

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

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L.P., Appellant)	
)	
and)	Docket No. 20-1158
)	Issued: September 23, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Plainview, NY, Employer)	
_____)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 14, 2020 appellant filed a timely appeal from December 3, 2019 and April 21, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Board assigned Docket No. 20-1158.

On September 30, 2019 appellant, then a 59-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained right shoulder rotator cuff tears and anterior dislocation of the right humerus causally related to the accepted factors of her federal employment. She noted that she first became aware of her condition and its relationship to her federal employment on August 12, 2019. Appellant indicated that she had previously injured the same shoulder when she fell at work on February 28, 2017. She explained that she had initially filed a recurrence claim for this condition under OWCP File No. xxxxxx567, but OWCP denied her recurrence claim.¹ Appellant did not stop working. OWCP assigned the present claim OWCP File No. xxxxxx643.

¹ OWCP had previously accepted appellant's February 28, 2017 traumatic injury claim for contusion of right hand, a sprain of right rotator cuff capsule, and contusion of right shoulder under OWCP File No. xxxxxx567. On September 4, 2019 appellant filed a notice of recurrence (Form CA-2a) of disability commencing August 19, 2019 under OWCP File No. xxxxxx567. By decision dated September 9, 2019, appellant's recurrence claim was denied. OWCP instructed appellant to file either a new traumatic injury or occupational disease claim.

In an August 21, 2019 medical report, Dr. Jonathan Mallen, a Board-certified orthopedic surgeon, noted that appellant had previously sustained right shoulder dislocation and rotator cuff tears in 2017. He conducted a physical examination and diagnosed a superior labrum anterior and posterior lesion, a full-thickness rotator cuff tear, and anterior dislocation of the right humerus of the right shoulder. In medical reports dated September 5 and 26, 2019, Dr. Mallen indicated that appellant previously fell at work on February 28, 2017. He conducted a physical examination and reiterated his previous diagnoses. Dr. Mallen opined that appellant's current injuries were casually related to the previously accepted February 28, 2017 employment injury.

In a September 30, 2019 statement, appellant indicated that she had been working in a limited-duty capacity following her previously accepted February 28, 2017 employment injury. She asserted that repetitive use of her right hand caused constant pain in her right shoulder, but that she continued to work. Appellant alleged that she was asked to load and unload heavy materials at work on August 12 and 19, 2019, which aggravated the pain in her right shoulder. She further noted that her right shoulder had been damaged due to repetitive use, including picking up, scanning, and sorting packages, and by her fall in February 2017. Appellant asserted that the employing establishment initially provided her a Form CA-2a, which was denied.

In medical reports dated October 17 and 23, 2019, Dr. Mallen reiterated that appellant previously fell at work on February 28, 2017. He repeated his diagnoses of a superior labrum anterior and posterior lesion and a full-thickness rotator cuff tear of the right shoulder. Dr. Mallen opined that appellant's repetitive activities, such as picking up, scanning, and throwing packages, caused her current conditions.

By decision dated December 3, 2019, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish causal relationship between her diagnosed right shoulder conditions and the accepted factors of her federal employment.

On January 2, 2020 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review and submitted additional evidence.

In a December 20, 2020 medical report, Dr. Mallen conducted a physical examination and repeated his diagnoses of a superior labrum anterior and posterior lesion and a full-thickness rotator cuff tear of the right shoulder. He indicated that these conditions were preexisting. Dr. Mallen opined that appellant's preexisting conditions were initially caused by the previously accepted February 28, 2017 employment injury and then aggravated by her repetitive activities at work.

By decision dated April 21, 2020, OWCP's hearing representative affirmed the December 3, 2019 decision and referenced appellant's previously accepted traumatic injury claim under OWCP File No. xxxxxx567.

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 depends on cross-referencing between files and when two or more injuries

occur to the same part of the body.² As the instant claim under OWCP File No. xxxxxx643 and the claim under OWCP File No. xxxxxx567 both involve injuries to appellant's right shoulder, these claims must be administratively combined for a full and fair adjudication.³ This will allow OWCP to consider all relevant claim files and accompanying evidence in developing appellant's current occupational disease claim.

Accordingly, the Board will remand the case to OWCP to administratively combine OWCP File No. xxxxxx643 and OWCP File No. xxxxxx567. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* merit decision.

IT IS HEREBY ORDERED THAT the April 21, 2020 and December 3, 2019 decisions of the Office of Workers' Compensation Programs are set aside and this case is remanded for further proceedings consistent with this order of the Board.

Issued: September 23, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

³ *D.J.*, Docket No. 20-0997 (issued November 20, 2020); *S.D.*, Docket No. 19-0590 (issued August 28, 2020).