

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

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<b>M.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 22-1123</b>
	)	<b>Issued: January 6, 2023</b>
<b>U.S. POSTAL SERVICE, NEW CITY POST OFFICE, New City, NY, Employer</b>	)	
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*Appearances:*  
*Alan J. Shapiro, Esq., for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On July 26, 2022 appellant, through counsel, filed a timely appeal from a July 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 22-1123.

On April 21, 2021 appellant, then a 50-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained a right knee injury when he felt a "pop" in his knee as he walked down a driveway while in the performance of duty. He stopped work on April 22, 2021.

A magnetic resonance imaging (MRI) scan of appellant's right knee obtained on May 13, 2021 demonstrated a complex tear of the medial meniscus with displacement of an undersurface

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<sup>1</sup> 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 an 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.

flap into the medial femorotibial recess; medial femorotibial chondromalacia with subchondral edema in the medial tibial plateau; and joint effusion.

In a report dated May 14, 2021, Dr. Arup K. Bhadra, an orthopedic surgeon, examined the MRI scan of appellant's right knee and diagnosed a medial meniscus tear of the right knee's posterior horn complex. He opined that the April 21, 2021 incident was the competent medical cause of appellant's injury, as complaints and objective findings were consistent.

By decision dated June 28, 2021, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed medical conditions and the accepted April 21, 2021 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury and/or medical condition causally related to the accepted employment incident. In its denial, OWCP referenced hospital notes dated August 26, 2019, which indicated preexisting right knee conditions and resultant surgery, found under OWCP File No. xxxxxx931.

On July 20, 2021 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on June 28, 2021.

By decision dated December 29, 2021, the hearing representative affirmed OWCP's June 28, 2021 decision.

On April 8, 2022 appellant, through counsel, requested reconsideration.

By decision dated July 7, 2022, OWCP denied modification of the December 29, 2021 decision. It again referenced hospital notes dated August 26, 2019, which indicated preexisting right knee conditions and resultant surgery, found under OWCP File No. xxxxxx931.

The Board, having duly considered this matter, finds that this case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on frequent cross-referencing between files and where two or more injuries occur to the same part of the body.<sup>2</sup> In the present claim, appellant alleged a work-related right knee meniscal tear. In its decisions, OWCP referenced hospital notes dated August 26, 2019, which indicated preexisting right knee conditions and resultant surgery, under OWCP File No. xxxxxx931, in finding that appellant had not submitted sufficient evidence to establish causal relationship. However, neither the August 26, 2019 hospital notes, nor other evidence from OWCP File No. xxxxxx931 are part of the present case file. For a full and fair adjudication, the claim in OWCP File No. xxxxxx931 shall be administratively combined with the present claim under OWCP File No. xxxxxx838.

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

Accordingly, the Board will remand the case to OWCP to administratively combine OWCP File Nos. xxxxxx931 and xxxxxx838. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the July 7, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 6, 2023  
Washington, DC

Patricia H. Fitzgerald, Deputy 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