

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

P.K., Appellant	)	
	)	
and	)	Docket No. 21-0808
	)	Issued: January 26, 2023
U.S. POSTAL SERVICE, PORTLAND	)	
PROCESSING AND DISTRIBUTION CENTER,	)	
Portland, OR, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On May 3, 2021 appellant filed a timely appeal from a March 25, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0808.<sup>1</sup>

On February 12, 2021 appellant, then a 51-year-old production machinery mechanic, filed a traumatic injury claim alleging that on January 25, 2021 he injured the right side of his mid-back while in the performance of duty. He explained that he stopped to allow another mail handler move mail and when he resumed pedaling, the pedal came off and he developed back pain

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<sup>1</sup> The Board notes that, following the March 25, 2021 decision, appellant submitted additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

thereafter. Appellant related that the pain eventually worsened with walking.<sup>2</sup> He stopped work on February 4, 2021 and returned to work on February 10, 2021.

In a February 18, 2021 development letter, OWCP advised appellant of the deficiencies of his claim. It informed him of the type of evidence needed to establish his claim and provided a questionnaire for his completion. In the questionnaire, OWCP referenced the previous employment injury under OWCP File No. xxxxxx263, noting that the injury in that claim involved a similar history of injury as that in the present claim. It afforded appellant 30 days to respond.

In a February 10, 2021 medical report, Dr. Amy Kerfoot, Board-certified in occupational medicine, reiterated her prior diagnoses of back pain and complex regional pain syndrome, left leg and noted that appellant had been treated over the past two years by other doctors for his back pain. She described appellant's claimed January 25, 2021 employment injury as an exacerbation of his left leg and low back pain related to his previous work injury, which had been aggravated by excessive walking at work.

In a February 18, 2021 response to OWCP's development questionnaire of even date, appellant claimed that the claimed January 25, 2021 employment incident aggravated his previous condition due to the excessive walking he engaged in during his shift, after he was no longer able to use the tricycle due to a broken pedal.

By decision dated March 25, 2021, OWCP denied appellant's traumatic injury claim, finding that he had not established a diagnosed medical condition in connection with the accepted January 25, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

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.<sup>3</sup> 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.<sup>4</sup> Herein, appellant's present claim

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<sup>2</sup> The record reflects that appellant has previously filed multiple claims alleging injuries to his back. Appellant has a previously accepted traumatic injury claim under OWCP File No. xxxxxx263 for lumbosacral ligament strain following an August 6, 2020 employment injury where he almost fell after his foot slipped off the pedal of a tricycle he was attempting to mount while in the performance of duty. He also filed a Form CA-1 following a January 24, 2019 employment incident where he alleged he injured his back lifting a vacuum over a railing under OWCP File No. xxxxxx830. Appellant subsequently filed a separate Form CA-1 under OWCP File No. xxxxxx253 alleging that he injured his back when his foot slipped off the pedal of the tricycle he was riding while in the performance of duty on March 25, 2020 and a September 17, 2020 occupational disease claim (Form CA-2) under OWCP File No. xxxxxx463 alleging that he developed back pain from repetitive bending to work on machines, resulting in a reinjury.

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

<sup>4</sup> *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).

under OWCP File No. xxxxxx880 and prior claims under File Nos. xxxxxx263, xxxxxx830, xxxxxx253 and xxxxxx463 involve injuries to the back.

Accordingly, the Board will remand the case to OWCP to administratively combine the current case record, OWCP File No. xxxxxx880, with OWCP File Nos. xxxxxx263, xxxxxx830, xxxxxx253, and xxxxxx463, so it can consider all relevant claim files and accompanying evidence in adjudicating this claim.<sup>5</sup> Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the March 25, 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: January 26, 2023  
Washington, DC

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

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

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

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<sup>5</sup> *Id.* 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); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).