

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

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J.M., Appellant)	
)	
and)	
)	Docket No. 24-0108
)	Issued: February 21, 2024
DEPARTMENT OF VETERANS AFFAIRS,)	
DURHAM VA MEDICAL CENTER,)	
Durham, NC, 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 November 17, 2023 appellant filed a timely appeal from a November 17, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0108.

On August 6, 2023 appellant, then a 59-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right shoulder strain on June 15, 2023. She explained that she worked a full day at home on June 15, 2023. The next day appellant's right arm was very sore, and she was having difficulty lifting it. Two days later she tried to garden but her arm pain worsened as the day went on. The employing establishment acknowledged that appellant was injured in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx774.

A July 14, 2023 magnetic resonance imaging (MRI) scan of appellant's right shoulder interpreted by Dr. Nicholas Said, Board-certified in diagnostic radiology, demonstrated a heterogeneous partial thickness bursal surface tear of the supraspinatus and infraspinatus; an intrinsic heterogeneous signal likely corresponding with calcification suggesting an acute or chronic process, no discernible humeral avulsion fracture, and mild-moderate acromioclavicular osteoarthritis.

An August 14, 2023 operative report, by Dr. Kevin Paul Speer, Board-certified in orthopedic surgery, indicated that appellant underwent a right shoulder arthroscopic subacromial decompression; anterior and posterior capsule release; distal clavicle excision; tendon debridement, labral debridement, calcium debridement; and arthroscopic biceps tenodesis.

In a development letter dated September 7, 2023, OWCP informed appellant of the deficiencies of her claim.¹ It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a September 7, 2023 statement, appellant indicated that the initial trauma to her shoulder occurred in 2003.² She noted that she explained to Dr. Speer that her right shoulder had been hurting for years and she attributed it to overuse from the computer, and she worked through the pain that resolved with rest.

In a September 8, 2023 response to the questionnaire, appellant noted the results of the MRI scan, and related that she had throbbing right deltoid pain for years which she attributed to overuse with the computer at work. She also alleged that Dr. Speer informed her that the shoulder bursa was aggravated by the forward movement of reaching for the mouse because the bone spur ran over the bursa like a razor and caused it to fray. Appellant further explained that in 2003, she fell on ice on the 6th level of the parking garage at the employing establishment and landed on her right shoulder. She noted that she had verified that the 2003 incident was documented and caused a rotator cuff injury with possible impingement. Appellant indicated that she believed that the 2003 incident began the deterioration of her right shoulder. She explained that she had continual throbbing and right shoulder pain at least one or two times per week that was aggravated by computer work and that she did not have throbbing when she was not working behind the computer. Appellant explained that she was told to complete the Form CA-1; however, she believed that an occupational disease claim (Form CA-2) would be more accurate.

OWCP continued to receive evidence from Dr. Speer.

On October 2, 2023 the employing establishment controverted the claim and contended that appellant did not indicate on the Form CA-1 that she suffered an injury at work on June 15, 2023. It further noted that the Form CA-1 indicated that she worked a full day at home on June 15, 2023, and that there was no medical diagnosis of a condition caused by an injury on that date.

In a letter dated October 5, 2023, appellant responded to the controversion of her claim and noted that when she initially filed her claim, she was unaware of the difference between a Form

¹ Appellant submitted a claim for compensation (Form CA-7) on August 31, 2023, for the period from August 14 to 25, 2023.

² Appellant filed a Form CA-1 on January 5, 2004 alleging that on December 15, 2003 she fell on ice in the employing establishment parking structure and sustained a right shoulder rotator cuff injury. OWCP assigned this claim OWCP File No. xxxxxx567.

CA-1 and Form CA-2 claim, that she was advised to file Form CA-1 and told that Form CA-2 was for Covid-19, and that she now believed she had a Form CA-2 claim.

On October 11, 2023 OWCP advised appellant that the evidence of record was insufficient to establish that she actually experienced the alleged incident or employment factor, and the evidence did not provide a medical opinion regarding how her employment caused the diagnosed condition. It afforded her 60 days from the date of the September 7, 2023 letter to submit the necessary evidence.

On October 13, 2023 appellant responded that her orthopedist had advised her that her injury was primarily caused or aggravated by the continual usage of the mouse and keyboard while working at the employing establishment, that it was a continuous/chronic condition that worsened, and then it culminated in the trauma.

In an October 25, 2023 report, Dr. T. Huynh, Board-certified in general surgery, diagnosed sprain of the acromioclavicular joint; rotator cuff tear or rupture of right shoulder; and incomplete rotator cuff tear or rupture of right shoulder. Dr. Huynh opined that appellant's shoulder sprain was directly and causally attributed to her 2003 fall on the ice.

In a memorandum of telephone call (Form CA-110) dated October 26, 2023, an employing establishment official informed OWCP that appellant had filed another claim, OWCP File No. xxxxxx842, a Form CA-2 claim for a June 16, 2023 date of injury, which should be combined with the current claim.

By decision dated November 17, 2023, OWCP denied appellant's claim, finding that the medical evidence of record failed to establish that she sustained an injury causally related to the accepted June 15, 2023 employment incident.

The Board has duly considered the matter and finds that this case is not in posture for decision.³

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁴ For example, if a new injury claim is reported for an employee who previously filed an injury claim for a similar condition of the same part of the body, doubling is required.⁵ Herein, appellant has a Form CA-1 or traumatic injury claim under OWCP File No. xxxxxx567 for a right shoulder rotator cuff condition due a fall on December 15, 2003, and she has a Form CA-2 or occupational disease claim under OWCP File No. xxxxxx842 for her right shoulder condition as of June 16, 2023. These claims are for the same region of the body at issue in the claim presently before the Board.

³ *Order Remanding Case, J.L.*, Docket No. 21-0958 (issued April 26, 2023).

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

⁵ *Id.*; *Order Remanding Case, H.B.*, Docket No. 20-1298 (issued November 22, 2021); *Order Remanding Case, S.G.*, Docket No. 21-0396 (issued September 27, 2021).

Therefore, for full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx774, with OWCP File No. xxxxxx567 and OWCP File No. xxxxxx842.⁶ This will allow OWCP to consider all relevant claim files and accompanying evidence in developing the current claim.⁷

The Board shall, therefore, remand the case to OWCP to combine the files.⁸ Following this and such further development as it deems necessary, OWCP shall issue a *de novo* decision.⁹ Accordingly,

IT IS HEREBY ORDERED THAT the November 17, 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 21, 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

⁶ *Order Remanding Case, K.W.*, Docket No. 22-1258 (issued March 14, 2023).

⁷ *Order Remanding Case, L.M.*, Docket No. 19-1490 (issued January 29, 2020).

⁸ *Order Remanding Case, J.W.*, Docket No. 22-1047 (issued March 14, 2023).

⁹ *Order Remanding Case, J.B.*, Docket No. 22-0127 (issued February 16, 2023).