

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

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J.W., Appellant)	
)	
and)	Docket Nos. 21-0588 &
)	21-0599
U.S. POSTAL SERVICE, MAIN POST OFFICE,)	Issued: January 21, 2022
Greensboro, NC, Employer)	
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Appearances:
Joanne Marie Wright, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On March 8, 2021 appellant, through her representative, filed a timely appeal from a September 11, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP) under OWCP File No. xxxxxx221. The Clerk of the Appellate Boards assigned the appeal Docket No. 21-0599. Also on March 8, 2021, appellant, through her representative, filed a timely appeal from a September 18, 2020 merit decision of OWCP under OWCP File No. xxxxxx298. The Clerk of the Appellate Boards assigned that appeal Docket No. 21-0588.

On June 7, 2014 appellant, then a 32-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed "occupational stress" due to factors of her federal employment. She asserted that a series of events contributed to her condition, including that a truck driver for the employing establishment with whom she had worked, M.S., murdered another postal clerk whom she knew. Appellant indicated that M.S. had also harassed her while at the employing establishment, had her contact information, and would send her inappropriate photos

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 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.

to her telephone. She explained that contemporaneously with the murder incident she was verbally assaulted by a coworker who cursed at her while at the time clock and she was required to call the police on a postal customer who had followed her and yelled at her over a piece of previously returned mail. Appellant explained, that due to the murder by M.S., she was in consultation with the Employee Assistance Program (EAP)² and that the acts of her coworker and the postal customer were more than she could take emotionally. She noted that she did not feel safe at work. OWCP assigned that claim OWCP File No. xxxxxx221.

By decision dated December 19, 2014, OWCP denied appellant's emotional condition claim under OWCP File No. xxxxxx221, finding that the medical evidence of record was insufficient to establish that a medical condition arose during the course of employment and within the scope of compensable work factors. It found that there were no accepted events that, were compensable factors of employment and, while the events involving M.S. occurred as alleged, they were not directed at appellant, nor did they involve her. OWCP found that the fact that she used to work with M.S. and knew at least one of his victims were not compensable factors of her federal employment. It further found that a postal customer had not verbally abused appellant on June 7, 2014 as alleged.³

On May 18, 2015 appellant, then a 53-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 12, 2015 she developed stress and anxiety due to harassment by management. Specifically, she alleged that management forced her to sit in a wheelchair for eight hours with no duties, denied her union representation, ordered her to remain in an office with two supervisors, and forced her to leave the building. OWCP assigned that claim OWCP File No. xxxxxx298.

By decision dated September 16, 2016, under OWCP File No. xxxxxx298, OWCP found that the evidence of record established a compensable factor of employment with respect to harassment.⁴ However, it denied her claim, finding that the medical evidence of record was insufficient to establish that her stress condition had been caused or aggravated by the accepted employment factor.

Appellant, through her representative, subsequently submitted requests for reconsideration under both OWCP File Nos. xxxxxx221 and xxxxxx298. OWCP received a number of medical reports from Dr. Rupinder Kaur, a Board-certified psychiatrist, which related to both of appellant's emotional condition claims.

By decision dated October 25, 2016, OWCP denied modification of the denial of the claim under OWCP File No. xxxxxx221.

² Appellant submitted a note from a USPS EAP consultant who noted that appellant had contacted EAP on April 9, 2014 and had continued counseling.

³ By decision dated September 29, 2015, under OWCP File No. xxxxxx221, OWCP's hearing representative affirmed the December 19, 2014 denial decision.

⁴ It found management's requiring appellant to sit in a wheelchair in the middle of the workroom floor in front of coworkers constituted harassment.

By decision dated June 13, 2018, OWCP denied modification of the denial of the claim under OWCP File No. xxxxxx298.⁵

Appellant, through her representative again requested reconsideration of the denials of both claims.

By decision dated September 11, 2020 under OWCP File No. xxxxxx221, OWCP denied modification of the October 25, 2016 decision.⁶

By decision dated September 18, 2020, under OWCP File No. xxxxxx298, OWCP, denied modification of the June 13, 2018 decision.

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.⁷ 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.⁸

Herein, appellant's claims under OWCP File Nos. xxxxxx298 and xxxxxx221 both involve emotional conditions, alleging that she sustained PTSD due factors of her federal employment, including harassment at work. Therefore, for full and fair adjudication, this case must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx298 and xxxxxx221. This will allow OWCP to consider all of the relevant claim files and accompanying evidence in developing appellant's current compensation claim. Following this and other such further development as deemed necessary, OWCP shall issue *de novo* merit decisions regarding appellant's emotional condition claims.

⁵ Appellant, through her representative, appealed to the Board on November 10, 2018. By decision dated July 1, 2019, the Board affirmed OWCP's June 13, 2018 decision finding that she had not met her burden of proof to establish an emotional condition causally related to the accepted compensable factor of her federal employment. Docket No. 19-0237 (issued July 1, 2019).

⁶ The Board notes that, by decision dated December 19, 2017 under OWCP File No. xxxxxx221, OWCP denied appellant's request for reconsideration of the merits of her claim. However, on March 11, 2018 appellant, through counsel, appealed to the Board. By decision dated July 1, 2020, the Board set aside the December 19, 2017 decision, finding that OWCP improperly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a). The Board remanded the case for an appropriate merit decision on appellant's claim. On remand, OWCP issued the September 11, 2020 merit decision.

⁷ *T.T.*, Docket No. 21-0049 (issued May 3, 2021); *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).

⁸ *Id.*

IT IS HEREBY ORDERED THAT the September 11 and 18, 2020 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: January 21, 2022
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