

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

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<b>L.H., Appellant</b>		)	
		)	
<b>and</b>		)	<b>Docket No. 22-0290</b>
		)	<b>Issued: August 3, 2022</b>
<b>DEPARTMENT OF VETERANS AFFAIRS,</b>		)	
<b>DES MOINES VA MEDICAL CENTER,</b>		)	
<b>Des Moines, IA, Employer</b>		)	
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*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

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

On December 17, 2021 appellant, through counsel,<sup>1</sup> filed a timely appeal from a June 23, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 22-0290.

On December 28, 2020 appellant, then a 59-year-old custodian, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral knee condition due to factors of her federal employment. She explained that she slipped and fell on a wet floor while descending stairs, landing on her knees. Appellant asserted that she had a prior claim which had been closed, and that she had been directed to file a new claim. She indicated that she first became aware of

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<sup>1</sup> Counsel withdrew representation by letter dated December 30, 2021.

her condition and its relationship to her federal employment on February 15, 2011.<sup>2</sup> Appellant stopped work on the same day. OWCP assigned the claim File No. xxxxxx132.

In a development letter dated January 4, 2021, OWCP advised appellant of the factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. It also requested that she clarify whether she was claiming an occupational disease or a traumatic injury occurring on February 15, 2011. OWCP afforded appellant 30 days to respond.

In a January 22, 2021 memorandum of telephone call (Form CA-110), OWCP requested that appellant clarify whether she was alleging a new occupational disease or traumatic injury on February 15, 2011 or seeking approval for further medical care for the accepted February 8, 2011 right knee injury.

In e-mail correspondence of even date, OWCP advised D.B., an employing establishment workers' compensation specialist, that appellant had indicated that there was no occupational disease or traumatic injury claim for February 15, 2011 and that the initial date of her fall was February 8, 2011.

By decision dated March 31, 2021, OWCP denied appellant's claim, finding that she had not submitted sufficient evidence to establish that the events occurred as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

On April 28, 2021 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review, contending that OWCP should have combined OWCP File Nos. xxxxxx132 and xxxxxx214 and developed and adjudicated the claim as a recurrence of the February 8, 2011 employment injury.

By decision dated June 23, 2021, OWCP's hearing representative affirmed the March 31, 2021 decision, finding the evidence was insufficient to establish an injury in the performance of duty, as alleged. The hearing representative evaluated whether the medical evidence of record supported a recurrence of appellant's February 8, 2011 employment injury and noted that the recurrence claim under OWCP File No. xxxxxx214 was not within the jurisdiction of appellant's request for review of the written record under OWCP File No. xxxxxx132, as OWCP had not issued a final determination with appeal rights for the recurrence claim under OWCP File No. xxxxxx214.

The Board has duly considered the matter and concludes that this case is not in posture for decision.

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<sup>2</sup> The record reflects that a appellant has a previously accepted February 8, 2011 traumatic injury claim (Form CA-1) for contusion and sprain of the right knee with tears of the medial and lateral menisci and temporary aggravation of right knee osteoarthritis under OWCP File No. xxxxxx214. She requested expansion of the acceptance of her claim to include a left knee condition, which OWCP had denied by decision dated November 3, 2014. On October 9, 2019 OWCP received a notice of recurrence (Form CA-2a) under OWCP File No. xxxxxx214. By letter dated October 21, 2019, it advised appellant that no further action would be taken on the Form CA-2a under OWCP File No. xxxxxx214, but that if she believed she had sustained a new work-related injury, she could complete a Form CA-1 or Form CA-2.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.<sup>3</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>4</sup> Herein, appellant's claim under OWCP File No. xxxxxx214 also involved injuries to the right knee, which is at issue in the present claim under OWCP File No. xxxxxx132. The record indicates that OWCP adjudicated OWCP File No. xxxxxx132 as a new occupational disease claim, even though the evidence supports that appellant was alleging a recurrence of the February 8, 2011 right knee injury. Although the hearing representative indicated that the files should be combined, she affirmed the March 31, 2021 OWCP decision. The Board finds that it was premature for the hearing representative to affirm the March 31, 2021 decision after indicating that the files still needed to be combined. As such, the ordered combined files have not yet been properly adjudicated by OWCP.

For a full and fair adjudication, this case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx214 so it can consider all relevant claim files and accompanying evidence in adjudicating whether appellant sustained either a recurrence of disability of her February 8, 2011 employment injury or a new occupational disease or traumatic injury.<sup>5</sup>

Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision.

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

<sup>4</sup> *Id.*; *M.L.*, Docket No. 20-1176 (issued April 29, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

<sup>5</sup> *Supra* note 3 at Chapter 2.400.8(c)(1); *W.D.*, Docket No. 19-0961 (issued March 31, 2021); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019).

**IT IS HEREBY ORDERED THAT** the June 23, 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 3, 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