

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

C.M., Appellant)	
)	
and)	Docket No. 22-1076
)	Issued: December 29, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Boston, GA, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On July 13, 2022 appellant, through counsel, filed a timely appeal from a June 21, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 22-1076.

On October 22, 2021 appellant, then a 56-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 9, 2021 she injured her right hip, hand, and wrist when she slipped and fell back on her right hip, hand, and wrist, while in the performance of duty. She indicated that she notified her supervisor. On the reverse side of the claim form, appellant's supervisor challenged appellant's claim, stating that he did not recall being notified of the injury. He further asserted that, if she slipped, it was because she was not paying attention to where she was walking, and he indicated that he considered this misconduct. Appellant stopped work on September 29, 2021. OWCP assigned this claim OWCP File No. xxxxxx166.

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 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.

Appellant filed an additional Form CA-1 on October 22, 2021 alleging that on July 7, 2021 she sustained a torn meniscus in the right knee when she stepped off a bottom stair after delivering a package and rolled her ankle in a dog hole while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx162. Appellant's claims have not been administratively combined by OWCP.

By decision dated December 8, 2021, OWCP denied appellant's traumatic injury claim in OWCP File No. xxxxxx166, finding that the evidence of record was insufficient to establish that the September 9, 2021 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On December 22, 2021 appellant, through counsel, timely requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on April 7, 2022. At the telephonic hearing, appellant related that the September 9, 2021 employment incident was "tied in with the other incident that was on [July 7, 2021]. I was already out for work from that incident." She indicated that she sought medical attention arising from both incidents at the same time and that on September 9, 2021 she was "in a holding pattern" awaiting knee surgery causally related to the July 7, 2021 employment incident.

By decision dated June 21, 2022, OWCP denied modification of its December 8, 2021, decision. In this decision, it referenced the prior claim, OWCP File No. xxxxxx162.

The Board, having duly considered this matter, finds 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.² 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, or if overlapping periods of disability are alleged, doubling is required.³ Herein, appellant also had a claim for a right knee injury, assigned OWCP File No. xxxxxx162. She also filed a traumatic injury claim for an injury sustained while "in a holding pattern" awaiting surgery arising from the former claim and reported that she received medical treatment arising from both claims at the same time. The latter claim, assigned OWCP File No. xxxxxx166, is the claim presently before the Board.

For a full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx166, with OWCP File No. xxxxxx162. On remand, OWCP shall review all relevant evidence to determine whether appellant has established an injury in the performance of duty. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.4008(c) (February 2000).

³ *Id.*; *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

IT IS HEREBY ORDERED THAT the June 21, 2022 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: December 29, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board