

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

_____)	
M.A., Appellant)	
)	
and)	Docket No. 20-0632
)	Issued: October 6, 2021
DEPARTMENT OF THE NAVY, JOINT BASE)	
PEARL HARBOR-HICKAM, Honolulu, HI,)	
Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 27, 2020 appellant filed a timely appeal from an October 1, 2019 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0632.¹

On May 10, 2017 appellant, then a 61-year-old child and youth program assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 27, 2017 she pulled a tendon in the back of her right leg when she was helping children clean up the playground while in the performance of duty. On the reverse side of the claim form her supervisor indicated that she did not believe that appellant was injured in the performance of duty as she failed to provide a diagnosis and had

¹ The Board notes that, following the October 1, 2019 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.*

not proven causal relationship. She also noted that appellant sustained a prior injury to her right knee.² Appellant did not stop work.

In an April 28, 2017 statement, appellant explained that she hurt the back of her right knee on April 27, 2017 while she was assisting the children to clean up the playground. She believed that she would feel better the following morning, but indicated that her injury did not improve. Appellant then visited her doctor's office where Dr. Mickey Tseng, a Board-certified orthopedic surgeon, informed her that she had strained and pulled a tendon in her left knee.

In a May 18, 2017 development letter, OWCP informed appellant of the factual and medical deficiencies of her claim and afforded her 30 days to submit the necessary evidence.

In a May 21, 2017 response to OWCP's development questionnaire, appellant explained the circumstances of her claimed April 27, 2017 injury. She also noted that she had previously injured her left knee in 2011.³

By decision dated June 28, 2017, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record did not establish that her right leg injury was causally related to the accepted April 27, 2017 employment incident.

On February 28, 2018 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated March 9, 2018, a hearing representative denied appellant's request for a review of the written record, finding that it was untimely filed as it was not postmarked within 30 days of the issuance of the June 28, 2017 decision. After exercising her discretion, the hearing representative further found that the merits of the claim could equally well be addressed through the reconsideration process.

On April 24, 2018 appellant requested reconsideration of OWCP's June 28, 2017 decision.

By decision dated September 13, 2018, OWCP denied modification of its June 28, 2017 decision.

In medical reports dated March 1 and 7, 2019, Dr. Brandon Shirai, Board-certified in emergency medicine, evaluated appellant for pain she was experiencing in her right knee due to the April 27, 2017 employment incident and also referenced her August 2000 right knee injury resulting in a medial meniscus repair and her February 7, 2011 left knee injury resulting in another medial meniscus repair. He opined to the "highest degree of medical probability" that appellant's

² Appellant previously filed a traumatic injury claim on August 8, 2000 that was accepted for a right knee meniscus tear under OWCP File No. xxxxxx785. On September 20, 2002 OWCP granted her a schedule award for two percent permanent impairment of the right lower extremity for the period October 2 to November 11, 2001.

³ OWCP previously accepted a February 10, 2011 traumatic injury claim for a contusion of the left knee under OWCP File No. xxxxxx844. On June 26, 2018 OWCP expanded acceptance of her claim to include a permanent aggravation unilateral primary osteoarthritis, left knee; an old bucket handle tear of medial meniscus, left; and a tear of medial meniscus of knee, current, left.

April 27, 2017 injury aggravated her August 2000 right knee injury. Dr. Shirai also opined that the acute injury to her right knee was consistent with a repeat meniscus tear, given the mechanism of weight bearing on the right knee rotation, subsequent buckling and popping and sharp localized pain occurring at the onset of her injury.

On an appeal request form dated July 23, 2019, postmarked September 9, 2019, and received by OWCP until September 16, 2019, appellant requested reconsideration of OWCP's September 13, 2018 decision.⁴ In an attached statement, she requested that she be placed back on workers' compensation due to her right knee condition and explained that her right knee gradually weakened due to having to overcompensate following her left knee injury.

By decision dated October 1, 2019, OWCP denied appellant's request for reconsideration, 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.⁵ 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.⁶ Herein, appellant has an accepted claim for a right knee meniscus tear under OWCP File No. xxxxxx785. She also claimed that she was forced to rely more on her right leg to compensate for a previously accepted left knee contusion, a permanent aggravation of unilateral primary osteoarthritis, left knee, an old bucket handle tear of medial meniscus, left and a tear of medial meniscus of the knee, current, left under OWCP File No. xxxxxx844. However, the evidence pertaining to OWCP File Nos. xxxxxx785 and xxxxxx844 are not a part of the case record presented before the Board.⁷

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx785 and xxxxxx844 so it can properly determine whether appellant has submitted sufficient evidence to demonstrate clear evidence of error. Following this and other such further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

⁴ The Board notes that appellant's reconsideration request was postmarked as mailed on September 9, 2019, but was not "received" into the case record until a full seven days later on September 16, 2019. Due to this unexplained seven-day delay, appellant's reconsideration request was deemed untimely filed.

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁶ *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

⁷ See *Order Remanding Case, S.C.*, Docket No. 19-1771 (issued April 28, 2020).

IT IS HEREBY ORDERED THAT the October 1, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 6, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board