

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

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<b>A.K., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-1491</b>
	)	<b>Issued: March 22, 2021</b>
<b>U.S. POSTAL SERVICE, OSWEGO POST</b>	)	
<b>OFFICE, Oswego, NY, Employer</b>	)	
_____	)	

*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*Office of Solicitor,* for the Director

**ORDER REMANDING CASE**

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

On August 7, 2020 appellant, through counsel, filed a timely appeal from a June 4, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1491.

On January 25, 2018 appellant, then a 43-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 24, 2018 he broke his shoulder when he slipped and fell on ice while in the performance of duty. He stopped work on January 25, 2018. OWCP accepted appellant's claim for left shoulder nondisplaced fracture of the glenoid and left humerus nondisplaced fracture of the greater tuberosity. It paid appellant wage-loss compensation on the supplemental rolls beginning March 11, 2018 and on the periodic rolls, effective May 27, 2018.

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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.

On October 13, 2018 appellant returned to full-duty work, but stopped work again after 40 minutes.<sup>2</sup> He subsequently returned to part-time, limited-duty work.

On May 21, 2019 appellant filed a notice of recurrence (Form CA-2a) claiming disability from work commencing May 21, 2019. He indicated that after the original January 24, 2018 employment injury, he returned to work with a lifting restriction.<sup>3</sup> Appellant also explained that he had experienced daily left shoulder pain and that his shoulder frequently popped since he broke it on January 24, 2018. He further described that on May 21, 2019, he set a package down on the porch when he felt a pop and pain in his left shoulder.

By decision on November 25, 2019, OWCP denied appellant's recurrence claim, finding that the medical evidence of record was insufficient to establish that he was unable to work limited duty due to a worsening of his accepted left shoulder injury.

On December 10, 2019 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on March 27, 2020. By decision dated June 4, 2020, the hearing representative affirmed the November 25, 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 correct adjudication of the issues depends on frequent cross-referencing between files.<sup>4</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>5</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, which is the claim presently before the Board. He subsequently filed a traumatic injury claim for the same body part on October 13, 2018, assigned OWCP File No. xxxxxx503.

For a full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record with OWCP File No. xxxxxx503 and determine whether appellant has provided sufficient rationalized medical evidence to establish a recurrence of disability commencing May 21, 2019, causally related to his accepted January 24, 2018 employment injury. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

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<sup>2</sup> On October 13, 2018 appellant filed a new traumatic injury claim under OWCP File No. xxxxxx503 alleging that he experienced shoulder pain when he lifted a tub of mail while in the performance of duty. OWCP denied that claim finding that the medical evidence of record was insufficient to establish causal relationship. Appellant's claims have not been administratively combined.

<sup>3</sup> Appellant indicated that he had a 20-pound lifting limitation and a 10-pound continuous carry limitation since October 13, 2018.

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

<sup>5</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 June 4, 2020 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 22, 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