

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

N.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Islandia, NY, Employer**

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**Docket No. 23-0044
Issued: April 20, 2023**

Appearances:

*Paul Kalker, Esq., for the appellant¹
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On October 12, 2022 appellant, through counsel, filed a timely appeal from a September 14, 2022 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellant Boards assigned the appeal Docket No. 23-0044.

On March 26, 2021 appellant, then a 32-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she developed a disease or illness due to factors of her federal employment. She indicated that she first became aware of her condition on January 29, 2021, and of its relationship to her federal employment on the same date. Appellant stopped work on January 29, 2021. OWCP assigned the claim OWCP File No. xxxxxx759.

In a narrative statement dated April 28, 2021, appellant related that on January 29, 2021, she was treated for excruciating pain from her left elbow into her hand/fingers, which had progressively worsened. She alleged that it was determined by her physician that her injury was

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 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.

due to an occupational disease. Appellant also explained that the reason for the delay in diagnosis was due to testing to determine if her condition was due to a prior injury of her left shoulder in OWCP File No. xxxxxx850.² She indicated that her physician determined that her condition was not an occupational disease that was connected to her prior left shoulder injury, but was due to cubital tunnel syndrome of the ulnar nerve which was caused when she kept her elbow in a flexed position for extended periods of time while casing and carrying mail. Appellant related that due to her prior left shoulder injury, she would carry the mail for four hours a day and case up to four hours a day, five days a week.

By decision dated June 8, 2021, OWCP denied appellant's occupational disease claim, finding that she had failed to submit medical evidence to explain how the work event(s) caused or affected her condition. It explained that her claim was denied on the issue of causal relationship.

On July 14, 2021 appellant requested reconsideration.

By decision dated July 20, 2021, OWCP denied modification of its June 8, 2021 decision.

On July 4, 2022 both appellant and counsel requested reconsideration.

By decision dated September 14, 2022, OWCP denied modification of its prior decision.

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 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 The Board notes that appellant has a traumatic injury claim for the left shoulder under OWCP File No. xxxxxx850. The present claim under OWCP File No. xxxxxx759, alleges that appellant developed a left arm condition due to an occupational disease and a question has arisen as to whether appellant's current left upper extremity condition is causally related to the prior injury. 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. xxxxxx850 and xxxxxx759, so it can consider all relevant claim files and accompanying evidence in adjudicating appellant's claims. Following this and other such

² On November 6, 2018 appellant filed a claim for traumatic injury (Form CA-1) alleging that she had injured her left shoulder while lifting a tray of mail. OWCP assigned this claim OWCP File No. xxxxxx850 and accepted the claim for sprain of the left rotator cuff capsule, anterior subluxation of the left humerus, cervical radiculopathy, sprain of the left rotator cuff capsule, and lesion of the left upper limb ulnar nerve.

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).

further development as deemed necessary, OWCP shall issue an appropriate decision. Accordingly,

IT IS HEREBY ORDERED THAT the September 14, 2022 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: April 20, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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