

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

I.H., Appellant)	
)	
and)	Docket No. 22-1127
)	Issued: May 12, 2023
U.S. POSTAL SERVICE, MILWAUKEE POST)	
OFFICE, Milwaukee, WI, Employer)	
)	

Appearances: Case Submitted on the Record
Stephanie Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On July 27, 2022 appellant, through counsel, filed a timely appeal from a June 27, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 22-1127.²

On September 17, 2020 appellant, then a 40-year-old postal distributor, filed a traumatic injury claim (Form CA-1) alleging that on September 14, 2020 he sustained a left foot injury when

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.

² The Board notes that, following the June 27, 2022 decision, OWCP received additional evidence. 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.*

a package weighing 38 pounds rolled onto his left foot while in the performance of duty. OWCP accepted his claim for left foot contusion.³

In a note dated April 6, 2021, Dr. John Bostanche, a podiatrist, stated that appellant had been seen in his office on that date and would need to be off work beginning April 26, 2021 until June 28, 2021 due to surgery scheduled for April 28, 2021.

On May 18, 2021 appellant filed a claim for compensation (Form CA-7) for intermittent disability from work for the period April 24 through May 7, 2021. On May 26, 2021 he filed a Form CA-7 for intermittent disability from work for the period May 8 through 21, 2021.

In a letter dated May 25, 2021, Dr. Bostanche noted that appellant's scheduled foot surgery on April 28, 2021 had been cancelled.

On June 18, 2021 appellant submitted Forms CA-7 for intermittent disability from work for the period May 22 through June 4, 2021; and for total disability from work for the period June 5 through 18, 2021.

By decision dated June 22, 2021, OWCP denied appellant's disability claim, finding that the medical evidence of record was insufficient to establish disability from work during the claimed period, causally related to the accepted September 14, 2020 employment injury.

In a report dated April 6, 2021, Dr. Bostanche examined appellant for a surgical consultation for painful plantar fasciitis and tarsal tunnel syndrome on the left. He diagnosed plantar fasciitis, localized swelling of the left lower limb, left tarsal tunnel syndrome, mononeuropathies of the left lower limb, a left calcaneal spur, left foot pain, and left foot contusion. Dr. Bostanche recommended surgical procedures included plantar fasciotomy, tarsal tunnel release, removal of the calcaneal spur and plantar fibroma, and revision of the plantar nerves. On April 27, 2021 he examined appellant and again recommended surgical procedures to address appellant's conditions. Dr. Bostanche opined that appellant's current condition was caused by an original work-related injury to his left foot in 2017 and reinjury in 2019, with progression of the conditions due to continued employment. OWCP continued to receive progress reports from Dr. Bostanche dated December 9 and 20, 2021 and January 13, February 10, March 10, and May 12, 2022.

In a letter dated May 9, 2022, Dr. Bostanche reviewed the history of appellant's conditions. He noted that appellant sustained a work-related injury to appellant's left foot and ankle on July 6, 2017 and that his left foot was reinjured on September 14, 2020 while in the performance of duty. Dr. Bostanche recommended surgery to decompress appellant's nerves and to repair the plantar fascia band on the left foot. He opined that appellant's current conditions were caused by the

³ OWCP had previously accepted that on July 6, 2017 appellant sustained a left foot contusion when a bulk mail container ran over his left foot. That claim was assigned OWCP File No. xxxxxx275. Appellant also filed a notice of traumatic injury alleging a left foot injury on January 1, 2019. That claim was assigned OWCP File No. xxxxxx799. OWCP File Nos. xxxxxx275 and xxxxxx799 have been administratively combined with OWCP File No. xxxxxx275 serving as the master file.

July 6, 2017 and September 14, 2020 work-related injuries. Dr. Bostanche stated that, with appellant's current work activities, there was further progression of the diagnosed conditions.

On June 17, 2022 appellant, through counsel, requested reconsideration of OWCP's June 22, 2021 decision

By decision dated June 27, 2022, OWCP denied modification of its prior decision.

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.⁴ This will allow OWCP to consider all relevant claim files in developing this schedule award claim.⁵ In the present claim, appellant alleged work-related conditions of the left lower extremity caused his disability beginning April 24, 2021. As he had prior work-related injuries to the left lower extremity on July 6, 2017 accepted under OWCP File No. xxxxxx275, for a full and fair adjudication, the case must be remanded to OWCP to administratively combine OWCP File No. xxxxxx275 with the present claim under File No. xxxxxx941.

Accordingly, the Board will remand the case to OWCP to administratively combine OWCP File Nos. xxxxxx275 and xxxxxx941. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* merit decision.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁵ *Id.*

IT IS HEREBY ORDERED THAT the June 27, 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: May 12, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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