

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

M.H., Appellant

and

**DEPARTMENT OF THE ARMY, FORT
SHAFTER, Honolulu, HI, Employer**

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**Docket No. 22-0413
Issued: February 13, 2023**

Appearances:

Elbridge Smith, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge

JANICE B. ASKIN, Judge

JAMES D. MCGINLEY, Alternate Judge

On January 26, 2022 appellant, through counsel, filed a timely appeal from an August 3, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-0413.

On March 31, 2020 appellant, then a 51-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she experienced wheezing, nasal congestion, extreme headaches, urticaria, and blurred vision due to factors of her federal employment, including exposure to workplace toxins and black mold as a result of workplace construction and poor heating, ventilation, and air condition (HVAC) maintenance. She noted that she initially believed her condition was the result of a recurrence of a prior claim, and that she had submitted a notice of

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.

recurrence (Form CA-2a) with a lengthy statement regarding the worsening of her condition.² Appellant noted that she first became aware of her condition on February 7, 2019 and realized its relation to her federal employment. OWCP assigned the present claim File No. xxxxxx911. Appellant stopped work on June 29, 2019.

By decision dated June 30, 2020, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment events occurred, as alleged.

On July 23, 2020 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, which was held on December 8, 2020.

By decision dated February 12, 2021, OWCP's hearing representative vacated the June 30, 2020 decision and remanded the case for further development, including providing the hearing transcript and factual evidence to the employing establishment for its consideration and response. The hearing representative further instructed OWCP to administratively combine File Nos. xxxxxx911 and xxxxxx026.

By decision dated August 3, 2021, OWCP denied the claim finding that the evidence of record was insufficient to establish that the employment events occurred, as alleged.

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 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

In the February 12, 2021 decision, the hearing representative instructed OWCP to administratively combine File Nos. xxxxxx911 and xxxxxx026. To date, OWCP has not combined the files. For a full and fair adjudication, this case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx026, so it can consider all relevant claim files and accompanying evidence in adjudicating appellant's current traumatic injury claim.⁵

Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

² Appellant has a previously-accepted January 30, 2018 traumatic injury claim for nasal congestion, other headache syndrome, urticaria, and wheezing due to mold and environmental exposure under OWCP File No. xxxxxx026. Her claims have not been administratively combined.

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

⁴ *Id.*; *M.L.*, Docket No. 20-1176 (issued April 29, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

⁵ *Supra* note 3 at Chapter 2.400.8(c)(1); *W.D.*, Docket No. 19-0961 (issued March 31, 2021); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019).

IT IS HEREBY ORDERED THAT the August 3, 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: February 13, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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