

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

V.G., Appellant)

and)

DEPARTMENT OF VETERANS AFFAIRS,)
NORTHPORT VA MEDICAL CENTER,)
Northport, NY, Employer)

Docket No. 22-0577
Issued: August 22, 2022

Appearances:
Paul Kalker, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On February 28, 2022 appellant, through counsel, filed a timely appeal from a January 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP) in relation to OWCP File No. xxxxxx666. The Clerk of the Appellate Boards docketed the appeal as No. 22-0577.

On April 9, 2021 appellant, then a 56-year-old pipe fitter, filed a notice of recurrence (Form CA-2a) claiming disability due to a material change/worsening of his accepted May 24, 2018 lumbar injury,² under OWCP File No. xxxxxx542. He related that his current symptoms were

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 The record reflects that appellant has an accepted May 24, 2018 traumatic injury claim (Form CA-1) for lower back and right hip strains under OWCP File No. xxxxxx542.

caused by his previously accepted 2018 lumbar injury and that his condition worsened following his return to work, as there was no intervening cause or new injury.

In a report dated April 14, 2021, Dr. Arjang Abbasi, an osteopath and Board-certified physiatrist, noted a date of injury of May 24, 2018 for appellant's original lumbar condition. He related that appellant had been experiencing constant lower back pain, which radiated to the posterior aspect of the right foot and worsened when sitting and standing for prolonged periods of time. Dr. Abbasi diagnosed displacement of lumbar intervertebral disc without myelopathy, lumbar foraminal stenosis, and lumbar radiculopathy.

OWCP subsequently received a narrative statement dated May 11, 2021, wherein appellant explained that his symptoms reoccurred as a result of his May 2018 injury and that these symptoms worsened after his return to work. Appellant also noted that he was assigned modified duties including scanning medical records and typing work orders.

In a medical report dated May 17, 2021, Dr. Brett Ross Silverman, an osteopath and Board-certified physiatrist, examined appellant for continued lower back pain relating to his May 24, 2018 lumbar injury. He noted that appellant was assigned light-duty activities including desk work, scheduling, and calling patients. Dr. Silverman related that his symptoms worsened when he returned to work following his initial injury and as a result of twisting side to side and sitting for long periods of time.

On August 6, 2021 OWCP converted appellant's recurrence claim to a new occupational disease claim (Form CA-2) and assigned OWCP File No. xxxxxx666.

By decision dated January 12, 2022, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted factors of his federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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 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

Appellant has a previously accepted traumatic injury claim for a lumbar condition under OWCP File No. xxxxxx542. He subsequently filed a recurrence claim, which OWCP converted to a new occupational disease claim for a claimed injury to the same body part, and assigned OWCP File No. xxxxxx666. As both claims involve injuries to appellant's lumbar region, for a full and fair adjudication, the Board will remand the case to OWCP to administratively combine

³ *R.R.*, Docket No. 19-0368 (issued November 26, 2019); Federal (FECA) Procedure Manual, Part 2 -- *Claims, File Maintenance & Management*, Chapter 2.400.8c (February 2000).

⁴ *L.B.*, Docket No. 21-0241 (issued October 28, 2021).

OWCP File Nos. xxxxxx666 and xxxxxx542.⁵ This will allow OWCP to consider all relevant claim files and accompanying evidence in developing the present claim. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the January 12, 2022 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 22, 2022
Washington, D.C.

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

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

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

⁵ *E.J.*, Docket No. 21-1044 (issued March 16, 2022); *T.T.*, Docket No. 21-0049 (issued May 3, 2021); *S.D.*, Docket No. 19-0590 (issued August 28, 2020).