

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

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<b>T.H., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 20-0861</b>
	)	<b>Issued: October 6, 2022</b>
<b>U.S. POSTAL SERVICE, MAIN POST OFFICE,</b>	)	
<b>Corning, NY, Employer</b>	)	
_____	)	

*Appearances:*  
Lonnie L. Boylan, for the appellant<sup>1</sup>  
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  
JANICE B. ASKIN, Judge

On March 6, 2020 appellant, through her representative, filed a timely appeal from a December 26, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-0861.

On September 12, 2017 appellant, then a 48-year-old rural mail carrier, filed a notice of recurrence (Form CA-2a) alleging that, on September 7, 2017, she sustained a recurrence of disability due to a July 18, 2017 employment-related right shoulder injury.<sup>2</sup> OWCP converted

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<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.

<sup>2</sup> Appellant previously filed a traumatic injury claim (Form CA-1), alleging that on July 18, 2017 she sustained a right shoulder strain when she lost her balance on uneven pavement and fell forward onto her outstretched right arm while delivering a package in the performance of duty. OWCP assigned that claim OWCP File No. xxxxxx871 and accepted it for right shoulder sprain. It subsequently expanded the acceptance of her claim to include right acromioclavicular (AC) joint strain. Appellant returned to full, unrestricted duty on July 22, 2017. However, she stopped work again and filed wage-loss compensation claims (Form CA-7) for total disability from work commencing September 7, 2017.

appellant's recurrence claim to a new occupational disease claim and assigned the present claim OWCP File No. xxxxxx128.

Appellant submitted medical evidence from Dr. Joel C. McClurg, an orthopedic surgeon.

In a development letter dated February 26, 2018, OWCP informed appellant of the deficiencies of her occupational disease claim. It advised her of the type of additional factual and medical evidence required and provided a questionnaire for her completion. By separate development letter of even date, OWCP also requested additional information from the employing establishment, including comments from a knowledgeable supervisor regarding the accuracy of appellant's statements and a copy of her position description. It afforded both parties 30 days to respond.

In narrative statements dated March 4 and 19, 2018, appellant described the circumstances surrounding her July 18, 2017 work-related injury and subsequent medical treatment.

Appellant submitted additional medical evidence.

In a letter dated March 19, 2018, Postmaster B.C., acknowledged that appellant's narrative was accurate. Postmaster B.C. submitted a copy of appellant's official position description and listed the physical requirements of the position.

By decision dated April 4, 2018, OWCP denied appellant's occupational disease claim, finding that she had not submitted a rationalized medical opinion explaining how her diagnosed right shoulder conditions were causally related to the accepted factors of her federal employment.

On October 1, 2018 appellant, through her representative, requested reconsideration and submitted additional evidence.

By decision dated December 27, 2018, OWCP denied modification of its April 4, 2018 decision.

Appellant, through her representative, appealed to the Board.

By decision dated September 9, 2019,<sup>3</sup> the Board set aside OWCP's December 27, 2018 decision and remanded the case for OWCP to develop appellant's occupational disease claim under OWCP File No. xxxxxx128 as a claim for recurrence of disability under OWCP File No. xxxxxx871 pursuant to OWCP's procedures for a claimed recurrence within 90 days of a return to work.<sup>4</sup> The Board also directed OWCP to administratively combine OWCP File Nos. xxxxxx871 and xxxxxx128, followed by the issuance of a *de novo* decision.

On September 17, 2019 OWCP administratively combined OWCP File Nos. xxxxxx871 and xxxxxx128, with OWCP File No. xxxxxx871 designated as the master file.

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<sup>3</sup> *Id.*

<sup>4</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

In a development letter dated October 30, 2019 under OWCP File No. xxxxxx128, OWCP informed appellant that in accordance with the September 9, 2019 Board decision it had issued a development letter dated September 17, 2019, regarding appellant's recurrence claim under OWCP File No. xxxxxx871. The September 17, 2019 development letter indicated that OWCP had received her Form CA-2a signed on September 12, 2017. It advised appellant of the definition of a recurrence of disability and the type of evidence required to establish her claim. OWCP afforded her 30 days to submit additional evidence.

By decision dated December 26, 2019, OWCP denied modification of the April 4, 2018 decision in OWCP File No. xxxxxx128, finding that appellant had not established a medical condition causally related to the accepted factors of her employment.

The Board, having duly considered this matter, finds this case not in posture for decision. As noted, by decision dated September 9, 2019,<sup>5</sup> the Board set aside OWCP's December 27, 2018 decision and remanded the case to OWCP to develop appellant's occupational disease claim under OWCP File No. xxxxxx128 as a claim for recurrence of disability under OWCP File No. xxxxxx871. As appellant filed a notice of recurrence within 90 days of her return to work, and because she continued to note right shoulder conditions following her return to work, the claim should have been developed pursuant to OWCP's procedures for a claimed recurrence within 90 days of a return to work.<sup>6</sup> The Board also directed OWCP to administratively combine OWCP File Nos. xxxxxx871 and xxxxxx128, followed by the issuance of a *de novo* decision. While OWCP administratively combined appellant's claims and issued a recurrence claim development letter dated September 17, 2019, it failed to issue a *de novo* decision on appellant's recurrence claim under OWCP File No. xxxxxx871, pursuant to OWCP's procedures for a claimed recurrence within 90 days of a return to work as ordered in the September 9, 2019 Board decision.

The case must therefore be remanded. On remand, OWCP shall adjudicate appellant's recurrence claim as previously ordered by the Board. Following any further development as deemed necessary it shall issue a *de novo* decision regarding appellant's recurrence claim under OWCP File No. xxxxxx871. Accordingly,

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<sup>5</sup> *Id.*

<sup>6</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013).

**IT IS HEREBY ORDERED THAT** the December 26, 2019 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: October 6, 2022  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board