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

R.A., Appellant	- )	
N.Zi., Appendin	)	
and	)	Docket No. 22-0256 Issued: August 17, 2022
U.S. POSTAL SERVICE, MORGAN	)	issucu. August 17, 2022
PROCESSING & DISTRIBUTION CENTER, New York, NY, Employer	) ) _ )	
Appearances: Appellant, pro se		Case Submitted on the Record
Office of Solicitor, for the Director		

## ORDER REMANDING CASE

## Before:

ALEC J. KOROMILAS, Chief Judge VALERIE D. EVANS-HARRELL, Alternate Judge JAMES D. McGINLEY, Alternate Judge

On December 3, 2021 appellant filed a timely appeal from a September 28, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP)<sup>1</sup> under OWCP File No. xxxxxx250. The Clerk of the Appellate Boards docketed the appeal as No. 22-0256.<sup>2</sup>

On August 12, 2021 appellant, then a 56-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he developed upper neck and back conditions due to the

<sup>&</sup>lt;sup>1</sup> The Board notes that, during the pendency of this appeal, OWCP issued a December 16, 2021 decision, which denied appellant's request for a hearing regarding its September 28, 2021 decision. However, the Board and OWCP may not simultaneously exercise jurisdiction over the same issue(s). Consequently, OWCP's December 16, 2021 decision is set aside as null and void. 20 C.F.R. §§ 501.2(c)(3), 10.626; *see J.W.*, Docket No. 19-1688, n.1 (issued March 18, 2020); *J.A.*, Docket No. 19-0981, n.2 (issued December 30, 2019); *Arlonia B. Taylor*, 44 ECAB 591 (1993) (Groom, Alternate Member, concurring in part and dissenting in part); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

<sup>&</sup>lt;sup>2</sup> The Board notes that, following the September 28, 2021 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*.

factors of his federal employment, including continuously lifting mail flats between 5 and 10 pounds at shoulder length. He noted that he first became aware of his condition on May 7, 2021 and realized its relation to his federal employment on June 18, 2021. Appellant stopped work on June 24, 2021. OWCP assigned the claim File No. xxxxxxx250.3

In medical reports dated June 22 and July 15, 2021, Dr. James McGee, a chiropractic orthopedist, examined appellant's lumbar spine and diagnosed a disc herniation.

On September 9, 2021 Dr. Sanjiv Bansal, a Board-certified orthopedist, diagnosed a c-spine herniation.

By decision dated September 28, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a back condition causally related to the accepted factors of his federal employment.

The Board, having duly considered this matter, finds 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 case files.<sup>4</sup> 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.<sup>5</sup> Appellant has a previously accepted traumatic injury claim for lumbosacral sprain and disc derangement under OWCP File No. xxxxxxx029. The present claim under OWCP File No. xxxxxxx250, involves the same body part. However, OWCP has not administratively combined the present claim with OWCP File No. xxxxxx029.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record, OWCP File No. xxxxxx250 with OWCP File No. xxxxxx029, so it can consider all relevant claim files and accompanying evidence in adjudicating appellant's current occupational disease claim. Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

<sup>&</sup>lt;sup>3</sup> Under OWCP File No. xxxxxx029, appellant previously filed a traumatic injury claim on November 18, 2004, which OWCP accepted on December 3, 2004 for a lumbosacral sprain and disc derangement.

<sup>&</sup>lt;sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000); *T.D.*, Docket No. 20-1119 (issued January 29, 2021); *R.R.*, Docket No. 19-0368 (issued November 26, 2019).

<sup>&</sup>lt;sup>5</sup> *Id.*; *M.B.*, Docket No. 20-1175 (issued December 31, 2020); *L.M.*, Docket No. 19-1490 (issued January 29, 2020).

**IT IS HEREBY ORDERED THAT** the September 28, 2021 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: August 17, 2022 Washington, DC

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

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

> James D. McGinley, Alternate Judge Employees' Compensation Appeals Board