

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

<hr/>)	
N.A., Appellant)	
)	
and)	Docket No. 23-1061
)	Issued: December 18, 2023
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL)	
CORRECTIONAL INSTITUTE, Victorville, CA,)	
Employer)	
<hr/>)	

Appearances:
Paul Felser, 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 August 7, 2023 appellant, through counsel, filed a timely appeal from a February 14, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1061.

On January 8, 2018 appellant, then a 42-year-old correctional officer, filed an occupational disease claim (Form CA-2) alleging that he developed injuries to his knees, hips, pelvis, shoulders, back, and neck due to factors of his federal employment, including restraining combative inmates, running, climbing stairs, constant walking and standing on concrete floors and wearing a heavy work belt. He noted that he first became aware of his conditions on June 2, 2009 and realized their

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.

relation to factors of his federal employment on May 19, 2017. Appellant stopped work on September 8, 2017.²

In a narrative statement, appellant asserted that when attempting to restrain a combative inmate he had been knocked to the floor impacting his back, neck, shoulders, hips, knees, and pelvic area. He was required to use his arms and shoulders to restrain the inmates and that he experienced impacts from both the inmates hitting him and from falling to the concrete floor.

On January 12, 2018 the employing establishment noted that appellant had previously filed traumatic injury claims in 2009 and 2017 for the same conditions currently claimed on January 8, 2018.

By decision dated April 25, 2018, OWCP denied appellant's occupational disease claim, finding that he had not established that his diagnosed conditions were causally related to the accepted factors of employment.

On October 12, 2018 appellant requested reconsideration and submitted additional evidence. By decision dated March 22, 2019, OWCP denied modification of its prior decision.

Appellant continued to request reconsideration. After extensive development, by decision dated February 14, 2023, OWCP denied modification of its prior decisions dated June 22, 2020 and November 22, 2021.

The Board has duly considered the 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.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

² OWCP assigned the present claim OWCP File No. xxxxxx133. Under OWCP File No. xxxxxx442, appellant had previously filed a traumatic injury claim (Form CA-1) for an alleged May 18, 2009 injury to his back, neck, and shoulders, sustained during training exercises while in the performance of duty. OWCP classified this claim as a short form closure. On May 19, 2017 appellant thereafter filed a Form CA-1 alleging that in 2009 he sustained chronic mechanical back pain, neck pain, leg, knee, and shoulder pain. OWCP assigned File No. xxxxxx051. It denied this claim on September 14, 2017 as it was not timely filed in accordance with 5 U.S.C. § 8122. Appellant subsequently filed another Form CA-1 under OWCP File No. xxxxxx786, alleging that on May 31, 2017 he injured his left leg, lower back, knee, and groin climbing stairs while in the performance of duty. OWCP has not issued a final decision in this claim.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

⁴ *Id.*; *K.W.*, Docket No. 22-0951 (issued January 26, 2023); *A.D.*, Docket No. 22-0147 (issued July 1, 2022); *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).

Herein, appellant had prior traumatic injury claims for back, neck, shoulder, knee, and groin injuries assigned OWCP File Nos. xxxxxx442, xxxxxx051, and xxxxxx786. Therefore, for a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record, OWCP File No. xxxxxx133, with OWCP File Nos. xxxxxx442, xxxxxx051, and xxxxxx786. Following this and any further development deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the February 14, 2023 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: December 18, 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