

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

_____)	
B.O., Appellant)	
)	
and)	Docket Nos. 22-0855 &
)	22-0856
U.S. POSTAL SERVICE, SANTA FE POST)	Issued: March 14, 2023
OFFICE, Santa Fe, NM, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
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 May 13, 2022 appellant, through counsel, filed a timely appeal from a March 8, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP) in OWCP File No. xxxxxx109. The Clerk of the Appellate Boards assigned the appeal Docket No. 22-0855. Also on May 13, 2022 appellant, through counsel, filed a timely appeal from an April 14, 2022 merit decision of OWCP in OWCP File No. xxxxxx384. The Clerk of the Appellate Boards assigned that appeal Docket No. 22-0856.

On July 13, 2020 appellant, then a 49-year-old customer service clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 13, 2020, she was dropping off "presort at each case lifted a tub of presort" and sustained an injury to her right shoulder, including a partial thickness rotator cuff tear, while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx109.

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 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.

On August 5, 2020 appellant filed an occupational disease claim (Form CA-2) alleging that she developed a repetitive strain injury to unspecified muscle/facia/tendon at right wrist and right hand due to the factors of her federal employment, including lifting and throwing parcels up to 70 pounds or more, lifting tubs of presort weighing up to 30 pounds, unloading trucks of parcels, and general processing of mail. She noted that she first became aware of her condition on July 23, 2020, and realized its relation to her federal employment on July 31, 2020. OWCP assigned that claim OWCP File No. xxxxxx384. The employing establishment noted that appellant was offered a modified job on July 23, 2020 under OWCP File No. xxxxxx109, which she refused. Appellant had indicated that she would not accept the job because she could not work with employees at the station, and she had not returned to work even though work remained available. The employing establishment controverted the occupational disease claim and noted that the “CA2 appears retaliatory. Agency not in agreement.”

By decision dated August 26, 2020, OWCP denied appellant’s traumatic injury claim under OWCP File No. xxxxxx109. It found that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted March 13, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 4, 2020 appellant requested a hearing before a representative of OWCP’s Branch of Hearings and Review on her traumatic injury claim under OWCP File No. xxxxxx109.

By decision dated September 11, 2020, OWCP denied appellant’s occupational disease claim under OWCP File No. xxxxxx384, finding that appellant had not established the implicated factors of employment. It noted that appellant did not respond to its development letter.

On September 23, 2020 appellant requested a hearing before a representative of OWCP’s Branch of Hearings and Review with regard to her occupational disease claim in OWCP File No. xxxxxx384.

A telephonic oral hearing was held before an OWCP hearing representative regarding the traumatic injury claim, under OWCP File No. xxxxxx109, on December 3, 2020. A telephonic oral hearing was held before a different OWCP hearing representative regarding the occupational disease claim, under OWCP File No. xxxxxx384, on January 8, 2021.

By decision dated February 16, 2021, the OWCP hearing representative modified the August 26, 2020 decision with regard to the traumatic injury claim under OWCP File No. xxxxxx109, to reflect that appellant met her burden of proof to establish diagnosed medical conditions; however, the claim remained denied as the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to the accepted March 13, 2020 employment incident.

By decision dated March 25, 2021, another OWCP hearing representative affirmed the September 11, 2020 decision with regard to the occupational disease claim under OWCP File No. xxxxxx384.

On December 13, 2021, appellant, through counsel, requested reconsideration and submitted additional evidence with regard to the traumatic injury claim under OWCP File No.

xxxxxx109. He included a December 4, 2021 report from Dr. Sami E. Moufawad, Board-certified in physical medicine and rehabilitation and pain medicine, who explained that “when [appellant’s] shoulder was limited with pain and limited range of motion, she was using her right wrist to compensate for the limited range of motion of the right shoulder.” He opined that “the requested condition of right radial tenosynovitis (M65.4), also known as de Quervain [‘s] tenosynovitis, is a consequent result to the injury to the shoulder, which led to excessive use of the right wrist, leading to the tenosynovitis requested.”

On January 24, 2022 counsel requested reconsideration and submitted additional evidence with regard to the occupational disease claim under OWCP File No. xxxxxx384. He attached a report from Dr. Moufawad dated January 20, 2022, who explained, “This is what happened to [appellant]. When her shoulder was limited and she could not use it to lift and carry, she compensated with using her right wrist for throwing the packages at work into respective bins.” Dr. Moufawad opined, “Therefore, the requested condition of right radial tenosynovitis (M65.4), also known as de Quervain tenosynovitis, is a consequent result to the injury of the shoulder, which led to excessive use of the right wrist, leading to the de Quervain’s tenosynovitis that I am requesting.”

By decision dated March 8, 2022, OWCP denied modification of the February 16, 2021 decision with regard to the traumatic injury claim under OWCP File No. xxxxxx109.

By decision dated April 14, 2022, OWCP denied modification of the March 25, 2021 decision with regard to the occupational disease claim under OWCP File No. xxxxxx384.

The Board, having duly considered this matter, finds that the 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 case files.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

Appellant’s claims involve a right shoulder partial thickness rotator cuff tear under the traumatic injury claim in OWCP File No. xxxxxx109, and a repetitive strain injury to unspecified muscle/facia/tendon at the right wrist and right hand due to the factors of her federal employment under OWCP File No. xxxxxx384. In a December 13, 2021, reconsideration request with regard to the traumatic injury claim under OWCP File No. xxxxxx109, counsel submitted a December 4, 2021 report from Dr. Moufawad who opined that the injury to the right shoulder caused a limitation in range of motion of the right shoulder which in turn caused appellant to compensate with her right wrist, and resulted in the injury to the right wrist. Similarly, in a January 24, 2022 reconsideration request with regard to the occupational disease claim under OWCP File No.

² See *J.W.*, Docket No. 21-0588 and Docket No. 21-0599 (issued January 21, 2022); *T.T.*, Docket No. 21-0049 (issued May 3, 2021); *R.R.*, Docket No. 19-0368 (issued November 26, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8c (February 2000).

³ *Id.*

xxxxxx384, counsel submitted a January 20, 2022 report from Dr. Moufawad who reiterated his opinion that “the requested condition of right radial tenosynovitis (M65.4), also known as de Quervain[‘s] tenosynovitis, is a consequent result to the injury of the shoulder, which led to excessive use of the right wrist.”

As such, the Board finds that appellant’s claims under both OWCP File Nos. xxxxxx109 and xxxxxx384 involve alleged injuries to the right upper extremity. Therefore, for a full and fair adjudication, this case must be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx109 and xxxxxx384. This will allow OWCP to consider all of the relevant claim files and accompanying evidence in developing appellant’s combined compensation claims. Following this and other such further development as deemed necessary, OWCP shall issue *de novo* merit decisions regarding appellant’s claims. Accordingly,

IT IS HEREBY ORDERED THAT the March 8 and April 14, 2022 decisions of the Office of Workers’ Compensation Programs are set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 14, 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