

² The Board notes that, following the September 4, 2024 decision, 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.*

carrying her mail satchel and parcels.³ She indicated she first became aware of her condition on November 19, 2020 and realized its relationship to her federal employment on December 10, 2020. OWCP accepted the claim for sprain of the ligaments of the cervical spine, lumbar intervertebral disc disorders with radiculopathy, and temporary aggravation of thoracic disc displacement. It paid intermittent wage-loss compensation on the supplemental rolls.⁴

In a January 18, 2023 case summary report, the employing establishment's Office of Inspector General (OIG) alleged that appellant had created social media videos singing and dancing for her online health and wellness company while in uniform working on her limited light-duty desk job. It further noted that she had been surveilled engaging in other physical activities that were inconsistent with her accepted employment injury, including working out, loading up her vehicle, and setting up a concession stand to sell products for her online business. OIG provided these videos to appellant's attending physician, Dr. William Plaza, a Board-certified internist, and in a January 10, 2023 signed statement he related that she had misrepresented her injury to him and that she could return to full-duty work.⁵

On March 2, 2023 OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions, for a second opinion examination with Dr. Clinton Bush, III, a Board-certified orthopedic surgeon, regarding the status of her employment-related disability. In his June 2, 2023 report, Dr. Bush found that appellant could return to full-duty work and related that he had not received the videos. In an August 16, 2023 addendum, he noted receipt of the videos which demonstrated her dancing, exercising, and significant flexibility and fluidity in her body movements while at work, outdoors, in an exercise studio, and other locations and again opined that she could return to full duty.

On August 29, 2023 OWCP proposed to terminate appellant's wage-loss compensation benefits. It found that the weight of medical evidence rested with the June 2 and August 16, 2023 reports of Dr. Bush, OWCP's second opinion physician.

By decision dated September 29, 2023, OWCP finalized the termination of appellant's wage-loss compensation effective that same day. It found that the weight of the medical evidence rested with Dr. Bush, the second opinion physician, who had determined in his June 2 and August 16, 2023 reports that appellant no longer had disability causally related to the accepted May 28, 2021 employment injury.

On August 29, 2024 appellant, through counsel, requested reconsideration and contended that OWCP had failed to follow its procedures with regard to the videos provided to Dr. Bush.

³ OWCP assigned the present claim OWCP File No. xxxxxx212. Appellant previously filed a traumatic injury claim (Form CA-1) on May 13, 2017 alleging that she fell and sustained back injuries while in the performance of duty. OWCP accepted that she sustained thoracic and lumbar spine strains and assigned this claim OWCP File No. xxxxxx244. Appellant subsequently filed a second Form CA-1 alleging an injury on October 6, 2017 which OWCP accepted for thoracic spine strain and assigned OWCP File No. xxxxxx157. OWCP has not administratively combined appellant's files.

⁴ Appellant reported concurrent employment as the owner of Royal Beads Boutique, an online business.

⁵ The record before the Board contains no videos.

By decision dated September 4, 2024, OWCP denied modification.

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 case files and when two or more injuries occur to the same part or region of the body.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's claims under OWCP File Nos. xxxxxx212, xxxxxx244, and xxxxxx157 all involve injuries to the same region of her body.

OWCP relied on the opinion of Dr. Bush, in justifying its termination decision. However, it had not administratively combined OWCP File Nos. xxxxxx212, xxxxxx244, and xxxxxx157. Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.⁸ As OWCP did not administratively combine the files prior to the referral to Dr. Bush, the Board finds that it failed to meet its burden of proof to terminate appellant's wage-loss compensation.⁹ Accordingly,

⁶ *Order Remanding Case, M.J.*, Docket No. 22-1357 (issued June 12, 2023); *Order Remanding Case, L.B.*, Docket No. 21-0241 (issued October 28, 2021); Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8c (February 2000).

⁷ *Id.*

⁸ *D.G.*, Docket No. 19-1259 (issued January 29, 2020); *S.F.*, 59 ECAB 642 (2008); *Kelly Y. Simpson*, 57 ECAB 197 (2005); *Paul L. Stewart*, 54 ECAB 824 (2003).

⁹ *Order Reversing Case C.V.*, Docket No. 23-0913 (issued December 4, 2023).

IT IS HEREBY ORDERED THAT the September 4, 2024 decision of the Office of Workers' Compensation Programs is reversed.

Issued: April 15, 2025
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