

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

_____)	
P.T., Appellant)	
)	
and)	Docket No. 23-0020
)	Issued: June 9, 2023
U.S. POSTAL SERVICE, CANAL STREET)	
POST OFFICE, New York, NY, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On October 7, 2022 appellant filed a timely appeal from an April 12, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0020.

On January 4, 2019 appellant, then a 44-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained an L5-S1 back condition due to factors of her federal employment. She noted that she first became aware of her condition and its relation to factors of her federal employment on June 16, 2015.¹

In a development letter dated January 23, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

¹ OWCP assigned the present claim OWCP File No. xxxxxx284. Appellant alleged that she had been advised to file an occupational disease claim after a recurrence claim was denied. The Board notes that under OWCP File No. xxxxxx079, OWCP previously accepted that appellant sustained an employment-related L5-S1 herniated disc on October 18, 1995. Appellant's claims have not been administratively combined.

OWCP subsequently received a series of medical reports dated January 20, 2015, from various physicians, which related appellant's symptoms due to L4-S1 lumbar radiculopathy.

By decision dated March 6, 2019, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish that appellant's accepted work factors caused or aggravated her diagnosed condition.

On September 24, 2019 appellant requested reconsideration and submitted additional evidence, including September 13, 2019 and March 13, 2020 reports from Dr. Edwin M. Chang, a Board-certified neurosurgeon.

By decision dated April 28, 2020, OWCP denied modification. It noted that the medical evidence received under OWCP File No. xxxxxx079 had been reviewed, but that no additional relevant medical evidence had been received.

On December 4, 2020 appellant again requested reconsideration and submitted an October 9, 2020 report, wherein Dr. Chang noted appellant's physical examination findings and diagnosed lumbar disc herniation with radiculopathy. He related that appellant's October 1995 employment injury resulted in a L5-S1 herniated disc with low back pain and bilateral lumbar radiculopathy. Dr. Chang discussed appellant's work capacity and advised that working four hours per day was optimal.

By decision dated January 14, 2021, OWCP denied modification.

On May 22, 2021 appellant requested reconsideration and submitted a report and work capacity evaluation (Form OWCP-5c) dated April 9, 2021 from Dr. Chang, which related unchanged findings.

By decision dated August 17, 2021, OWCP denied appellant's request for reconsideration of the merits of the claim, pursuant to 5 U.S.C. § 8128(a).

On January 13, 2022 appellant again requested reconsideration. She asserted that OWCP erred in relying on the opinion of Dr. Aprin, an OWCP second opinion physician, in her prior claim. Accompanying her request for reconsideration was one page from a report by Dr. Aprin dated September 18, 2015, and revised on October 21, 2015, advising that appellant was capable of working four to six hours per day with restrictions. He indicated that appellant had decreased range of motion of her lumbar spine and positive findings on diagnostic studies, which had affected her work capacity.

By decision dated April 12, 2022, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

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.² For example, if a new injury case is reported for an employee who previously filed an injury claim for

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

a similar condition or the same part of the body, doubling is required.³ Herein, appellant's claim under OWCP File No. xxxxxx079 also involved injuries to the lumbar spine. Therefore, for a full and fair adjudication, this case must be remanded for OWCP to administratively combine OWCP File Nos. xxxxxx284 and xxxxxx079, so it may consider all relevant claim files and accompanying evidence in adjudicating appellant's current traumatic injury claim.⁴ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the April 12, 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 9, 2023
Washington, DC

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

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

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

³ *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).

⁴ *Supra* note 4 at Chapter 2.400.8c(1); *W.D.*, Docket No. 19-0961 (issued March 31, 2021); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019).