United States Department of Labor
Employees' Compensation Appeals Board

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T.D., Appellant)
)
and)   **Docket No. 21-1160; 21-1161**
)   **Issued: April 20, 2022**
DEPARTMENT OF HOMELAND SECURITY,)
U.S. COAST GUARD, Washington, DC,)
Employer)
_____)

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

ORDER REMANDING CASES

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 26, 2021 appellant, through counsel, filed a timely appeal from a June 16, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP) under OWCP File No. xxxxxx534 and a June 24, 2021 merit decision of OWCP under OWCP File No. xxxxxx513. The Clerk of the Appellate Boards docketed these appeals as Docket Nos. 21-1160 and 21-1161, respectively.

OWCP File No. xxxxxx534 has previously been before the Board.[2] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

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[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] Docket No. 19-1779 (issued March 9, 2021).

On January 24, 2017 appellant, then a 70-year-old contract specialist, filed an occupational disease claim (Form CA-2) alleging that he sustained an "impact injury resulting in Achilles Tendinitis of the right ankle" due to factors of his federal employment. He noted that he was originally injured on November 4, 2016 when his right ankle was struck by a security gate at a security checkpoint while exiting the employing establishment parking garage. OWCP assigned that claim File No. xxxxx513.[3] It subsequently issued decisions dated April 12 and June 8, 2017, December 18, 2018, January 14 and September 3, 2020, January 11 and June 24, 2021 denying appellant's occupational disease claim finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed right ankle conditions and the accepted employment factors. OWCP noted that the medical evidence of record indicated that appellant's diagnosed Achilles tendinitis and calcific tendinosis were due to previously claimed traumatic injuries sustained on November 4, 2015 and again on January 6, 2016 under OWCP File Nos. xxxxx534 and xxxxx656, respectively.

On March 28, 2017 appellant subsequently filed a Form CA-1 alleging that on November 4, 2015 he injured his right ankle when he was struck by the bar on a security gate while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxx534 and issued decisions dated May 26, 2017, June 8, 2018, and August 2, 2019 denying the claim. Appellant, through counsel, filed a timely appeal from the August 2, 2019 decision to the Board. By decision dated March 9, 2021, the Board affirmed OWCP's August 2, 2019 decision, but directed OWCP to administratively combine the files for OWCP File Nos. xxxxx513 and xxxxx534 upon return of the case record.[4] On March 19, 2021 appellant, through counsel, requested reconsideration and submitted new evidence. By decision dated June 16, 2021, OWCP denied modification. However, appellant's claims have not been administratively combined by OWCP.

The Board has duly considered the matter and concludes that these cases are 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] Both OWCP File Nos. xxxxx534 and xxxxx513 allege injuries to appellant's right ankle. Furthermore, appellant's claim under OWCP File No. xxxxx656 also involved injuries to the right ankle. For a full and fair adjudication, the Board finds that the cases must be returned to OWCP to administratively combine administratively combine appellant's claims under File Nos. xxxxx534, xxxxx513, and xxxxx656, as they concerned the same parts of the body. This will allow OWCP to consider all

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[3] Appellant previously filed a traumatic injury claim (Form CA-1) alleging that on January 6, 2016 he reinjured his right ankle when he was struck by the bar on a security gate while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxx656.

[4] *Supra* note 2.

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

[6] *Id.*; *Order Remanding Case*, *M.E.*, Docket No. 21-0094 (issued May 27, 2021); *Order Remanding Case*, *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *Order Remanding Case*, *L.H.*, Docket No 18-1777 (issued July 2, 2019).

relevant claim files in adjudicating appellant's claims.[7] Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision in each of appellant's claims.

        IT IS HEREBY ORDERED THAT the June 16 and 24, 2021 decisions of the Office of Workers' Compensation Programs are set aside and the cases are remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: April 20, 2022
Washington, DC

                                                        Patricia H. Fitzgerald, Deputy Chief Judge
                                                        Employees' Compensation Appeals Board

                                                        Janice B. Askin, Judge
                                                        Employees' Compensation Appeals Board

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

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[7] *Id.*