

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

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R.L., Appellant)	
)	
and)	Docket No. 24-0041
)	Issued: February 26, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SAFETY)	
ADMINISTRATION, FEDERAL AIR)	
MARSHAL SERVICE, Egg Harbor, NJ,)	
Employer)	
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Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On October 24, 2023 appellant filed a timely appeal from an August 10, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0041.

On May 9, 2021 appellant, then a 47-year-old federal air marshal, filed a traumatic injury claim, (Form CA-1) alleging that on April 30, 2021 he injured his left knee cap when it was struck by the seat of a reclining passenger resulting in an audible "pop" and constant knee pain while in

¹ The Board notes that, following the August 10, 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.*

the performance of duty. OWCP assigned the claim OWCP File No. xxxxxx251 and accepted it for traumatic arthropathy, left knee.²

On February 18, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award. By decision dated August 10, 2023, OWCP granted him a schedule award for five percent permanent impairment of his left lower extremity. The period of the award ran for 14.4 weeks from February 21 through June 1, 2022.

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, doubling is required.⁴ Herein, appellant has a previously accepted claim for bilateral knee injuries under OWCP File No. xxxxxx707. He subsequently filed the instant claim under OWCP File No. xxxxxx251, which OWCP accepted for traumatic arthropathy, left knee.

Therefore, for a full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx251, with OWCP File No. xxxxxx707. On remand, OWCP shall review all evidence to determine whether appellant has established permanent impairment to a scheduled member due to an accepted condition. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

² Appellant also has a previously accepted traumatic injury claim for bilateral knee sprains, under OWCP File No. xxxxxx707.

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

⁴ *Id.*; *S.A.*, Docket No. 23-0184 (issued July 17, 2023); *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).

IT IS HEREBY ORDERED THAT the August 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: February 26, 2024
Washington, DC

Alec J. Koromilas, 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