

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

L.H., Appellant

and

**U.S. POSTAL SERVICE, FENKELL STATION,
Detroit, MI, Employer**

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**Docket No. 21-0100
Issued: July 19, 2021**

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

PATRICIA H. FITZGERALD, Alternate Judge

On October 29, 2020 appellant, through counsel, filed a timely appeal from an August 26, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 21-0100.

On July 22, 2019 appellant, then a 60-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2019 she struck her left knee on the door of the union office while in the performance of duty. She returned to limited-duty work on July 22, 2019 after

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 notes that, following the August 26, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

seeking medical care. OWCP assigned the claim OWCP File No. xxxxxx249 and accepted it for left knee contusion on November 26, 2019.

On December 6, 2019 appellant filed a claim for intermittent wage-loss compensation (Form CA-7) for the period November 25 through December 6, 2019.

By decision dated February 13, 2020, OWCP denied appellant's claim for intermittent disability from November 25 through December 6, 2019. On February 27, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated August 26, 2020, OWCP's hearing representative denied appellant's claimed period of intermittent work-related disability. She noted that appellant had a prior claim for a right knee injury under OWCP File No. xxxxxx253 and further noted that she had filed a prior claim for a left knee consequential injury under OWCP File No. xxxxxx888.

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

Appellant has a previously accepted traumatic injury claim under OWCP File No. xxxxxx253 for bilateral knee contusions and internal derangement of the right knee. She also previously filed an occupational disease claim under OWCP File No. xxxxxx888 for aggravation of her left knee condition, which OWCP denied in decisions dated May 11 and November 15, 2017.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between case files.³ 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.⁴

As the present claim under OWCP File No. xxxxxx249 and the claims under OWCP File Nos. xxxxxx253 and xxxxxx888 involve injuries to appellant's left knee, they must be administrative combined for a full and fair adjudication.⁵ This will allow OWCP to consider all relevant claim files and accompanying evidence in developing her claim for employment-related disability.⁶

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8c (February 2000); *T.D.*, Docket No. 20-1119 (issued January 29, 2021); *R.R.*, Docket No. 19-0368 (issued November 26, 2019).

⁴ *See S.H.*, Docket No. 20-1440 (issued March 12, 2021); *M.B.*, Docket No. 20-1175 (issued December 31, 2020).

⁵ *Id.*

⁶ *L.E.*, Docket No. 20-1178 (issued March 3, 2021); *B.M.*, Docket No. 20-0955 (issued November 30, 2020).

Accordingly, the Board will remand the case to OWCP to administratively combine the present claim with OWCP File Nos. xxxxxx888 and xxxxxx253. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the August 26, 2020 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 19, 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