

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

<p>L.S., Appellant</p>)	
)	
<p>and</p>)	<p>Docket No. 21-0178</p>
)	<p>Issued: June 28, 2021</p>
<p>U.S. POSTAL SERVICE, HANOVER PARK CARRIER ANNEX POST OFFICE, Hanover Park, IL, Employer</p>)	
)	

Appearances:
Stephanie N. Leet, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
 ALEC J. KOROMILAS, Chief Judge
 JANICE B. ASKIN, Judge
 VALERIE D. EVANS-HARRELL, Alternate Judge

On November 24, 2020 appellant, through counsel, filed a timely appeal from a November 10, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-0178.²

On November 15, 2019 appellant, then a 61-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 12, 2019 he injured his back when he slipped on

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 The Board notes that, following the November 10, 2020 decision, OWCP received additional evidence and appellant submitted additional evidence on appeal. 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.*

ice and fell while in the performance of duty. He did not stop work. OWCP assigned this claim, which is the current claim before the Board, OWCP File No. xxxxxx661.

The record reflects that appellant had previously filed a traumatic injury claim for an alleged back injury he sustained while in the performance of duty on November 22, 2006, under OWCP File No. xxxxxx281. As well, OWCP previously accepted a February 28, 2007 traumatic injury claim for a back contusion, under OWCP File No. xxxxxx964.

By decision dated January 31, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish that his diagnosed condition was causally related to the accepted November 12, 2019 employment incident.

On February 26, 2020 appellant, through counsel, requested a review of the written record before a representative of OWCP's Branch of Hearings and Review. He submitted an undated narrative report from Dr. Mansoor Khan, an emergency medicine specialist, who opined that the accepted November 12, 2019 employment incident aggravated his chronic degenerative disc disease, leading to severe spinal stenosis. By decision dated June 17, 2020, an OWCP hearing representative denied modification of OWCP's January 31, 2020 decision.

On August 13, 2020 appellant, through counsel, requested reconsideration and submitted additional medical evidence, including a July 25, 2020 narrative report from Dr. Khan, who provided a detailed account of appellant's injury. By decision dated November 10, 2020, OWCP denied modification of the June 17, 2020 decision.

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 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 As the instant claim under OWCP File No. xxxxxx661 and the prior claims under OWCP File Nos. xxxxxx281 and xxxxxx964 all involve injuries to appellant's back, these claims must be administratively combined for a full and fair adjudication.⁵ This will allow OWCP to consider all relevant claim files and accompanying evidence in developing appellant's current traumatic injury claim.

Accordingly, the Board will remand the case to OWCP to administratively combine OWCP File Nos. xxxxxx661, xxxxxx281, and xxxxxx964. Following this and such other further development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's traumatic injury claim.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁴ *Id.*; *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

⁵ *M.B.*, Docket No. 20-1175 (issued December 31, 2020); *S.D.*, Docket No. 19-0590 (issued August 28, 2020).

IT IS HEREBY ORDERED THAT the November 10, 2020 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this order of the Board.

Issued: June 28, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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