

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

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D.T., Appellant )

and )

DEPARTMENT OF HOMELAND SECURITY, )  
U.S. CITIZENSHIP & IMMIGRATION )  
SERVICES, ARLINGTON ASYLUM OFFICE, )  
Arlington, VA, Employer )

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**Docket No. 21-0168  
Issued: April 8, 2022**

Appearances:  
Appellant, *pro se*  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

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

**JURISDICTION**

On November 13, 2020 appellant filed a timely appeal from a September 21, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards docketed the appeal as No. 21-0168.

On January 23, 2019 appellant, then a 59-year-old citizens and immigration services assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 18, 2019 she injured her back when pulling files in the performance of duty. She stopped work on January 18, 2019 and returned to work on January 23, 2019. OWCP assigned this claim No. xxxxxx463.

Progress reports dated from February 7 to March 14, 2019 indicate that appellant was evaluated by Drs. Kenneth May and Tyler Schnitzler, chiropractors, for neuromusculoskeletal pain

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<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In light of the Board's disposition of this case, the request for oral argument is denied.

she was experiencing. Dr. May diagnosed sprains of the ligaments of the thoracic and lumbar spine, low back pain, pain in the thoracic spine, sacrococcygeal disorders, segmental and somatic dysfunction of the thoracic region, segmental and somatic dysfunction of the lumbar region, segmental and somatic dysfunction of the sacral region, segmental and somatic dysfunction of the lower extremity, muscle spasms of the back and other muscle spasms. Drs. May and Schnitzler provided a three-week treatment plan and included treatment notes noting her progression.

In a March 14, 2019 medical report, Dr. Dani Boulattouf, Board-certified in family medicine, noted that appellant injured her back at work a couple of months prior and that her symptoms began to flare up again on March 13, 2019 when she was back at work lifting boxes on to a shelf. On evaluation, he diagnosed a sprain of the ligaments of the lumbar spine and advised that her to follow up with her primary care physician.

Appellant also submitted additional progress reports dated from April 5 to 25, 2019, in which Dr. May and Dr. Kirsten Gilmour, also a chiropractor, treated her for low back pain relating to her diagnoses of a strain of the muscle in the fascia and tendon of the lower back, unspecified inflammatory spondylosis, a sprain of the ligament in the thoracic spine, a sprain of the ligament in the lumbar spine, myalgia, segmental and somatic dysfunction of the thoracic region, segmental and somatic dysfunction of the lumbar region, segmental and somatic dysfunction of the sacral region, and segmental and somatic dysfunction of the lower extremity.

In a May 2, 2019 development letter, OWCP advised appellant of the deficiencies of her claim and attached a questionnaire seeking additional information concerning the alleged January 18, 2019 employment incident. It requested additional factual and medical evidence from her, including a narrative medical report from her attending physician. OWCP noted that a chiropractor did not qualify as a physician under FECA unless a spinal subluxation, demonstrated by x-ray evidence was diagnosed. It afforded appellant 30 days to respond.

In a January 18, 2019 medical report, Dr. Dahlia Charles, Board-certified in emergency medicine, detailed appellant's past medical history, including two cervical disc deteriorations, and noted that she presented with acute on chronic neck pain radiating through back and down to her knees. She stated that appellant experienced these symptoms after pulling a file drawer open from a standing position while she was at work that morning. Appellant informed Dr. Charles that she underwent computerized tomography (CT) scans of her head, neck, and back a few months prior that revealed two cervical disc deteriorations. It was recommended that she not lift over five pounds as a result. On evaluation, Dr. Charles noted complaints of back and neck pain.

In an April 2, 2019 medical report, Dr. Jeffrey Sabloff, a Board-certified orthopedic surgeon, noted that appellant previously experienced an issue with her back eight years prior that was never treated. He recounted the alleged January 18, 2019 employment incident where she was lifting at work and felt her back give out. Appellant went to the emergency room where she was informed that her injury stemmed from her neck. When she returned to work again in March she experienced a similar episode. On examination and review of diagnostic results, Dr. Sabloff diagnosed a lumbar strain, facet syndrome, back pain and bilateral hip pain.

In a subsequent April 23, 2019 medical report, Dr. Sabloff observed that appellant's symptoms in her neck, back, and hip continued despite undergoing therapy. He noted that x-ray

scans of her cervical spine taken that day revealed degenerative disc disease (DDD) at C4-5, C5-6 and C6-7. Dr. Sabloff diagnosed a lumbar strain, facet syndrome, cervical DDD, and a cervical strain.

