

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

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<b>T.J., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0550</b>
	)	<b>Issued: September 19, 2023</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Charlotte, NC, Employer</b>	)	
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*Appearances:* *Case Submitted on the Record*  
*Alan J. Shapiro, Esq., for the appellant*<sup>1</sup>  
*Office of Solicitor, for the Director*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 13, 2023 appellant, through counsel, filed a timely appeal from a February 10, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0550.

On September 3, 2020 appellant, then a 53-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on August 26, 2020 she sustained an injury to her right shoulder and neck when reaching out of the window to put mail in a mailbox while in the performance of duty. On the reverse side of the claim form, her supervisor, E.M., challenged the factual basis of her claim. Appellant stopped work on August 27, 2020. OWCP assigned the instant claim OWCP File No. xxxxxx142.

Appellant had previously filed a Form CA-1 for a right shoulder injury sustained on July 15, 2017, which OWCP denied. OWCP assigned this prior claim OWCP File No. xxxxxx565.

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<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 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.

She subsequently filed a Form CA-1 for a neck, back, and bilateral shoulder injury sustained on September 16, 2022, which OWCP accepted for thoracic spondylosis, lumbar spondylosis with radiculopathy, lumbar spondylolisthesis, cervical radiculopathy, and cervical hypolordosis, under OWCP File No. xxxxxx757.

By decision dated October 15, 2020, under OWCP File No. xxxxxx142, OWCP denied the present claim, finding that appellant had not established a diagnosed medical condition in connection with the accepted August 26, 2020 employment incident.<sup>2</sup>

Appellant requested reconsideration on September 29, 2021. By decision dated December 22, 2021, OWCP denied modification of the October 15, 2020 decision. In its decision, it referred to appellant's prior claim under OWCP File No. xxxxxx565.<sup>3</sup>

On November 21, 2022 appellant requested reconsideration. By decision dated February 10, 2023, OWCP modified its December 22, 2021 decision, finding that a medical diagnosis had been provided. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between the diagnosed condition and the accepted August 26, 2020 employment incident.

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>4</sup> For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition, doubling is required.<sup>5</sup> Herein, appellant has additional claims involving right shoulder conditions under OWCP File Nos. xxxxxx565 and xxxxxx757. She filed a claim for a traumatic injury to the right shoulder and neck on September 3, 2020, under the present claim, OWCP File No. xxxxxx142.

For a full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx142, with OWCP File Nos. xxxxxx565 and xxxxxx757. On remand, OWCP shall review all relevant evidence to determine whether appellant has established an injury in the performance of duty under the present claim. Following

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<sup>2</sup> Appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review on November 15, 2020. By decision dated December 4, 2020, it denied her request as it was not filed within 30 days of the October 15, 2020 decision.

<sup>3</sup> On July 5, 2022 appellant appealed to the Board. By order dated July 29, 2022, the Board dismissed the appeal as untimely filed. *Order Dismissing Appeal*, Docket No. 22-1062 (issued July 29, 2022).

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

<sup>5</sup> *Id.*; *S.G.*, Docket No. 21-0396 (issued September 27, 2021); *R.L.*, Docket No. 20-0901 (issued July 27, 2021); *M.E.*, Docket No. 21-0094 (issued May 27, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

**IT IS HEREBY ORDERED THAT** the February 10, 2023 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 19, 2023  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board