

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

_____)
A.J., Appellant)

and)

U.S. POSTAL SERVICE, MOUNT PLEASANT)
POST OFFICE, Mount Pleasant, SC, Employer)
_____)

Docket No. 20-0904

Issued: October 4, 2021

Appearances:

Joanne M. Wright, 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 March 19, 2020 appellant, through her representative, filed a timely appeal from a November 15, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-0904.²

On June 4, 2015 appellant, then a 51-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she sustained right upper extremity, right hip, and right lower extremity injuries when she tripped and fell forward over a plastic strap in a parking lot

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 an 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 Board notes that appellant submitted additional evidence to OWCP following the November 15, 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.*

while in the performance of duty. She was treated on June 4, 2015 in a hospital emergency department. Appellant accepted a full-time, modified-duty assignment on June 18, 2015.

In support of the claim, appellant submitted medical evidence.

On August 17, 2015 OWCP accepted the claim for right hip contusion.

Appellant filed claims for compensation (Form CA-7) claiming disability commencing September 18, 2015.

By decision dated October 28, 2015, OWCP denied appellant's disability claim, commencing September 18, 2015. It found that the medical evidence of record was insufficient to establish that she was disabled from work due to the accepted June 4, 2015 employment injury.

Appellant accepted a modified-duty job on January 14, 2016. She worked approximately four hours a day and claimed wage-loss compensation for the remaining hours.

On March 23, 2016 appellant requested a telephonic oral hearing before a representative of OWCP's Branch of Hearings and Review. She submitted additional medical reports by Dr. Brilliant.

On April 25, 2016 appellant filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2016 she sustained right hip, right knee, right shoulder, right hand, neck, and back injuries when her right leg gave way while she was casing mail in the modified-duty position assigned to her under the present claim. OWCP assigned the claim File No. xxxxxx036 and OWCP accepted it for sprain of ligament of thoracic spine.

By decision dated August 19, 2016, OWCP's hearing representative affirmed OWCP's October 28, 2015 decision.

On November 28, 2016 appellant, through her representative, requested reconsideration and submitted additional medical evidence.

By decisions dated January 30 and February 17, 2017, OWCP denied modification.

On January 13, 2018 appellant, through her representative, requested reconsideration and submitted additional evidence.

By decision dated March 19, 2018, OWCP denied modification.

On February 6, 2019 OWCP expanded its acceptance of the claim to include aggravation of osteoarthritis of the right hip and contusion of the right hip based on the report of Dr. Dowse D. Rustin, a Board-certified orthopedic surgeon.

Appellant requested reconsideration. By decisions dated May 1, July 10, and November 15, 2019, OWCP denied modification.

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.³ 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.⁴

In the present claim, OWCP accepted that appellant sustained a right hip contusion on August 17, 2015, unspecified complications of medical treatment, and aggravation of osteoarthritis of the right hip. Under OWCP File No. xxxxxx036, appellant also claimed injuries to her right hip. However, it has not administratively combined the present claim with OWCP File No. xxxxxx036.

As both files involve injuries to appellant's right hip, for a full and fair adjudication of appellant's current claim, the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx036.⁵ Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.⁶

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁴ *Id.*; *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).

⁵ *Id.*

⁶ *R.G.*, Docket No. 19-1755 (issued July 7, 2020); *M.E.*, *supra* note 4; *L.M.*, *supra* note 4.

IT IS HEREBY ORDERED THAT the November 15, 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: October 4, 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