

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

A.K., Appellant	)	
	)	
and	)	<b>Docket No. 19-1773</b>
	)	<b>Issued: March 18, 2021</b>
U.S. POSTAL SERVICE, OSWEGO POST	)	
OFFICE, Oswego, NY, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., 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 August 21, 2019 appellant, through counsel, filed a timely appeal from an April 19, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1773.<sup>2</sup>

On October 13, 2018 appellant, then a 44-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained an injury to his left shoulder when he lifted a tub of mail and felt a sharp pain radiating down his left arm while in the performance of duty. On the reverse side of the claim form, appellant's supervisor noted that appellant had not

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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.

<sup>2</sup> The record provided to the Board includes evidence received after OWCP issued its April 19, 2019 decision. 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.*

informed her that the injured shoulder was the same one that was previously broken while on duty in February 2018. Appellant stopped work on October 15, 2018.

The record reflects that appellant has a prior January 24, 2018 traumatic injury claim that OWCP accepted for a displaced fracture of glenoid of left shoulder and nondisplaced fracture of greater tuberosity of left humerus, left shoulder under OWCP File No. xxxxxx253.

By decision dated December 3, 2018, OWCP denied appellant's traumatic injury claim finding that the medical evidence submitted was insufficient to establish causal relationship between his diagnosed left shoulder conditions and the accepted October 13, 2018 employment incident. It noted that he had a previously accepted a January 2018 traumatic injury claim, but did not submit a Form CA-2a for a claim for a recurrence of injury.

On January 29, 2019 appellant requested reconsideration and submitted additional medical evidence.

By decision dated April 19, 2019, OWCP denied modification of the December 3, 2018 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 correct adjudication of the issues depends on frequent cross-referencing between files.<sup>3</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>4</sup> Herein, appellant has an accepted claim for displaced fracture of glenoid of left shoulder and nondisplaced fracture of greater tuberosity of left humerus, left shoulder under OWCP File No. xxxxxx253. He subsequently filed a traumatic injury claim for the same body part on October 13, 2018 assigned OWCP File No. xxxxxx503, which is the claim presently before the Board.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx253 and determine whether appellant has provided sufficient rationalized medical evidence to establish a left shoulder condition causally related to the accepted October 13, 2018 employment incident. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

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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.*; *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

**IT IS HEREBY ORDERED THAT** the April 19, 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: March 18, 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