

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

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J.C., Appellant)	
)	
and)	Docket No. 21-0748
)	Issued: September 16, 2022
DEPARTMENT OF VETERANS AFFAIRS, VA)	
MEDICAL CENTER, Vancouver, WA, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On April 21, 2021 appellant filed a timely appeal from a March 17, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0748.

On December 23, 2016 appellant, then a 42-year-old certified nursing assistant (CNA), filed a traumatic injury claim (Form CA-1) alleging that on January 19, 2016 she injured her right upper extremity from her shoulder down to her elbow when she repositioned a patient in bed while in the performance of duty. She did not stop work. OWCP assigned File No. xxxxxx563 to this claim.

Under OWCP File No. xxxxxx628, appellant had previously filed a Form CA-1 on September 29, 2014 alleging that she sustained a right shoulder injury on September 27, 2014 when she repositioned a veteran on a shower chair while in the performance of duty. OWCP processed the claim as a short form closure.

Under OWCP File No. xxxxxx555, appellant had previously filed a Form CA-1 on January 22, 2016 alleging that she sustained a right forearm strain when pulling up a patient while in the performance of duty. OWCP accepted that claim for right elbow lateral epicondylitis.

The case record in the present claim reflects that, as of January 20, 2017, appellant was working part-time, limited duty for six hours per day due to the previously accepted work-related injury under OWCP File No. xxxxxx555.

On January 21, 2017 appellant recounted that she had previously injured her right elbow in December 2015 by lifting a patient. She indicated that a month later she sustained another injury to her right shoulder. Appellant explained that her claim had not been accepted so she filed a new one. She provided medical reports dated from July 19, 2016 through February 7, 2017 by Dr. Steven Lu, a Board-certified internist, describing appellant's history of right tennis elbow and right shoulder tendinitis due to prior employment-related injuries, and a right shoulder injury caused by a claimed January 19, 2016 employment incident. Appellant also submitted reports dated from February 9 through May 18, 2017 by Dr. Jerry Fisher, a family practitioner, who noted a 2015 and January 19, 2016 employment-related injuries to the right upper extremity.

By decision dated May 31, 2017, OWCP denied appellant's claim under OWCP File No. xxxxxx563. It accepted that the January 19, 2016 incident occurred as alleged and that a right shoulder condition had been diagnosed. However, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted employment incident and the diagnosed medical condition.

On June 1, 2017 appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on October 18, 2017. She subsequently submitted reports dated June 1 and 22, 2017 by Dr. Mark L. Colville, a Board-certified orthopedic surgeon, who opined that a posterior labral tear was consistent with the mechanism of injury of the January 19, 2016 employment incident. Appellant also submitted additional reports from Dr. Fisher, including his October 5, 2017 letter opining that the January 19, 2016 employment incident was competent to cause right rotator cuff tears and internal derangement.

On October 25, 2017 under OWCP File No. xxxxxx301, appellant filed a Form CA-1 for right shoulder and hand injuries sustained that day when performing cardiopulmonary resuscitation practice on a training mannequin while in the performance of duty. OWCP accepted that claim for a right shoulder sprain, right shoulder strain, and strain of unspecified muscle, fascia, and tendon of the shoulder and upper level of the right arm, and unspecified sprain of right shoulder joint.

By decision dated December 26, 2017, OWCP's hearing representative affirmed the May 31, 2017 decision under OWCP File No. xxxxxx563.

On February 15, 2018 OWCP administratively combined OWCP File Nos. xxxxxx555 and xxxxxx301, with the former designated as the master file.

On April 19, 2018 appellant requested reconsideration and submitted additional evidence under OWCP File No. xxxxxx563. In examination reports dated March 5 to 22, 2018, Dr. Peter L. Kung, a Board-certified orthopedic surgeon, described that in January 2016 she felt a tear in her right shoulder when she lifted a heavy patient at work. Appellant reinjured her shoulder on October 25, 2017. Dr. Kung diagnosed a right shoulder superior glenoid labrum lesion and right shoulder pain. He opined that, while the October 2017 incident could have aggravated appellant's

shoulder, the labral tear and cysts were present since 2016 and could be related to repositioning a patient on January 19, 2016.

By decision dated June 29, 2018, OWCP denied modification of the December 26, 2017 decision.

Appellant subsequently requested reconsideration on August 13 and October 29, 2018, which OWCP denied by decisions dated October 11 and November 5, 2018, respectively.

On December 5, 2018 appellant again requested reconsideration. She submitted a November 29, 2018 report by Dr. Kung, who opined that the October 25, 2017 employment injury aggravated right shoulder injuries caused by the January 19, 2016 employment incident.

By decision dated December 20, 2018, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On January 28, 2019 appellant, through counsel, filed a timely appeal with the Board. By decision dated September 10, 2020,¹ the Board set aside OWCP's December 20, 2018 decision and remanded the case for an appropriate merit decision on appellant's claim.

By decision dated March 17, 2021, OWCP denied modification as the medical evidence submitted on reconsideration was insufficient to establish causal relationship. It reviewed case histories and selected evidence from OWCP File Nos. xxxxxx628, xxxxxx555, and xxxxxx301. OWCP found that, under OWCP File No. xxxxxx555, Dr. Derrick Knowles, an attending physician, noted in his January 20, 2016 report that appellant had sustained a December 20, 2015 employment injury, but made no mention of the alleged January 19, 2016 employment injury under the present claim. It further found that there was no indication that Dr. Kung had reviewed "all prior treatment records."

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 when correct adjudication of the issues depends on frequent cross-referencing between files.² 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.³

In the present claim, OWCP denied appellant's traumatic injury claim, based, in part, on evidence of record under OWCP File No. xxxxxx555. OWCP's demonstrated need to cross reference between appellant's claim files is precisely the situation set forth in OWCP's procedures, which direct that claim files pertaining to a new injury to the same member of the body be

¹ Docket No. 19-0640 (issued September 10, 2020).

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

³ *Id.*; *M.E.*, Docket No. 21-0094 (issued May 27, 2021); *T.T.*, Docket No. 21-0049 (issued May 3, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

administratively combined.⁴ However, OWCP has not administratively combined the present claim with OWCP File No. xxxxx555, accepted for right lateral elbow epicondylitis, and its sub-file OWCP File No. xxxxxx301, accepted for an October 25, 2017 right shoulder sprain and strain. As the Board has jurisdiction to review only the case record under OWCP File No. xxxxxx563 on the present appeal, the Board may not review the evidence under OWCP File No. xxxxxx555 relied upon by OWCP in its March 17, 2021 decision.

Accordingly, for a full and fair adjudication, the Board will remand the case to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx555 and xxxxxx301.⁵ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁶

IT IS HEREBY ORDERED THAT the March 17, 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: September 16, 2022
Washington, DC

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

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

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

⁴ *Supra* note 2.

⁵ *Id.*

⁶ *R.G.*, Docket No. 19-1755 (issued July 7, 2020); *T.T.*, *supra* note 3; *M.E.*, *supra* note 3; *L.M.*, *supra* note 3.