

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

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J.C., Appellant)	
)	
and)	Docket No. 24-0117
)	Issued: February 20, 2024
U.S. POSTAL SERVICE, PORTLAND POST OFFICE, Portland, ME, Employer)	
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Appearances:

*Thomas R. Uliase, Esq., for the appellant¹
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 November 21, 2023 appellant, through counsel, filed a timely appeal from an August 9, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned Docket No. 24-0117.

On December 28, 2022 appellant, then a 52-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 27, 2022 he sustained a herniated disc in his low back

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 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.

² The Board notes that following the August 9, 2023 decision, OWCP received additional evidence. However, 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.*

when lifting and delivering packages while in the performance of duty.³ He stopped work on January 27, 2022 and returned to work on February 3, 2022. On the reverse side of the claim form, appellant's supervisor indicated that no medical evidence had been submitted and controverted the claim as it had not been filed within 30 days of the date of injury.

In a January 5, 2023 development letter, OWCP informed appellant of the deficiencies of his claim and of the type of factual and medical evidence required to establish his claim. It provided a questionnaire for his completion and afforded him 30 days to respond.

In a January 19, 2023 attending physician's report (Form CA-20), Dr. Nancy A. Ball, a Board-certified physiatrist, noted that she had followed appellant since 2012 for an October 26, 2011 injury. She noted that appellant underwent L5-S1 surgery in 1999. Dr. Ball diagnosed an unstable L5-S1 herniated nucleus pulposus status post two surgical procedures, requiring surgical fusion.

By decision dated February 15, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the January 27, 2022 employment incident occurred as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

In a March 10, 2023 statement, appellant explained that on January 27, 2022 he lifted a 15 to 20 pound parcel from his vehicle and experienced the onset of right-sided low back pain with increasing right-sided radiculopathy. He noted that OWCP had accepted a prior claim under OWCP File No. xxxxxx124 for a left-sided L5-S1 disc herniation.

In a March 10, 2023 report, Dr. Ball opined that the January 2022 employment incident affected the L5-S1 disc surgically decompressed in 1999 and 2012, causing right-sided S1 nerve root compression due to appellant's repetitive physical work duties.⁴

On March 15, 2023 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.⁵

OWCP received a May 10, 2022 report by Dr. Matthew R. Sanborn, a Board-certified neurosurgeon, wherein he recounted appellant's history of 1999 and 2012 L5-S1 discectomies.

³ Appellant previously filed an occupational disease claim (Form CA-2) for an alleged lumbar injury that he first became aware of on May 5, 2007. OWCP assigned the claim OWCP File No. xxxxxx996 and accepted it for acute lumbar sprain with aggravation. Additionally, appellant previously filed a Form CA-1 for an alleged October 26, 2011 lumbar injury. OWCP assigned that claim OWCP File No. xxxxxx124 and accepted it for recurrent left L5-S1 disc herniation with compression of the left S1 nerve root. OWCP authorized left L5-S1 reexploration laminotomy with left S1 hemilaminectomy and microdiscectomy. Appellant also previously filed a Form CA-1 for an October 17, 2016 lower back injury. OWCP assigned that claim OWCP File No. xxxxxx279, but denied it by decision dated March 29, 2017.

⁴ Dr. Ball noted that she had provided the same opinion in her May 6, 2021 and March 31, 2022 reports. These reports are not of record under the present claim.

⁵ In a June 30, 2023 letter, counsel asserted that OWCP should administratively combine the current claim with the prior accepted lumbar injury under OWCP File No. xxxxxx124.

Appellant developed right-sided low back pain in February 2022, exacerbated by a physical therapy session. Dr. Sanborn noted a lumbarized S1 vertebra with listhesis of L5 upon S1 and instability at the level of the two prior disc herniations and current right-sided herniated disc. He recommended lumbar fusion.

In an April 5, 2023 report, Dr. Joseph T. Alexander, a Board-certified neurosurgeon, opined that appellant's condition was related to the 1999 lumbar injury and two left-sided L5-S1 surgeries.

In an undated statement received on July 18, 2023, appellant described bending, pulling, twisting, and lifting up to 70 pounds repeatedly during an eight-hour shift, with overhead reaching. He delivered up to 100 parcels per shift and placed mail through slots at the bottom of doors while wearing a satchel weighing up to 70 pounds.

By decision dated August 9, 2023, OWCP's hearing representative modified the February 15, 2023 decision to find that appellant had established that the January 27, 2022 employment incident occurred as alleged; however, the claim remained denied as the medical evidence of record was insufficient to establish that the diagnosed conditions were causally related to that the accepted employment incident.

The Board, having duly considered this matter, finds 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.⁶ 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.⁷ Herein, appellant has a previously-accepted acute lumbar sprain with aggravation under OWCP File No. xxxxxx996. He subsequently filed a traumatic injury claim (Form CA-1) for a lumbar injury, accepted under OWCP File No. xxxxxx124 for left L5-S1 recurrent disc herniation with compression of the left S1 nerve root, and OWCP-authorized left L5-S1 reexploration laminectomy and microdiscectomy. Appellant also filed a traumatic injury claim (Form CA-1) for a lumbar injury under OWCP File No. xxxxxx279, which was denied by OWCP. Thus, for a full and fair adjudication, this case shall be remanded for OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx996, xxxxxx124, and xxxxxx279 so that it can consider all relevant claim files and accompanying evidence in adjudicating the present claim.⁸ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

⁷ *Id.*; *Order Remanding Case, C.G.*, Docket No. 23-0777 (issued October 5, 2023); *Order Remanding Case, M.L.*, Docket No. 20-1176 (issued April 29, 2021); *Order Remanding Case, L.M.*, Docket No. 19-1490 (issued January 29, 2020); *Order Remanding Case, L.H.*, Docket No. 18-1777 (issued July 2, 2019).

⁸ *Supra* note 5 at Chapter 2.400.8c(1); *M.L., id.*; *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 August 9, 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 20, 2024
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