

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

_____)	
H.B., Appellant)	
)	
and)	Docket No. 20-1298
)	Issued: November 22, 2021
U.S. POSTAL SERVICE, LOS ANGELES)	
PROCESSING & DISTRIBUTION CENTER,)	
Los Angeles, CA, Employer)	
_____)	

Appearances:
*Manuel B. Madrid, for the appellant*¹
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 June 15, 2020 appellant, through his representative, filed a timely appeal from an April 29, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as Docket No. 20-1298.

On October 29, 2018 appellant, then a 61-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that beginning on September 20, 2018 he sustained degenerative

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 Appellant, through his representative, submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In light of the Board's disposition in this case, the requested oral argument is hereby denied.

lumbar disc disease, necessitating lumbar fusion, due to factors of his federal employment.³ In an accompanying statement, he described repetitive lifting, bending, and twisting while handling bags and containers of mail weighing 35 to 60 pounds, pushing and pulling mail containers weighing from 200 to 700 pounds, loading 600 sacks weighing 50 pounds each during an 8-hour shift, and moving over-the-road containers weighing 700 pounds and all-purpose containers from the work area to the staging area. Appellant had performed these duties over a 30-year period. He acknowledged that his current condition was similar to a lumbar condition for which he had undergone surgery in May 2015 and October 2016. Appellant stopped work on approximately September 24, 2018.

By decision dated January 29, 2019, OWCP denied appellant's claim finding that the medical evidence of record was insufficient to establish causal relationship between a diagnosed medical condition and the accepted employment factors.

On January 31, 2020 appellant requested reconsideration. By decision dated April 29, 2020, OWCP denied his reconsideration request, finding that it was untimely filed and failed to demonstrate clear evidence of error.

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.⁴ 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.⁵ Herein, appellant had a prior claim for a lumbar condition, assigned OWCP File No. xxxxxx042. He subsequently filed an occupational disease claim for the same region of the body on October 29, 2018, assigned OWCP File No. xxxxxx263, 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, OWCP File No. [xxxxxxx]263 with OWCP File No. [xxxxxxx]042, so it can review all appellant's relevant claim files in determining whether appellant has submitted sufficient evidence to demonstrate clear evidence of error. Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

³ OWCP assigned the present claim OWCP File No. xxxxxx263. Appellant has a prior occupational disease claim (Form CA-2), filed on June 8, 2011, alleging sciatica, lumbosacral radiculitis, and bulging discs. Appellant's claims have not been administratively combined.

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

⁵ *Id.*; *S.G.*, Docket No. 21-0396 (issued September 27, 2021); *R.L.*, Docket No. 20-0901 (issued July 27, 2021); *M.E.*, Docket No. 21-0094 (issued May 27, 2021); *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 29, 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: November 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