxxxxx118 for other internal derangement of the knees.

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.

On September 21 and 26, 2016 appellant filed a claim for compensation (Form CA-7) claiming a schedule award in the instant case under OWCP File No. xxxxxx951. By decision dated March 7, 2017, OWCP denied appellant's schedule award claim finding that the evidence was not sufficient to establish permanent impairment of a scheduled member or function of the body.

On May 21, 2018 appellant submitted additional medical evidence and again requested a schedule award. By decision dated January 2, 2020, OWCP denied appellant's schedule award claim finding that she had not established employment-related permanent impairment of a scheduled member or function of the body. On January 9, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated July 10, 2020, OWCP's hearing representative affirmed the January 2, 2020 decision.

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

Under its procedures, OWCP has determined that cases should be administratively combined where a new injury case is reported for an employee who previously filed an injury claim for the same part of the body and where correct adjudication depends on cross-referencing between files.² This will allow OWCP to consider all relevant claim files in developing this schedule award claim.³

Appellant sustained two accepted employment injuries to both knees. For a full and fair adjudication, the claims in OWCP File Nos. xxxxxx951 and xxxxxx118 should be administratively combined. Accordingly, the Board will remand the case to OWCP to administratively combine the case records for File Nos. xxxxxx951 and xxxxxx118. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

² *Id.* at Chapter 2.400.8(c)(1); *V.G.*, Docket No. 19-0670 (issued April 30, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

³ *Id.*

IT IS HEREBY ORDERED THAT the July 10, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: July 27, 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