

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

D.W., Appellant	)	
	)	
and	)	Docket No. 22-0948
	)	Issued: September 13, 2023
U.S. POSTAL SERVICE, POST OFFICE,	)	
Struthers, OH, Employer	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
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 June 7, 2022 appellant filed a timely appeal from a May 23, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 22-0948.

On September 28, 2019 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2019 he injured his right foot when descending steps while in the performance of duty.<sup>2</sup> He stopped work on that date.

---

<sup>1</sup> 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 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.

<sup>2</sup> OWCP assigned the present claim OWCP File No. xxxxxx661. Appellant has a previously accepted traumatic injury claim for an October 1, 2014 contusion and fracture of the closed metatarsal bones, right foot, under OWCP File No. xxxxxx223. His claims have not been administratively combined by OWCP.

By decision dated November 22, 2019, OWCP accepted that the August 26, 2019 employment incident occurred as alleged. However, it denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish causal relationship between his diagnosed conditions and the accepted August 26, 2019 employment incident.

On August 21, 2020 appellant, through counsel, requested reconsideration and submitted additional evidence.

By decision dated September 21, 2021, OWCP denied modification of its November 22, 2019 decision.

On February 22, 2022 appellant, through counsel, requested reconsideration of the September 21, 2021 decision and submitted additional evidence.

By decision dated May 23, 2022, OWCP denied modification of its September 21, 2021 decision.

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.<sup>3</sup> 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.<sup>4</sup> Herein, appellant's claim under OWCP File No. xxxxxx223 also involved injuries to the right foot. Therefore, for a full and fair adjudication, this case must be remanded to OWCP to administratively combine the current case record with OWCP File No. xxxxxx223.<sup>5</sup> Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

---

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

<sup>4</sup> *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).

<sup>5</sup> *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 May 23, 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: September 13, 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