

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

_____)	
D.M., Appellant)	
)	
and)	Docket No. 19-1929
)	Issued: August 3, 2020
DEPARTMENT OF THE NAVY, MARINE)	
CORPS BASE, Quantico, VA, Employer)	
_____)	

Appearances:
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge

On September 17, 2019 appellant, through counsel, filed a timely appeal from a June 3, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards docketed the appeal as No. 19-1929.

On October 5, 2015 appellant, then a 61-year-old supervisory audiovisual specialist, filed a traumatic injury claim (Form CA-1) alleging that on September 4, 2015 he sustained lumbar back pain, muscle strain, hypertension, and a contusion after he fell on office steps and slipped

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 OWCP continued to receive evidence following its June 3, 2019 decision. 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.*

onto his back while in the performance of duty. He did not stop work. OWCP assigned this claim OWCP File No. xxxxx897.

On January 18, 2019 appellant filed a traumatic injury claim (Form CA-1) alleging that on January 15, 2019 he hit his head and injured his back when he slipped on ice walking from a road to a walkway while in the performance of duty. He stopped work on January 15, 2019. OWCP assigned this claim OWCP File No. xxxxxx142.

Appellant submitted medical evidence in support of his claim regarding injury on January 15, 2019.

By decision dated March 19, 2019, OWCP denied appellant's January 2019 traumatic injury claim finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted January 15, 2019 employment incident.

On March 26, 2019 appellant requested a review of the written record by an OWCP hearing representative. OWCP continued to receive medical evidence.

By decision dated June 3, 2019, OWCP's hearing representative affirmed OWCP's March 19, 2019 decision finding that the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed lumbar conditions and the accepted January 15, 2019 employment incident. The hearing representative noted that OWCP File No. xxxxxx897, appellant's prior 2015 claim for a back injury, should be combined with the instant claim, as some of the medical reports of record in the current claim referenced his 2015 injury.

The Board has duly considered the matter and concludes that this 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.³ 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.⁴

In the June 3, 2019 decision, OWCP's hearing representative indicated that it would be appropriate for the cases to be doubled as medical reports in the current claim referenced medical evidence pertaining to the 2015 claim.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx897. Following this and such other further development as it deems necessary, OWCP shall issue a *de novo* decision. Accordingly,

³ *R.R.*, Docket No. 19-0368 (issued November 26, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8c (February 2000).

⁴ *Id.*

IT IS HEREBY ORDERED THAT the June 3, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order of the Board.

Issued: August 3, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board