

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

<p>M.C., Appellant</p>)	
)	
and)	Docket No. 22-0765
)	Issued: October 27, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
TOGUS VA MEDICAL CENTER,)	
Augustus, ME, Employer)	

Appearances:

James G. Noucas, Jr., 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
 JANICE B. ASKIN, Judge

On April 20, 2022 appellant, through counsel, filed a timely appeal from a November 12, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellant Boards assigned the appeal Docket No. 22-0765.

On October 9, 2020 appellant, then a 38-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed subacromial and scapulothoracic bursitis of the right shoulder due to factors of her federal employment, including the repetitive use of her arms. She noted that she previously injured her right shoulder at work on March 31, 2014 and while performing work activities that required repetitive use and exertion of her right arm/shoulder beginning in the summer 2018. Appellant indicated that she first became aware of her conditions

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.

on August 1, 2018 and their relationship to her federal employment on June 25, 2019. She stopped work on November 27, 2019. OWCP assigned the claim OWCP File No. xxxxxx221.²

Following development of the evidence, OWCP, by decision dated January 7, 2021, denied appellant's occupational disease claim, finding that she had failed to submit medical evidence to establish a medical diagnosis in connection with the accepted factors of her federal employment. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On February 4, 2021 appellant, through counsel, requested reconsideration. In an accompanying letter dated January 26, 2021, counsel described appellant's March 31, 2014 employment injury. He requested that appellant's current claim be accepted for right shoulder and neck sprain from the March 31, 2014 injury, subacromial bursitis of the right shoulder, acromioclavicular joint synovitis of the right shoulder from the March 31, 2014 injury, and scapulothoracic bursitis of the right shoulder.

By decision dated February 9, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

On February 17, 2021 appellant, through counsel, again requested reconsideration and submitted medical evidence related to her previously accepted March 31, 2014 employment injury, including an August 26, 2020 medical report from Dr. John J. Walsh, Jr., a Board-certified orthopedic surgeon. Dr. Walsh diagnosed sprain of the right shoulder and neck and subacromial bursitis, AC joint synovitis, and chronic scapulothoracic bursitis of the right shoulder. Dr. Walsh opined that appellant's diagnosed conditions and resultant disability were permanent and directly caused by the March 31, 2014 employment injury.

By decision dated May 14, 2021, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a). It found that the medical evidence submitted, including Dr. Walsh's August 26, 2020 report, was irrelevant or immaterial as it related to appellant's March 31, 2014 employment injury. OWCP noted that it had reviewed the case under OWCP File No. xxxxxx910 to ensure that evidence related to the instant claim under OWCP File No. xxxxxx221 was not misfiled.

On November 1, 2021 appellant, through counsel, requested reconsideration. Counsel contended that the medical evidence from Dr. Walsh established that appellant sustained a new injury and an aggravation of her accepted March 31, 2014 employment injury due to repetitive use and exertion of her right arm and shoulder at work in 2018.

OWCP, by decision dated November 12, 2021, again denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

² The record reflects that appellant has a previously-accepted traumatic injury claim for a March 31, 2014 sprain of the right shoulder and neck under OWCP File No. xxxxxx910.

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 case files.³ 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.⁴ Herein, appellant has a previously accepted traumatic injury claim for sprain of the right shoulder and neck, assigned OWCP File No. xxxxxx910. She subsequently, in the present claim under OWCP File No. xxxxxx221, filed an occupational disease alleging that she developed a right shoulder condition due to the accepted factors of her federal employment. Appellant's files, however, have not been administratively combined.

For a full and fair adjudication, the case must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx221 and xxxxxx910, so it can consider all relevant claim files and accompanying evidence in adjudicating appellant's current occupational disease claim. Following this and other such further development as deemed necessary, OWCP shall issue an appropriate decision. Accordingly,

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8c (February 2000); *T.D.*, Docket No. 20-1119 (issued January 29, 2021); *R.R.*, Docket No. 19-0368 (issued November 26, 2019).

⁴ *Id.*; *A.M.*, Docket No. 22-0095 (issued May 9, 2022); *M.B.*, Docket No. 20-1175 (issued December 31, 2020); *L.M.*, Docket No. 19-1490 (issued January 29, 2020).

IT IS HEREBY ORDERED THAT the November 12, 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: October 27, 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