

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

L.E., Appellant)	
)	
and)	Docket No. 20-1178
)	Issued: March 3, 2021
U.S. POSTAL SERVICE, CHICAGO)	
INTERNATIONAL SERVICE CENTER,)	
Chicago, IL, Employer)	
)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

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

On May 20, 2020 appellant, through counsel, filed a timely appeal from an April 28, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1178.

On July 8, 2011 appellant, then a 39-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on July 7, 2011 she strained her neck when she lifted bags onto the priority belt while in the performance of duty. She stopped work on that date and returned to full-duty on September 7, 2011. OWCP accepted her claim for brachial neuritis or radiculitis and neck sprain.² It subsequently expanded the acceptance of appellant's claim to include cervical

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 record reflects that appellant has a prior December 6, 2004 traumatic injury claim that OWCP accepted for left shoulder sprain under File No. xxxxxx564. Appellant had also filed a September 11, 2008 traumatic injury claim alleging bruising and swelling of her left wrist under File No. xxxxxx064, which OWCP accepted for medical benefits only.

spondylosis without myelopathy or radiculopathy and cervicothoracic spondylosis without myelopathy or radiculopathy.

On April 23, 2012 appellant stopped work again. OWCP paid her wage-loss compensation benefits on the supplemental rolls, beginning April 21, 2012, and placed her on the periodic rolls, effective September 22, 2013.

On February 1, 2019 appellant returned to full-time, sedentary duty as a scanner room monitor.

On March 13, 2019 appellant stopped work again. She filed a new traumatic injury claim under OWCP File No. xxxxxx604 alleging that on that date she injured her left elbow when she hit it against the metal arm of her chair and experienced shooting pain through her left arm into her neck while in the performance of duty. Appellant indicated that she at the time of her injury was working modified duty in the scanner room. In an April 29, 2019 decision, OWCP denied her claim, finding that the medical evidence of record was insufficient to establish causal relationship.³

Under the present claim, OWCP File No. xxxxx0394, appellant filed a claim for compensation (Form CA-7) claiming wage-loss from May 20 to June 21, 2019, for a total of 176 hours. She noted that she stopped work on March 14, 2019.

In response to a July 9, 2019 OWCP development letter, appellant explained that the recurrence started in February 2019 from repetitive motions of reaching forward and pushing a button and escalated on March 13, 2019 when she hit her left arm against an exposed metal arm in her chair, causing pain in her neck, elbow, arms, and lower back. She asserted that the effects of the original July 7, 2011 employment-related injury never resolved, but was exacerbated on March 13, 2019.

Appellant also submitted a medical report by Dr. David Barnes, an osteopath specializing in family medicine. Dr. Barnes described the March 13, 2019 employment incident and noted that she experienced severe sharp shooting pain through her left arm and into her neck. He opined that, after reviewing appellant's medical file and examination findings, appellant had sustained an injury to her ulnar nerve on March 13, 2019.

In a September 25, 2019 decision, OWCP treated appellant's claim for wage-loss compensation as one for a recurrence of disability commencing May 20, 2019 under File No. xxxxxx394 and denied it. The decision noted that appellant actually stopped work on March 14, 2019, and that appellant had filed a new traumatic injury claim under File No. xxxxxx604.

On October 21, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on February 12, 2020.

By decision dated April 28, 2020, an OWCP hearing representative affirmed the September 25, 2019 decision denying appellant's recurrence claim. She also noted that OWCP

³ On July 22, 2019 appellant requested reconsideration. By decision dated October 16, 2019, OWCP denied modification of the April 29, 2019 decision.

had denied appellant's traumatic injury claim under OWCP File No. xxxxxx604, which involved the same claimed period of disability.

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 depends on cross-referencing between files and where two or more injuries occur to the same part of the body.⁴ As the claims in OWCP File Nos. xxxxxx604 and xxxxxx394 both involve appellant's neck and upper extremities, the Board finds that they must be administratively combined for a full and fair adjudication.⁵ This will allow OWCP to consider all relevant claim files and accompanying evidence in developing appellant's recurrence of disability claim. Additionally, as appellant has pursued compensation benefits under both OWCP File Nos. xxxxxx604 and xxxxxx394 for the same period of wage-loss compensation benefits, there may be medical reports and factual information that bear directly on the matter before OWCP in both files.⁶

Accordingly, the Board will remand the case to OWCP to administratively combine OWCP File Nos. xxxxxx604 and xxxxxx394. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁵ See *Order Remanding Case, K.F.*, Docket No. 19-0554 (issued October 21, 2019).

⁶ See *Order Remanding Case, J.D.*, Docket No. 19-1585 (issued October 9, 2020).

IT IS HEREBY ORDERED THAT the April 28, 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: March 3, 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