

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

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D.S., Appellant )  
and ) Docket No. 25-0878  
U.S. POSTAL SERVICE, NEW JERSEY )  
INTERNATIONAL BULK MAIL & NETWORK )  
DISTRIBUTION CENTER, Jersey City, NJ, )  
Employer )  
Issued: December 12, 2025

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*Appearances:*

*Paul Kalker, Esq.*, for the appellant<sup>1</sup>  
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

**ORDER REVERSING CASE**

Before:

ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JANICE B. ASKIN, Judge

On September 11, 2025 appellant, through counsel, filed a timely appeal from an August 29, 2025 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 25-0878.

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<sup>1</sup> 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.

On October 28, 2022 appellant, then a 53-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on October 26, 2022 she injured her back and entire left side of her body when she slipped and fell while in the performance of duty.<sup>2</sup> She stopped work on the date of injury. OWCP initially accepted the claim for right and left shoulder contusions, right and left knee contusions, and cervical and lumbar radiculopathy. It subsequently expanded the acceptance of the claim to include adhesive capsulitis of the right and left shoulders. OWCP paid appellant wage-loss compensation on the supplemental rolls as of December 11, 2022 and on the periodic rolls as of March 24, 2024. On August 24, 2024, appellant returned to full-time, limited-duty work with restrictions.

On January 27, 2025, OWCP referred appellant, along with the medical record, a statement of accepted facts (SOAF), and a series of questions to Dr. Howard Kiernan, Jr., a Board-certified orthopedic surgeon, for a second opinion evaluation regarding the nature and extent of appellant's employment-related residuals and disability.

In a February 19, 2025 medical report, Dr. Kiernan reviewed the SOAF and the medical record. He reported normal findings on appellant's physical and neurological examination of the cervical and lumbar spines, right and left shoulders, and right and left knees. Dr. Kiernan concluded that, based on clinical findings, appellant had no active residuals. He further opined that appellant was medically capable of performing her date-of-injury job as a mail processing clerk. Dr. Kiernan advised that her prognosis was good and there was no need for medical treatment or a vocational rehabilitation program.

In a notice dated March 27, 2025, OWCP proposed to terminate appellant's wage-loss compensation and medical benefits because she no longer had disability or residuals causally related to her accepted October 26, 2022 employment injury. It found that the weight of medical evidence rested with the February 19, 2025 medical report of Dr. Kiernan, the second opinion physician, who found that she no longer had disability or residuals causally related to her accepted October 26, 2022 employment injury.

By decision dated May 2, 2025, OWCP finalized the termination of appellant's wage-loss compensation and medical benefits effective that date, based on Dr. Kiernan's February 19, 2025 second opinion report.

OWCP subsequently received additional medical evidence.

On August 25, 2025, appellant requested reconsideration of OWCP's May 2, 2025 termination decision.

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<sup>2</sup> OWCP assigned the present claim OWCP File No. xxxxxxx549. Appellant has prior claims before OWCP. Under OWCP File No. xxxxxxx781, OWCP accepted appellant's January 9, 2013 traumatic injury claim for right shoulder rotator cuff sprain and right rotator cuff partial tear. Under OWCP File No. xxxxxxx763, it accepted her August 23, 2015 traumatic injury claim for lumbar sprain, thoracic sprain, and bilateral shoulder sprain, cervical spondylosis, and neck sprain. Under OWCP File No. xxxxxxx797, OWCP accepted appellant's occupational disease claim for cervical strain, lumbar strain, right shoulder strain, and left shoulder strain. It has administratively combined OWCP File Nos. xxxxxxx781, xxxxxxx797, and xxxxxxx763, with the latter serving as the master file. Appellant's claims under master file xxxxxxx763 have not been administratively combined with the present claim.

By decision dated August 29, 2025, OWCP denied modification of the May 2, 2025 termination decision.<sup>3</sup>

The Board, having duly considered this matter, finds that OWCP failed to meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective May 2, 2025.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.<sup>4</sup> 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 region of the body, doubling is required.<sup>5</sup> Herein, appellant's claims under OWCP File Nos. xxxxxx549, xxxxxx781, xxxxxx763, and xxxxxx797 all involve injuries to her neck, back, and shoulders. OWCP relied on the opinion of Dr. Kiernan in justifying its termination decision. However, it had not administratively combined OWCP File Nos. xxxxxx549, xxxxxx781, xxxxxx763, and xxxxxx797. Once OWCP accepts a claim and pays compensation, it has the burden of proof to justify termination or modification of benefits.<sup>6</sup> As OWCP did not administratively combine the claim files prior to its referral to Dr. Kiernan, the Board finds that it failed to meet its burden of proof to terminate appellant's wage-loss compensation.<sup>7</sup> Accordingly,

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<sup>3</sup> The Board notes that subsequent to the current appeal before the Board, OWCP issued a decision on September 22, 2025 denying modification of its March 26, 2025 denial of appellant's recurrence claim.

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

<sup>5</sup> *Id.*; *Order Reversing Case, E.B.*, Docket No. 25-0351 (issued April 15, 2025); *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).

<sup>6</sup> See *Order Reversing Case, E.B.*, *id.*; *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).

<sup>7</sup> See *Order Reversing Case, E.B.*, *id.*; *Order Reversing Case, C.V.*, Docket No. 23-0913 (issued December 4, 2023).

**IT IS HEREBY ORDERED THAT** the August 29, 2025 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 12, 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