

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

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<b>G.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 21-1277</b>
	)	<b>Issued: July 28, 2022</b>
<b>U.S. POSTAL SERVICE, SOUTH SUBURBAN VEHICLE MAINTENANCE FACILITY, Bedford Park, IL, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER GRANTING REMAND**

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

On August 21, 2021 appellant filed a timely appeal from a March 29, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards assigned Docket No. 21-1277.

On December 14, 2016 appellant, then a 62-year-old general clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 12, 2016 she sustained injury to her neck, back, shoulders, and legs, including both knees and feet, when she slipped on ice and fell to the ground while in the performance of duty. She did not stop work and did not receive any wage-loss

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<sup>1</sup> The Board notes that, following the March 29, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* 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.*

compensation. After development of the evidence, OWCP accepted appellant's claim for strains of muscle, fascia, and tendon of the neck and lower back.<sup>2</sup>

OWCP determined that there was a conflict in the medical opinion evidence between the opinion of Dr. Michael Morgenstern, an attending Board-certified orthopedic surgeon, and the opinion of Dr. Kenekwue Ugokwe, a Board-certified neurosurgeon serving as an OWCP district medical adviser on the issue of whether appellant sustained a consequential injury related to her accepted December 12, 2016 employment injury.<sup>3</sup> In a December 28, 2020 report, Dr. Bryan Neal, a Board-certified orthopedic surgeon serving as an impartial medical specialist, determined that appellant did not sustain any additional injuries as a consequence of her accepted December 12, 2016 employment injury.

By decision dated March 29, 2021, OWCP denied appellant's consequential injury claim. It found that the special weight of the medical opinion evidence rested with the opinion of Dr. Neal.

On January 3, 2022 the Director of OWCP filed a motion to remand with the Clerk of the Appellate Boards. The Director indicated that, in accordance with the Board's prior order in Docket No. 21-0416,<sup>4</sup> and in light of the need to make cross-references among appellant's multiple files, which involve injuries to the same parts of the body, the present matter must be remanded to allow OWCP to consider all relevant claim files and accompanying evidence in developing her claim for consequential injuries.<sup>5</sup> The Director requested that the March 29, 2021 decision be set aside and that, on remand, OWCP further develop the evidence to include administrative

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<sup>2</sup> Under a separate claim, assigned OWCP File No. xxxxxx379, OWCP accepted that appellant fell from a chair to the floor and sustained a December 12, 2005 traumatic injury in the form of a lumbar strain, lumbago, thoracic sprain, and back contusion. It only paid her for visits to attending physicians in connection with that claim. Under OWCP File No. xxxxxx725, OWCP accepted that appellant fell to the ground on an icy surface and sustained a February 7, 2008 traumatic injury, which it accepted for neck and lumbar sprains. Appellant stopped work on the date of injury and returned to light-duty work on January 26, 2009 on a full-time basis. In connection with this claim, OWCP granted her a schedule award on October 26, 2010 for three percent permanent impairment of each upper extremity and four percent permanent impairment of each lower extremity. Under OWCP File No. xxxxxx060, OWCP accepted that, by March 2017, appellant had sustained the occupational diseases of bilateral carpal tunnel syndrome, radial styloid tenosynovitis, and cervical radiculopathy. Appellant did not stop work under that claim.

<sup>3</sup> In a June 3, 2020 report, Dr. Morgenstern determined that appellant sustained several lower extremity conditions, in addition to the conditions already accepted, which were sustained as a consequence of her accepted December 12, 2016 employment injury. In contrast, Dr. Ugokwe found in a July 10, 2020 report that appellant did not sustain any additional injuries as a consequence of her accepted December 12, 2016 employment injury.

<sup>4</sup> In a November 8, 2021 order remanding case, issued in connection with a schedule award issue, the Board had directed OWCP to administratively combine OWCP File Nos. xxxxxx379 and xxxxxx417 with OWCP File Nos. xxxxxx725 and xxxxxx060. OWCP File No. xxxxxx060 was to be designated as the master file. *Order Remanding Case*, Docket No. 21-0416 (issued November 8, 2021). It is noted that on October 23, 2020 OWCP had administratively combined OWCP File Nos. xxxxxx725 and xxxxxx060 and designated OWCP File No. xxxxxx060 as the master file.

<sup>5</sup> The Director cited *M.O.*, Docket No. 20-0821 (issued January 26, 2021), which references Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

combination of all of appellant's relevant files pertaining to the present matter, with OWCP File No. xxxxxx060 designated as the master file.<sup>6</sup>

The Board, having duly considered this matter, grants the Director's motion. On remand, OWCP shall further develop the evidence to include administrative combination of all of appellant's relevant files pertaining to the present matter, with OWCP File No. xxxxxx060 designated as the master file. After this and such further additional development deemed necessary, OWCP shall issue a *de novo* decision regarding her consequential injury claim.

**IT IS HEREBY ORDERED THAT** the March 29, 2021 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: July 28, 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

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<sup>6</sup> As noted above, the relevant files are OWCP File Nos. xxxxxx417, xxxxxx379, xxxxxx725, and xxxxxx060.