

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

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**J.D., Appellant** )  
 )  
**and** )  
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**U.S. POSTAL SERVICE, SARASOTA MAIN** )  
**POST OFFICE, Sarasota, FL, Employer** )

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**Docket No. 21-0850  
Issued: December 6, 2021**

*Appearances:*  
*Joanne Marie Wright, for the appellant<sup>1</sup>*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 18, 2021 appellant, through his representative filed a timely appeal from an April 2, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>2</sup> The Clerk of the Appellate Boards docketed the appeal as No. 21 -0850.

On August 11, 2016 appellant, then a 57-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 11, 2016 he was involved in a motor vehicle accident and

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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 an 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.

<sup>2</sup> The Board notes that, following the April 2, 2021 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.*

sustained an injury to his chest while in the performance of duty.<sup>3</sup> He did not stop work. On August 22, 2016 OWCP accepted appellant's claim for cervical spine sprain. It subsequently expanded the acceptance of this claim to include thoracic sprain, thorax front wall contusion, and cervical radiculopathy.

On November 5, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award due to his August 11, 2016 cervical sprain.

By decision dated December 2, 2020, OWCP granted appellant a schedule award for 24 percent permanent impairment of his left arm and 24 percent permanent impairment of his right arm.<sup>4</sup>

On January 11, 2021 appellant, requested reconsideration of the December 2, 2020 decision and submitted additional medical evidence. By decision dated April 2, 2021, OWCP denied modification.

The Board has duly considered the matter and finds that this case is not in posture for decision.

OWCP's procedures provide that cases should be administratively combined where correct adjudication depends on frequent cross-referencing between files and where two or more injuries occur to the same part of the body. Due to OWCP's cross-referencing of the claims, for a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record, OWCP File No. xxxxxx110, with OWCP File No. xxxxxx619.<sup>5</sup> This will allow OWCP to consider all relevant claim files in developing appellant's schedule award claim.

Accordingly, the Board will remand the case to OWCP to administratively combine OWCP File Nos. xxxxxx110 and xxxxxx619. Following this and other such development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

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<sup>3</sup> The present claim was assigned OWCP File No. xxxxxx110. Appellant has a prior claim for a January 25, 2010 traumatic injury, which OWCP accepted for right shoulder rotator cuff tear under OWCP File No. xxxxxx619. By decision dated September 30, 2016, in OWCP File No. xxxxxx619, OWCP granted appellant a schedule award for 24 percent permanent impairment of his right arm. Appellant's claims have not been administratively combined.

<sup>4</sup> It noted that appellant was previously awarded 24 percent permanent impairment of the right arm on September 30, 2016 under OWCP File No. xxxxxx619.

<sup>5</sup> *Id.*; see *R.S.*, Docket No. 20-1232 (issued April 28, 2021).

**IT IS HEREBY ORDERED THAT** the April 2, 2021 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: December 6, 2021  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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