

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

K.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Palmerton, PA, Employer**

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**Docket No. 21-1112
Issued: June 22, 2022**

Appearances:

Aaron B. Aumiller, 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

JAMES D. MCGINLEY, Alternate Judge

On July 15, 2021 appellant, through counsel, filed a timely appeal from a March 22, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-1112.

On April 8, 2019 appellant, then a 61-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that she developed calcific tendinitis and calcific bursitis in her right shoulder due to factors of her federal employment, including reaching across her vehicle to open and close mailboxes, bundling mail, loading mail, and carrying parcels. She reported that she first became aware of her claimed injury and its relation to her federal employment on

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.

February 20, 2018.² The employing establishment controverted appellant's claim, arguing that appellant's shoulder injury was a preexisting condition as demonstrated by a previously denied traumatic injury claim.³

Appellant submitted factual and medical evidence in support of her claim.

By decision dated May 13, 2019, OWCP denied appellant's occupational disease claim, finding that she had not submitted medical evidence sufficient to establish that her medical conditions were causally related to the accepted factors of her federal employment.

Appellant, through counsel, subsequently requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, held on August 29, 2019. She also submitted additional factual and medical evidence. By decision dated October 24, 2019, OWCP's hearing representative denied modification; however, it directed OWCP to administratively combine the present claim with appellant's prior claim for her right shoulder injury under OWCP File No. xxxxxx661 in accordance with OWCP's procedures.

OWCP continued to receive evidence. Appellant, through counsel, requested reconsideration of OWCP's October 24, 2019 decision. By decision dated April 9, 2020, OWCP denied modification of the October 24, 2019 decision.

On December 21, 2020 appellant, through counsel, requested reconsideration of OWCP's April 9, 2020 decision and submitted additional medical evidence.

By decision dated March 22, 2021, OWCP denied appellant's request for reconsideration, in part, relying on evidence from appellant's previously accepted March 17, 2011 occupational disease claim under OWCP File No. xxxxxx185 for right rib strain.

The Board has duly considered the matter and finds that this case is not in posture for decision. OWCP's procedures provide that cases should be administratively combined where correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.⁴ 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.⁵ The evidence of record indicates that appellant had a prior accepted injury to her right

² The present claim was assigned OWCP File No. xxxxxx129. OWCP previously denied an August 20, 2018 traumatic injury claim under OWCP File No. xxxxxx661 for right shoulder strain, finding that she had not met the requirements to establish fact of injury. Additionally, OWCP previously accepted a March 16, 2011 occupational disease claim under OWCP File No. xxxxxx185 for right rib strain. Appellant's claims have not been administratively combined.

³ See *supra* note 2.

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

⁵ *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).

rib in OWCP File No. xxxxxx185. She also filed a traumatic injury claim for the right shoulder on August 18, 2018, assigned OWCP File No. xxxxxx661.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx185 and xxxxxx661 so it can determine whether appellant has submitted sufficient evidence to demonstrate causal relationship.⁶ Following this and other such development as deemed necessary, OWCP shall issue an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the March 22, 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: June 22, 2022
Washington, DC

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

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

A handwritten signature in cursive script, appearing to read "J. D. McGinley".

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

⁶ *Id.*