

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

M.S., Appellant)	
)	
and)	Docket No. 23-0802
)	Issued: November 3, 2023
DEPARTMENT OF HOMELAND SECURITY,)	
CITIZENSHIP & IMMIGRATION SERVICES,)	
Laguna Niguel, CA, 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
JANICE B. ASKIN, Judge

On May 8, 2023 appellant filed a timely appeal from April 17, 2023 merit decisions of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0802.

On March 30, 2022 appellant, then a 55-year-old budget analyst, filed a traumatic injury claim (Form CA-1) alleging that she injured her back and right leg and wrist on March 28, 2022 during new employee orientation when she pushed a heavy wheelchair-bound employee to several locations throughout the employing establishment while in the performance of duty.² She stopped

¹ The Board notes that, following the April 17, 2023 decisions, OWCP received additional evidence. 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.*

² OWCP assigned the present claim OWCP File No. xxxxxx867. Appellant has a previous occupational disease claim for plantar fasciitis, cervical and lumbar bulging discs, sciatica, and spinal degeneration under OWCP File No. xxxxxx496. These claims have not been administratively combined.

work on March 29, 2022 and returned to full-duty work on March 30, 2022. OWCP accepted the claim for right pectoralis strain.

Beginning on August 25, 2022 appellant requested that the acceptance of her claim be expanded to include additional diagnosed conditions including cervical radiculopathy, sciatica, cervical disc disorder, right rotator cuff tear, and right knee and back pain. On October 24, 2022 her attending physician, Dr. Badi Durain Jeffers, an osteopath, prescribed acupuncture treatments.

By decision dated April 17, 2023, OWCP denied expansion of appellant's claim to include additional right shoulder, back, and right knee injuries. It found that the weight of the medical evidence rested with the November 16, 2022 and March 15, 2023 opinions of Dr. Michael, J. Einbund, a Board-certified orthopedic surgeon and OWCP's second opinion physician.

In a separate decision of even date, OWCP denied appellant's request for authorization of acupuncture therapies finding that her attending physician, failed to provide a rationalized medical report establishing the need for such therapy to treat her accepted employment injury and that Dr. Einbund reported that the accepted right pectoralis strain had resolved.

The Board has duly considered this matter and concludes 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 files.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 Herein, appellant has a previous claim for cervical and lumbar spine conditions and sciatica under OWCP File No. xxxxxx496. She subsequently filed a Form CA-1 for back conditions including cervical radiculopathy, sciatica, cervical disc disorder which was assigned OWCP File No. xxxxxx867, the claim presently before the Board. Thus, for a full and fair adjudication, this case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx496, so that it can consider all relevant claim files and accompanying evidence in adjudicating the present claim.⁵ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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

⁴ *Id.*; *P.T.*, Docket No. 23-0113 (issued May 24, 2023); *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).

⁵ *Supra* note 3 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).

IT IS HEREBY ORDERED THAT the April 17, 2023 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: November 3, 2023
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board