

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

\_\_\_\_\_ )  
**J.M., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,** )  
**Pendleton, OR, Employer** )  
\_\_\_\_\_ )

**Docket No. 22-0333**  
**Issued: July 1, 2022**

*Appearances:*

*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On January 22, 2021 appellant, through counsel, filed a timely appeal from a December 8, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-0333.

On December 4, 2020 appellant, then a 48-year-old rural delivery specialist, filed an occupational disease claim (Form CA-2) alleging that he developed stiffness, pain, and limited mobility in his neck due to factors of his employment. He reported that he first became aware of his condition on November 13, 2019 and first realized that his condition was caused or aggravated by his federal employment on November 4, 2020. Appellant stopped work on October 31, 2020. OWCP assigned the claim File No. xxxxxx583.

---

<sup>1</sup> 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.

In an accompanying narrative statement, appellant described his work duties and noted that he had previously sustained an accepted right shoulder injury on December 23, 2016 which resulted in authorized surgery.<sup>2</sup>

In a December 11, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of medical and factual evidence necessary to establish his claim and provided a questionnaire for his completion. In a separate development letter dated December 10, 2020, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to submit the necessary information.

By decision dated January 29, 2021, OWCP denied appellant's occupational disease claim finding that he provided insufficient medical evidence 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.

On February 26, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. The oral hearing took place on May 27, 2021.

Dr. Patricia Ann Waring, a Board-certified family practitioner, completed a June 24, 2021 note and described appellant's work duties. She noted that he experienced left-sided neck pain beginning in November 2019 and received facet injections on June 3, 2021. Dr. Waring diagnosed cervical facet arthritis. She noted that the etiology of appellant's arthritis and degenerative changes was difficult to establish as "being solely related to his employment."

By decision dated August 3, 2021, OWCP's hearing representative affirmed, as modified, OWCP's January 29, 2021 decision finding that the medical evidence was insufficient to establish causal relationship between the diagnosed medical condition and the accepted factors of appellant's federal employment.

On October 28, 2021 appellant, through counsel, requested reconsideration. In support of this request, he provided an August 9, 2021 note from Dr. Andrea Yolanda Carrasco, a Board-certified family practitioner. Dr. Carrasco diagnosed arthropathy of the right shoulder region and cervical facet syndrome. She attributed appellant's left-sided neck pain to compensating for his accepted right shoulder injury under OWCP File No. xxxxxx733.

By decision dated December 8, 2021, OWCP denied modification of its prior decisions.

The Board, having duly considered the 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.<sup>3</sup> For example, if a new injury case is reported for an employee who previously filed an injury claim for

---

<sup>2</sup> The record reflects that appellant has a previously accepted December 23, 2016 traumatic injury claim (Form CA-1) for right shoulder suprascapular neuropathy and right rotator cuff tear with authorized surgery on June 19, 2017 under OWCP File No. xxxxxx733.

<sup>3</sup> *K.K.*, Docket No. 20-0581 (issued September 14, 2020); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

a similar condition or the same part of the body, doubling is required.<sup>4</sup> Regarding alleged consequential injuries, in discussing the range of compensable consequences, once the primary injury is causally connected with the employment, the question is whether compensability should be extended to a subsequent injury or aggravation related in some way to the primary injury. The basic rule is that a subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is compensable if it is the direct and natural result of a compensable primary injury.<sup>5</sup> Herein, Dr. Carrasco noted appellant's previously accepted right shoulder suprascapular neuropathy and right rotator cuff tear under OWCP File No. xxxxxx733 and indicated that these employment injuries and the subsequent surgery procedure caused his diagnosed conditions in the present claim.

The Board finds that for a full and fair adjudication of appellant's claim, the case shall be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx583 and xxxxxx733. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the December 8, 2021 decision of the Office of Workers' Compensation is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: July 1, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>4</sup> *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

<sup>5</sup> *See C.H.*, Docket No. 20-0228 (issued October 7, 2020); *see also K.S.*, Docket No. 17-1583 (issued May 10, 2018).