

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

E.R., Appellant)	
)	
and)	Docket No. 21-0259
)	Issued: September 30, 2021
U.S. POSTAL SERVICE, YBOR PROCESSING)	
& DISTRIBUTION CENTER, Tampa, FL,)	
Employer)	
)	

Appearances:
Wayne Johnson, 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
PATRICIA H. FITZGERALD, Alternate Judge

On December 15, 2020 appellant filed a timely appeal from a June 17, 2020 non-merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0259.

On September 20, 2017 appellant, then a 41-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 15, 2017 she injured her knees, left shoulder, neck, low back, left leg, and left arm when she tripped and fell over a pole while in the performance of duty. She stopped work on September 20, 2017.²

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 present claim was assigned OWCP File No. xxxxx318. OWCP previously accepted a December 5, 2015 traumatic injury claim under File No. xxxxx430 for cervical disc disorder with myelopathy and bursitis/tendinitis of the shoulders. Appellant's claims have not been administratively combined.

Appellant submitted medical evidence in support of her claim.

By decision dated December 1, 2017, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient medical evidence to establish causal relationship between the accepted September 15, 2017 work incident and her diagnosed medical conditions. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

Appellant subsequently requested reconsideration and submitted additional medical evidence. By decisions dated April 25, 2018 and May 29, 2019, OWCP denied modification.

OWCP continued to receive evidence. A June 13, 2019 work capacity evaluation (Form OWCP-5c), signed by Dr. Patel, indicated that appellant was able to return to full-time sedentary duty with no prolonged sitting, standing, walking, reaching, bending, stooping, or kneeling. The note also related that she believed she may have exacerbated her right knee recently.

On May 29, 2020 appellant requested reconsideration of OWCP's May 29, 2019 decision.

By decision dated June 17, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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

Under its procedures, OWCP has determined that cases should be administratively combined where a new injury case is reported for an employee who previously filed an injury claim for the same part of the body and where correct adjudication depends on cross-referencing between files.³ This will allow OWCP to consider all relevant claim files in developing this schedule award claim.⁴

As OWCP File No. xxxxxx430 also involves a claim to appellant's shoulders for a full and fair adjudication, the Board will remand the case to OWCP to administratively combine the case records for File Nos. xxxxxx318 and xxxxxx430. Following this and other such further development as deemed necessary, OWCP shall issue an appropriate decision.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000). *See also Order Remanding Case, M.W.*, 20-1221 (issued July 6, 2021).

⁴ *Id.*

IT IS HEREBY ORDERED THAT the June 17, 2020 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 30, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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