

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

P.G., Appellant)	
)	
and)	Docket No. 21-0911
)	Issued: September 7, 2023
U.S. POSTAL SERVICE, BRICK POST)	
OFFICE, Brick, NJ, Employer)	
)	

Appearances:

Robert D. Campbell, 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 24, 2021 appellant, through counsel, filed a timely appeal from an April 26, 2021 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 21-0911.

On May 2, 2016 appellant, then a 60-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on May 2, 2016 she sustained injuries to her lip, chin, knees and head when she tripped while walking down a driveway and fell in the street while in the performance of duty. She indicated that she cut her lip and chin, scraped both of her knees, and also hit her left

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.

eye, cheek, and head on the ground. Appellant stopped work that same day. OWCP assigned the claim OWCP File No. xxxxxx360.²

By decision dated June 21, 2016, OWCP accepted appellant's claim for a contusion of the face and abrasions of the lip, left hand, right hand, left knee, and right knee. In a separate decision of even date, it denied acceptance of her traumatic injury claim to include the additional diagnoses of primary bilateral osteoarthritis of the knee, a tear of the medial meniscus of the right knee, and a right knee sprain as causally related to the accepted May 2, 2016 employment incident.

OWCP continued to receive evidence. In a June 29, 2016 medical report Dr. Fotios Tjounakaris, a Board-certified orthopedic surgeon, evaluated appellant for her right knee pain in relation to her May 2, 2016 employment injury. She related that she originally injured her right knee in 2014 during a fall and was diagnosed with a small meniscus tear as a result.

On July 19, 2016 appellant, through counsel, requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated January 3, 2017, OWCP's hearing representative affirmed the June 21, 2016 decision.

In a December 7, 2016 narrative medical report, Dr. Tjounakaris recounted his history of treatment of appellant's right knee. He indicated that she originally injured her knee in 2014 when she fell at work and was diagnosed with a small meniscus tear. Dr. Tjounakaris opined that appellant's condition was causally related to her 2014 fall, as well as her May 2, 2016 fall.

On January 11, 2017 appellant, through counsel, appealed the January 3, 2017 decision.

By decision dated February 7, 2018, OWCP denied modification of the January 3, 2017 decision.

On January 28, 2019 appellant, through counsel, requested reconsideration of OWCP's February 7, 2018 decision.

By decision dated January 22, 2020, OWCP denied modification of the February 7, 2018 decision in part and vacated it in part. It determined that the medical evidence of record was sufficient to establish an aggravation of a preexisting tear of the medial meniscus, right knee and acceleration of preexisting osteoarthritis, right knee causally related to the accepted May 2, 2016 employment incident. OWCP also found that the medical evidence of record did not establish that

² Appellant previously filed a traumatic injury claim on December 7, 2014 alleging that on December 5, 2014 she tripped over a protruding metal bar and fell while walking through the employee parking lot, injuring her left arm and right knee under OWCP File No. xxxxxx198. By decision dated December 4, 2015, OWCP denied her claim, finding that the medical evidence of record was insufficient to establish that her diagnosed condition was causally related to the accepted employment incident. Appellant also filed a traumatic injury claim on July 3, 2013 alleging that on July 2, 2013 she fell on a wooden step and hit her shin and left kneecap on the landing while in the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx206. It has not issued a decision on the claim.

appellant's diagnosed left knee osteoarthritis was casually related to the accepted May 2, 2016 employment injury.

On January 27, 2021 appellant, through counsel, requested reconsideration of OWCP's January 22, 2020 decision.

By decision dated March 10, 2021, OWCP denied appellant's request for reconsideration, finding that it was untimely filed and failed to demonstrate clear evidence of error.

On March 30, 2021 appellant, through counsel, requested reconsideration.

By decision dated April 26, 2021, OWCP denied appellant's request for reconsideration finding that it untimely filed and failed to demonstrate clear evidence of error.

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 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 previously filed a claim for a right knee injury under OWCP File No. xxxxxx198 and a claim for a left knee injury under OWCP File No. xxxxxx206, respectively. The evidence pertaining to OWCP File Nos. xxxxxx198 and xxxxxx206, however, is not part of the case record presently before the Board.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx198 and xxxxxx206. Following this, and other such further development as OWCP deems necessary, it shall issue an appropriate decision. Accordingly,

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

⁴ *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

IT IS HEREBY ORDERED THAT the April 26, 2021 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: September 7, 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