

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

) W.H., Appellant))) and)) Docket No. 22-0312) Issued: October 7, 2022) U.S. POSTAL SERVICE, CLARKSDALE POST)) OFFICE, Clarksdale, MS, Employer)))		
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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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On December 28, 2021 appellant, through counsel, filed a timely appeal from a November 30, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-0312.

On May 9, 2018 appellant, then a 57-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she popped her right shoulder when she lifted a tray of mail into her truck while in the performance of duty. She stopped work on May 12, 2018. OWCP assigned the claim OWCP File No. xxxxxx400.

By decision dated July 13, 2018, OWCP accepted the condition of sprain of incomplete rotator cuff tear or rupture of the right shoulder, not specified as traumatic. It paid appellant wage-loss compensation on the supplemental rolls for the period June 28 through August 18, 2018, 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 an 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.

the periodic rolls for commencing August 19, 2018, and again on the supplemental rolls from November 11, 2018 through July 4, 2020.

On August 8, 2018 appellant underwent OWCP-authorized right shoulder acromioplasty and open right rotator cuff repair performed by Dr. Edward D. Field, an attending orthopedic surgeon.

On October 9, 2019 appellant filed a notice of traumatic injury (Form CA-1) alleging that on that day she injured her right shoulder when she pulled mail, flats and packages from the rear of her employing establishment vehicle. OWCP assigned this claim OWCP File No. xxxxxx230. It has not issued a final decision regarding this claim.

On March 28, 2020 appellant returned to full-time, modified-duty work with restrictions.

On January 12, 2021 appellant filed a claim for compensation (Form CA-7) for disability from work for the period October 24, 2020 through January 1, 2021 in OWCP File No. xxxxxx400.

OWCP received medical records from Dr. Edward D. Field, an attending orthopedic surgeon. In a November 30, 2020 medical report, Dr. Field noted appellant's OWCP-authorized August 8, 2018 surgery to repair her accepted May 9, 2018 right shoulder right rotator cuff tear. He further noted that on October 5, 2019 she again tore her rotator cuff while working at the employing establishment. Appellant was unable to return to work, and on May 18, 2020 Dr. Field performed a revision open rotator cuff repair. On October 20, 2020 Dr. Field found that she still had decreased range of motion secondary to pain. Appellant also had other health conditions that required her to use a walker, which caused increased pain in her right shoulder. Dr. Field related that she remained off work due to increased pain and decreased range of motion in her shoulder.

OWCP continued to receive progress reports from Dr. Field.

OWCP, by development letter dated January 19, 2021, informed appellant of the deficiencies in her claim for wage-loss compensation during the period October 24, 2020 through January 1, 2021. It noted that the evidence of record indicated that a light/limited-duty assignment was available within her medical restrictions as of March 31, 2020. OWCP requested that appellant submit additional medical and factual evidence explaining her disability for work during the claimed period. It afforded her 30 days to submit the necessary evidence.

OWCP subsequently received additional medical evidence from Dr. Field. By letter dated January 25, 2021, Dr. Field clarified appellant's second injury. He noted that she initially injured her right shoulder on May 9, 2018 while working at the employing establishment and underwent right rotator cuff repair on August 8, 2018. Dr. Field determined that appellant reached maximum medical improvement on October 8, 2019. Appellant returned to work and on October 5, 2019 she retore her right rotator cuff and underwent a revision open rotator cuff repair on May 18, 2020.

OWCP, by decision dated March 8, 2021, denied appellant's claim for disability from work for the period October 24, 2020 through January 1, 2021. It found that the medical evidence of record was insufficient to establish disability.

On September 1, 2021 appellant, through counsel, requested reconsideration of the March 8, 2021 decision and submitted additional medical evidence from Dr. Field. In an August 12, 2021 report, Dr. Field reiterated the findings, including his opinion regarding appellant's disability from work, set forth in his prior reports dated November 30, 2020 and January 20, 2021.

By decision dated November 30, 2021, OWCP denied modification of its March 8, 2021 decision.

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.² For example, if a new injury 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.³ In the instant case, appellant filed a new traumatic injury claim for an October 9, 2019 injury to her right shoulder in OWCP File No. xxxxxx230. She had previously filed the present traumatic injury claim for the same body part, a right shoulder injury dated May 9, 2018, which was assigned OWCP File No. xxxxxx400. The evidence pertaining to OWCP File No. xxxxxx230, however, is not part of the case record presently before the Board.

For a full and fair adjudication, the Board finds that appellant's claims should be administratively combined, pursuant to OWCP's procedures. Therefore, the case must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx400 and xxxxxx230. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of appellant's claim for recurrence of disability for the period October 24, 2020 through January 1, 2021.

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

³ *Id.*; see *P.B.*, Docket No. 19-1532 (issued April 30, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

IT IS HEREBY ORDERED THAT the November 30, 2021 merit 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 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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