

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

| | | |
|-------------------------------------|---|----------------------|
| A.D., Appellant |) | |
| |) | |
| and |) | Docket No. 22-0147 |
| |) | Issued: July 1, 2022 |
| U.S. POSTAL SERVICE, WEST ALLISPOST |) | |
| OFFICE, West Allis, WI, Employer |) | |
| |) | |

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On November 8, 2021 appellant, through counsel, filed a timely appeal from a July 27, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-0147.

On August 16, 2019 appellant, then a 32-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on August 12, 2019 she sustained an injury to her left foot when a coworker pushed a hand pallet jack that hit the top of her left foot while in the performance of duty. She stopped work on August 13, 2019. OWCP accepted the claim for contusion of the

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 Board notes that, following the July 27, 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.*

left foot. It authorized wage-loss compensation on the supplemental rolls beginning September 27, 2019. Appellant returned to full-time, full-duty work on November 20, 2019.

Beginning October 27, 2020, appellant filed claims for compensation (Form CA-7) for disability from work commencing June 6, 2020.

In a letter dated November 2, 2020, appellant, through counsel, requested that OWCP expand the acceptance of her claim to include left peroneal tendinitis, stress fracture of the metatarsal bone of the left foot, sinus tarsi syndrome of the left ankle, swelling of the left ankle joint, and swelling of the left foot.

By decision dated January 21, 2021, OWCP denied appellant's claim for a recurrence of disability, commencing June 19, 2020, causally related to her August 16, 2019 employment injury. On January 26, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated March 31, 2021, OWCP expanded the acceptance appellant's claim to include temporary aggravation of a fracture of the fourth metatarsal of the left foot.

The oral hearing before OWCP's hearing representative took place on May 10, 2021.

By decision dated July 27, 2021, OWCP's hearing representative, affirmed OWCP's January 21, 2021 decision. She referenced OWCP File No. xxxxxx993 in the decision, in which appellant had claimed a left foot stress fracture as a result of tripping on March 25, 2019 while in the performance of duty.³

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 files.⁴ For example, if a new injury claim is reported for an employee who previously filed an injury claim for a similar condition of the same part of the body, doubling is required.⁵

Herein, appellant has a prior claim under OWCP File No. xxxxxx993 for a left foot condition, which is the same region of the body at issue in the claim presently before the Board. Therefore, for a full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx713, with OWCP File No. xxxxxx993. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

³ The hearing representative noted that this claim was not accepted by OWCP because it found that the incident had not been established.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁵ *Id.*; *H.B.*, Docket No 20-1298 (issued November 22, 2021); *S.G.*, Docket No. 21-0396 (issued September 27, 2021); *R.L.*, Docket No. 20-0901 (issued July 27, 2021); *M.E.*, Docket No. 21-0094 (issued May 27, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

IT IS HEREBY ORDERED THAT the July 27, 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: July 1, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy 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