

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

R.M., Appellant)	
)	
and)	Docket No. 23-1104
)	Issued: January 23, 2024
U.S. POSTAL SERVICE, MINNEAPOLIS POST)	
OFFICE, Minneapolis, MN, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 18, 2023 appellant filed a timely appeal from a July 31, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1104.

On June 24, 2022 appellant, then a 52-year-old personnel clerk, filed a traumatic injury claim (Form CA-1) alleging that on December 30, 2021 he sustained a full-thickness tear of the right rotator cuff due to heavy lifting and repetitive motion while in the performance of duty. OWCP assigned this claim File No. xxxxxx362.

On June 30, 2022 the employing establishment challenged appellant's claim, noting that he had already filed an occupational disease claim (Form CA-2) under OWCP File No. xxxxxx888

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.

for a right rotator cuff tear, and that it was unclear as to which date the alleged right shoulder injury occurred.

In a development letter dated July 1, 2022, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In particular, OWCP noted that appellant had filed an occupational disease claim for a right shoulder injury with a date of injury of November 30, 2021, and requested that he clarify the correct date of injury for his occupational disease claim, as well as to explain why there were two different dates of injury for the same claimed condition. It afforded him 30 days to respond.

Appellant subsequently submitted medical evidence dated January 13 through July 19, 2022.

By decision dated August 11, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that claimed injury occurred on December 30, 2021, as alleged. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 5, 2023 appellant, through counsel, requested reconsideration of OWCP's August 11, 2022 decision. In support thereof, appellant submitted additional medical evidence.

By decision dated July 31, 2023, OWCP denied modification of its August 11, 2022 decision. It noted that it had reviewed documentation under OWCP File No. xxxxxx888.

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 depends on cross-referencing between files and where two or more injuries occur to the same part of the body.² In the present claim, appellant alleged that he sustained a full-thickness tear of the right rotator cuff due to heavy lifting and repetitive motion at work while in the performance of duty on December 30, 2021. Appellant also has an occupational disease claim for the same right shoulder condition under OWCP File No. xxxxxx888, which was referenced in OWCP's August 11, 2022 and July 31, 2023 decisions.

Therefore, for a full and fair adjudication, the case must be remanded for OWCP to administratively combine OWCP File No. xxxxxx888 with the present claim, so that it can consider all evidence in adjudicating appellant's claims. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8c (February 2000).

IT IS HEREBY ORDERED THAT the July 31, 2023 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 23, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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