Appellant submitted progress reports dated from April 30 to May 7, 2019 where Dr. May continued to provide treatment notes relating to her diagnosed back conditions.

In a May 14, 2019 response to OWCP's questionnaire, appellant explained that on January 18, 2019 she was pulling files and placing them on a cart and then pulling the loaded cart. She indicated that the file cabinet was approximately 40 pounds and that she pulled approximately 45 to 50 files. Appellant explained that she felt immediate pain in her back and heard a crack that made her cry. She stopped work and requested that her supervisor call an ambulance for assistance. Appellant asserted that she had not sustained a back injury prior to the employment incident and that she had no preexisting back conditions. She noted that she had a disability before her injury relating to migraine headaches that came from several discs in her neck. Appellant discussed a March 14, 2019 conversation she had with Dr. Boulattouf where she described her employment duties and the alleged January 18, 2019 employment incident. She also noted that she experienced similar symptoms on March 13, 2019 at work when she was again pulling files and pushing carts.

By decision dated June 13, 2019, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish her diagnosed medical condition was causally related to the accepted January 18, 2019 employment incident.

On July 9, 2019 appellant requested reconsideration of OWCP's June 13, 2019 decision and submitted additional medical evidence.

In an unsigned January 18, 2019 emergency room report, appellant was diagnosed with muscle strain, neck pain and upper back pain and instructed her to follow up with her primary care physician.

OWCP subsequently received information sheets which detailed home care techniques for back pain and a cervical strain, as well as other administrative notes and forms from the hospital.

By decision dated October 11, 2019, OWCP denied modification of its July 9, 2019 decision.

On November 13, 2019 appellant requested reconsideration and submitted additional medical evidence.

In an October 18, 2019 medical note, Dr. Sabloff explained that he had been treating appellant since April 2, 2019 for her diagnosed lumbar sprain. He advised that her condition would benefit from having an ergonomic chair at work.

In a November 2, 2019 statement, appellant denied prior injury to her back. She noted that January 18, 2019 was the first time she was diagnosed with lumbar sprain after pulling files. Additionally, appellant noted that she was injured on March 14, 2019; "April 23, 2019 through

May 21, 2019,” after which she was out of work for a short time; and thereafter when lifting large packages of documents out of a box bending over from a chair.<sup>2</sup>

By decision dated January 29, 2020, OWCP denied modification of its October 11, 2019 decision.

On February 18, 2020 appellant requested reconsideration of OWCP’s January 29, 2020 decision.

In support thereof, appellant submitted a March 19, 2019 medical report, wherein Dr. Laura Riggins, Board-certified in family medicine, related that appellant reinjured her back on March 13, 2019 when she was pulling files at work. On evaluation, she diagnosed cervical radiculopathy and lumbar radiculopathy.

Appellant also submitted copies of Dr. Sabloff’s April 2 and 23, 2019 medical reports.

By decision dated May 14, 2020, OWCP denied modification of its January 29, 2020 decision.

On June 29, 2020 appellant requested reconsideration of OWCP’s May 14, 2020 decision. In an attached June 18, 2020 statement, she recounted the January 18, 2019 employment incident. Appellant estimated that she had performed her work duties for the past two or three years and also attested that she lifted 25- to 35-pound boxes on a daily basis for years. She indicated that she did not remember stating that she injured her back eight years prior. Appellant concluded by offering that, to the best of her knowledge, Dr. Sabloff’s medical evidence was sufficient to establish her claim.

By decision dated September 21, 2020, OWCP denied appellant’s request for reconsideration of the merits of her claim.

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.<sup>3</sup> For example, if an employee has another claim for a similar condition or the same part of the body, doubling is required.<sup>4</sup> Appellant has alleged injuries to her back in both File Nos. xxxxxx463 and xxxxxx373. Additionally, she referenced the injury alleged in File No. xxxxxx373 in a statement in support of the present claim. The Board notes that OWCP has not administratively combined appellant’s claims.

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<sup>2</sup> The record reflects that appellant filed a CA-1 for back pain sustained when sitting and lifting documents out of a box on July 19, 2019, while in the performance of duty. OWCP assigned this claim File No. xxxxxx373. This claim has not been accepted.

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

<sup>4</sup> *Id.*

For a full and fair adjudication of appellant's current claim, the case must be remanded to OWCP to administratively combine the current case record with OWCP File No. xxxxxx373.<sup>5</sup> Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the September 21, 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: April 8, 2022  
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

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<sup>5</sup> *Id.*