

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

_____)	
T.S., Appellant)	
)	
and)	Docket No. 21-0864
)	Issued: January 31, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Chanute, KS, Employer)	
_____)	

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, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On May 14, 2021 appellant filed a timely appeal from a November 19, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 21-0864.¹

On November 14, 2016 appellant, then a 50-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a bilateral shoulder condition as a result of factors of his federal employment which required repetitive reaching and lifting over the course of 23 years. He noted that he first became aware of his claimed condition on October 1, 2016 and its relation to his federal employment on November 1, 2016. Appellant stopped work on October 19, 2016 when he elected Office of Personnel Management disability retirement benefits. OWCP assigned the claim OWCP File No. xxxxxx730. It accepted the claim for permanent aggravation of bilateral acromioclavicular joint degeneration and permanent aggravation of bilateral rotator cuff tendinitis.

¹ The Board notes that following the November 19, 2020 decision, appellant submitted additional evidence to OWCP. 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.*

Appellant had prior claims for which OWCP accepted several upper extremity conditions. In an occupational disease claim, assigned OWCP File No. xxxxxx167, OWCP accepted on July 27, 2005 that appellant sustained bilateral carpal tunnel syndrome. On May 1, 2007 it awarded him a schedule award for two percent permanent impairment of the left upper extremity and four percent permanent impairment of the right upper extremity. In another occupational disease claim, assigned OWCP File No. xxxxxx020, OWCP accepted the claim on July 25, 2014 for bilateral cubital tunnel syndrome and bilateral epicondylitis. On May 7, 2019 it awarded appellant additional schedule award compensation for 8 percent permanent impairment of the left upper extremity and 11 percent permanent impairment of the right upper extremity. In another occupational disease claim, assigned OWCP File No. xxxxxx833, OWCP accepted the claim on December 2, 2015 for bilateral carpal tunnel syndrome. On March 8, 2019 it awarded appellant additional schedule award compensation for four percent permanent impairment of the left upper extremity and two percent permanent impairment of the right upper extremity.

By decision dated November 19, 2020, OWCP granted appellant a schedule award for an additional 10 percent permanent impairment of the left upper extremity (24 percent less prior awards for 14 percent permanent impairment of the left upper extremity); and for an additional 10 percent permanent impairment of the right upper extremity (27 percent less prior awards for 17 percent permanent impairment of the right upper extremity). It based its schedule award decision on October 1 and 23, 2020 reports of Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser. Dr. Katz evaluated August 31, 2020 findings of Dr. Joseph G. Sankoorikal, a Board-certified physiatrist serving as an OWCP referral physician.

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

OWCP's procedures provide that cases should be administratively combined when proper adjudication of the issues depends on frequent cross-referencing between case 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, doubling is required.³ In the present claim, OWCP specifically referenced evidence from earlier claims, OWCP File Nos. xxxxxx167, xxxxxx020, and xxxxxx833, including schedule awards granting permanent impairment of the upper extremities, *i.e.*, the same extremities for which a schedule award was granted in the present claim, assigned OWCP File No. xxxxxx730. However, the evidence pertaining to these files is not part of the case record presented before the Board. For a full and fair adjudication, the case shall be remanded to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx167, xxxxxx020, and xxxxxx833, so it can consider all relevant claim files and accompanying evidence in adjudicating appellant's occupational disease claim. Following this

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c)(1) (February 2000); *V.G.*, Docket No. 19-0670 (issued April 30, 2020); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019); *L.S.*, Docket Nos. 17-1863, 17-1867, 17-1868 (issued April 18, 2018); *W.S.*, Docket No. 15-0969 (issued October 5, 2015); *C.C.*, Docket No. 14-1576 (issued March 9, 2015).

³ *Id.*; *M.B.*, Docket No. 20-1175 (issued December 31, 2020); *L.M.*, Docket No. 19-1490 (issued January 29, 2020).

and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's schedule award claim. Accordingly,

IT IS HEREBY ORDERED THAT the November 19, 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: January 31, 2022
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