

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

K.S., Appellant	)	
	)	
and	)	<b>Docket No. 21-0682</b>
	)	<b>Issued: October 13, 2021</b>
U.S. POSTAL SERVICE, PELHAM POST	)	
OFFICE, Pelham, AL, Employer	)	
	)	

*Appearances:* *Case Submitted on the Record*  
*Lauren Holt Shine, 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 March 24, 2021 appellant, through counsel, filed a timely appeal from a February 17, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0682.

On February 8, 2019 appellant, then a 55-year-old sales and service distribution associate, filed an occupational disease claim (Form CA-2) alleging that she sustained an aggravation of an April 13, 2006 occupational lumbar injury while working a modified job lifting packages and tubs

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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 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.

of mail, scanning packages, sorting mail, and loading and moving equipment while in the performance of duty.<sup>2</sup> She stopped work on August 11, 2016 and did not return.<sup>3</sup>

In a development letter dated February 27, 2019, OWCP notified appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted numerous medical reports, including medical evidence previously submitted under her prior claims.

By decision dated May 21, 2019, OWCP denied the claim, finding that the evidence of record was insufficient to establish that the identified employment factors occurred as alleged.

On June 14, 2019 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was subsequently changed to a request for a review of the written record.

By decision dated December 12, 2019, OWCP's hearing representative affirmed the May 21, 2019 decision. The hearing representative noted that appellant had filed the present claim after OWCP had denied a claim for recurrence of disability under OWCP File No. xxxxxx049, and discussed the findings of OWCP's hearing representative under that claim.

On December 29, 2020 appellant, through counsel, requested reconsideration. Counsel contended that the medical evidence under OWCP File No. xxxxxx049 was sufficient to meet appellant's burden of proof under the present claim.

By decision dated February 17, 2021, OWCP denied appellant's reconsideration request, finding that it was untimely filed and failed to present 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.<sup>4</sup> For

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<sup>2</sup> OWCP assigned the present claim xxxxxx444.

<sup>3</sup> Appellant has several prior claims before OWCP. On April 14, 2006 appellant filed a traumatic injury claim (Form CA-1) alleging that on April 13, 2006, she sustained a back strain when she lifted a tub of bulk mail while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx049 and, on December 1, 2006, accepted lumbar sprain and aggravation of degeneration of lumbar or lumbosacral intervertebral disc. On August 21, 2009 appellant had filed a traumatic injury claim (Form CA-1) for back, neck, and left shoulder injuries sustained on August 17, 2009 when she tripped and fell over a stool while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx136 and processed it as a short form closure. On December 30, 2013 appellant filed a traumatic injury claim (Form CA-1) for low back, right knee, right shoulder, and right hip injuries sustained on December 20, 2013 when she tripped and fell over a pallet jack while in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx126 and processed it as a short form closure. Appellant's claims have not been administratively combined.

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

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> However, OWCP has not administratively combined the present claim with OWCP File Nos. xxxxx049, OWCP File Nos. xxxxxx136 and xxxxxx126, all of which pertain to lumbar spine injuries.

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 Nos. xxxxxx049, xxxxxx136, and xxxxxx126.<sup>6</sup> Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.<sup>7</sup>

**IT IS HEREBY ORDERED THAT** the February 17, 2021 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 13, 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

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<sup>5</sup> *Id.*; *T.T.*, Docket No. 21-0049 (issued May 3, 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).

<sup>6</sup> *Id.*

<sup>7</sup> *R.G.*, Docket No. 19-1755 (issued July 7, 2020); *T.T.*, *supra* note 5; *M.E.*, *supra* note 5; *L.M.*, *supra* note 5.