

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

M.M., Appellant)	
)	
and)	Docket No. 23-0770
)	Issued: May 29, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, JOHN F. KENNEDY)	
INTERNATIONAL AIRPORT, Jamaica, NY,)	
Employer)	

Appearances: *Case Submitted on the Record*
*Michael D. Overman, Esq., for the appellant*¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

On May 3, 2023 appellant, through counsel, filed a timely appeal from a November 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0770.

On July 9, 2016 appellant then a 41-year-old transportation security officer (screener) filed a traumatic injury claim (Form CA-1) alleging that, on that date, he injured his left shoulder when pulling a checked bag off of the screening table and felt a pop in his shoulder while in the

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 record also contains a February 6, 2023 decision denying appellant's claim for wage-loss compensation due to disability from work for the period September 18, 2016 through June 24, 2017. However, counsel has not appealed this decision and thus it is not before the Board at this time. 20 C.F.R. § 501.2(c).

performance of duty.³ He stopped work on July 9, 2016. On July 16, 2016 appellant accepted a light-duty assignment with no lifting. He subsequently accepted a full-time light-duty assignment on August 8, 2016 with no reaching above the shoulder, no pushing, and no lifting. On August 31, 2016 OWCP accepted appellant's claim for left shoulder acromioclavicular (AC) joint strain. On May 25, 2017 it expanded the acceptance of the claim to include impingement syndrome of the left shoulder and superior glenoid labrum lesion of the left shoulder. On August 7, 2018 OWCP further expanded its acceptance of appellant's claim to include aggravation of osteoarthritis glenohumeral joint left shoulder.

On October 19, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated July 15, 2021, OWCP granted appellant a schedule award for 14 percent permanent impairment of the left upper extremity. The period of the award ran for 43.68 weeks for the period May 27, 2020 through March 28, 2021.

On July 20, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on November 18, 2021.

By decision dated February 2, 2022, OWCP's hearing representative vacated the July 15, 2021 decision and remanded the claim for further development.

By decision dated March 7, 2022, OWCP denied appellant's claim for an increased schedule award, finding that the medical evidence of record was insufficient to establish greater than the 14 percent permanent impairment of the left upper extremity previously awarded.

On March 14, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. A hearing was held on October 6, 2022.

By decision dated November 7, 2022, OWCP's hearing representative affirmed the March 7, 2022 schedule award decision.

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 correct adjudication of the issues depends on frequent cross-referencing between files.⁴ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar

³ OWCP assigned the present claim OWCP File No. xxxxxx603. Appellant has a prior traumatic injury claim (Form CA-1) for a November 25, 2006 traumatic injury claim under OWCP File No. xxxxxx236, which was accepted for cervical and lumbar radiculopathies. Appellant's claims have not been administratively combined.

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

condition, doubling is required.⁵ Herein, appellant has a prior claim under OWCP File No. xxxxxx236, which was accepted for cervical and lumbar radiculopathies. He subsequently filed the instant claim under OWCP File No. xxxxxx603, which OWCP accepted for shoulder conditions.

As both claims involve the same region of the body, for a full and fair adjudication, the case shall be remanded to OWCP to administratively combine OWCP File Nos. xxxxxx603 and xxxxxx236. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the November 7, 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: May 29, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁵ *Id.*; *S.A.*, Docket No. 23-0184 (issued July 17, 2023); *S.G.*, Docket No. 21-0396 (issued September 27, 2021); *R.L.*, Docket No. 20-0901 (issued July 27, 2021); *M.E.*, Docket No. 21-0094 (issued May 27, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).