

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

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J.S., Appellant)	
)	
and)	Docket No. 23-0311
)	Issued: July 11, 2023
DEPARTMENT OF VETERANS AFFAIRS,)	
MARTINSBURG VA MEDICAL CENTER,)	
Martinsburg, WV, Employer)	
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Appearances:
Lisa Varughese, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On December 19, 2022 appellant, through counsel, filed a timely appeal from a June 28, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0311.

On March 18, 2021 appellant, then a 47-year-old nurse, filed an occupational disease claim (Form CA-2) alleging that she developed symptoms in the right side of her neck, right arm, right hand, and right shoulder blade, due to factors of her employment. She indicated that an injury sustained in a March 18, 2018 employment incident was aggravated by her job duties, specifically repositioning patients, moving beds and stretchers, pushing and pulling medical carts, and lifting equipment. Appellant noted that she first became aware of her condition on March 18, 2018, and realized its relationship to factors of her federal employment on March 22, 2018.

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.

Appellant submitted a detailed statement describing the previous March 18, 2018 employment incident and the development of her current symptoms which were due to the increased number of heavy patients she had to treat during the COVID-19 pandemic. She also submitted a March 18, 2021 medical report from Dr. Joshua B. Macht, a Board-certified internist.

By decision dated June 16, 2021, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment factors. It specifically noted that appellant had a prior traumatic injury claim under OWCP File No. xxxxxx563, which was denied.

On June 15, 2022 appellant, through counsel, requested reconsideration. No additional evidence was received.

By decision dated June 28, 2022, OWCP denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a). It specifically referenced appellant's claim under OWCP File No. xxxxxx563 and indicated that it was accepted for cervical spine sprain, right shoulder and upper arm strain, and aggravation of other cervical disc degeneration.

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

The record reflects that, under OWCP File No. xxxxxx563, appellant has a traumatic injury claim for right shoulder and cervical injuries causally related to a March 18, 2018 employment incident.

OWCP's procedures provide that cases should be administratively combined when correct adjudication depends on cross-referencing between files and where two or more injuries occur to the same part of the body.² 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.³ In the present claim, under OWCP File No. xxxxxx369, appellant filed an occupational disease claim on March 18, 2021 alleging that she developed cervical, right shoulder, and right upper arm symptoms due to factors of her federal employment. She referenced a March 18, 2018 employment injury and alleged that her work duties worsened her previous traumatic injury. Appellant had filed a prior traumatic injury claim under OWCP File No. xxxxxx563 for right shoulder and cervical injuries causally related to a March 18, 2018 employment incident. However, her claims have not been administratively combined by OWCP.

Therefore, for a full and fair adjudication, the Board finds that this case must be returned to OWCP to administratively combine OWCP File Nos. xxxxxx369 xxxxxx563, so it can review all of appellant's relevant claim files in determining whether appellant has submitted sufficient

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

³ *Id.*; *R.L.*, Docket No. 22-0603 (issued September 16, 2022); *Order Remanding Case, T.M.*, Docket No. 18-0887 (issued February 21, 2019).

evidence to warrant further merit review pursuant to 5 U.S.C. § 8128(a).⁴ Following this and other such further development as deemed necessary, it shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the June 28, 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: July 11, 2023
Washington, DC

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

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

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

⁴ See *Order Remanding Case, H.B.*, Docket No. 20-1298 (issued November 22, 2021); see also *Order Remanding Case, T.L.*, Docket No. 18-0935 (issued February 25, 2020).