

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

J.H., Appellant)
)
)
and)
)
U.S. POSTAL SERVICE, POST OFFICE,)
Des Moines, IA, Employer)

Docket No. 22-0443
Issued: September 12, 2022

Appearances:
*Alan J. Shapiro, Esq., for the appellant*¹
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 January 31, 2022 appellant, through counsel, filed a timely appeal from a December 14, 2021 merit decision of the Office of Workers’ Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-0443.

On October 2, 2020 appellant, then a 52-year-old rural delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 9, 2020 he sustained pain and injury to his right shoulder, as well as aggravation of his osteoarthritis and rotator cuff arthropathy, when he fell forward onto outstretched hands/arms while in the performance of duty. On the reverse side of the claim form appellant’s supervisor, S.A., acknowledged that he was injured in the performance of duty, but challenged the factual basis of his claim. Appellant returned to work on September 14, 2020. OWCP assigned the claim OWCP File No. xxxxxx436.

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 a 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.

Appellant had previously filed a Form CA-1 for an injury sustained on October 7, 2003, which OWCP accepted for right rotator cuff tear and surgical repair. OWCP assigned this prior claim OWCP File No. xxxxxx314. Appellant's claims have not been administratively combined by OWCP.

By decision dated January 12, 2021, OWCP denied appellant's claim in OWCP File No. xxxxxx436, finding that causal relationship had not been established.

On December 8, 2021 appellant, through counsel, requested reconsideration. By decision dated December 14, 2021, OWCP affirmed the January 12, 2021 decision, as modified, finding that the September 9, 2020 employment incident did not occur, as alleged.

The Board has duly considered this matter and concludes 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 Herein, appellant had a prior claim for right rotator cuff tear and surgical repair, assigned OWCP File No. xxxxxx314. He subsequently filed a traumatic injury claim for the same region of the body on October 2, 2020, to which OWCP assigned OWCP File No. xxxxxx436, which is the claim presently before the Board.

For a full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx436, with OWCP File No. xxxxxx314. On remand OWCP shall review all relevant evidence to determine whether appellant has established an injury in the performance of duty. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

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

³ *Id.*; *S.G.*, Docket No. 21-0396 (issued September 27, 2021); *R.L.*, Docket No. 20-0901 (issued July 27, 2021); *M.E.*, Docket No. 21-0094 (issued May 27, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

IT IS HEREBY ORDERED THAT the December 14, 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 12, 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