

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

M.J., Appellant)	
)	
and)	Docket No. 22-1357
)	Issued: June 12, 2023
U.S. POSTAL SERVICE, CITY OF INDUSTRY)	
POST OFFICE, City of Industry, CA, Employer)	
)	

Appearances: *Case Submitted on the Record*
Sally F. LaMacchia, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 26, 2022 appellant, through counsel, filed a timely appeal from a July 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-1357.²

On January 13, 2020 appellant, then a 32-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on January 10, 2020 she sustained anxiety/a panic attack when D.A., a manager, allegedly harassed her for leaving her workstation while in the performance of duty. She became very anxious and requested medical assistance. In a statement, appellant indicated that

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.

² The Board notes that following the July 14, 2022 decision appellant submitted additional evidence to OWCP. 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.*

R.M., a manager, allegedly refused to aid her and instead stated that he would contact law enforcement to have her removed from the employing establishment. Appellant stopped work on January 10, 2020 and sought immediate treatment at a hospital emergency department. OWCP assigned the claim OWCP File No. xxxxxx318.

Appellant had previously filed an occupational disease claim (Form CA-2) for anxiety and stress due to employment factors commencing November 16, 2019. OWCP assigned the claim OWCP File No. xxxxxx229. In a February 14, 2020 statement, appellant attributed her emotional condition, in part, to harassment and verbal abuse on November 16, 2019, by the same managers allegedly involved in the January 10, 2020 employment incident.

By decision dated June 25, 2020, OWCP denied appellant's claim for an employment-related emotional condition, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as alleged.

On June 22, 2021 appellant, through counsel, requested reconsideration and submitted additional evidence, including a March 4, 2020 Equal Employment Opportunity (EEO) affidavit by D.A. noting that appellant had "altercations with [him]" prior to January 10, 2020 "which had also been documented."

By decision dated June 30, 2021, OWCP denied modification of the prior decision.

On June 2, 2022 appellant, through counsel, requested reconsideration. Counsel noted that a November 16, 2019 verbal altercation with managers contributed to appellant's emotional condition under the present claim.

By decision dated July 14, 2022, OWCP denied modification of the prior decision.

The Board has duly considered the matter and 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 cross-referencing between files and where two or more injuries occur to the same part of the body.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 instant case, OWCP File No. xxxxxx318, appellant filed a traumatic injury claim for employment-related anxiety arising from January 10, 2020 interactions with managers. The Board notes that her prior claim under OWCP File No. xxxxxx229 also involved a claim for employment-related anxiety and stress precipitated by interactions with the same managers

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

⁴ *Id.*; *Order Remanding Case, L.G.*, Docket No. 18-1676 (issued August 22, 2019); *Order Remanding Case, D.L.*, Docket No. 17-1588 (issued January 28, 2019).

commencing November 16, 2019. However, appellant's claims have not been administratively combined.

For a full and fair adjudication, this case shall be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx318, with OWCP File No. xxxxxx229.⁵ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁶

IT IS HEREBY ORDERED THAT the July 14, 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: June 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁵ See *R.L.*, Docket No. 22-0603 (issued September 16, 2022); *Order Remanding Case, S.R.*, Docket No. 21-0400 (issued April 25, 2022); *Order Remanding Case, C.Y.*, Docket No. 20-1079 (issued December 7, 2020); *Order Remanding Case, K.T.*, Docket No. 17-0432 (issued August 17, 2018).

⁶ See *R.L., id.; S.R., id.; Order Remanding Case, J.W.*, Docket Nos. 21-0588 & 21-0599 (issued January 21, 2022); *Order Remanding Case, T.L.*, Docket No. 18-0935 (issued February 25, 2020); *Order Remanding Case, T.M.*, Docket No. 18-0887 (issued February 21, 2019).