

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

_____)	
B.H., Appellant)	
)	Docket No. 24-0311
and)	Issued: May 2, 2024
)	
U.S. POSTAL SERVICE, KENMORE POST)	
OFFICE, Akron, OH, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

On February 6, 2024 appellant, through counsel, filed a timely appeal from a January 5, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0311.

On April 4, 2023 appellant, then a 39-year-old city carrier, filed a notice of recurrence of disability (Form CA-2a) alleging that on December 7, 2022 he began having right foot and ankle pain while entering and exiting his long-life vehicle (LLV) to deliver packages. He indicated the date of his original injury was July 23, 2019, and that following his return to work in June 2020 he

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.

was assigned sedentary duties. When attempting his new job assignment in December 2022, which required driving a LLV and delivering packages, his right foot and ankle began to swell.²

In an April 12, 2023 letter, OWCP noted receipt of his April 4, 2023 Form CA-2a. It advised appellant that it appeared that he was claiming a new traumatic injury based on his description of the circumstances. Thus, OWCP converted his recurrence claim under OWCP File No. xxxxxx213 to a traumatic injury claim, assigned OWCP File No. xxxxxx863.

By decision dated June 14, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the December 7, 2022 employment incident occurred as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On June 20, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional evidence.

By decision dated January 5, 2024, OWCP's hearing representative modified the June 14, 2023 decision to find that appellant had established the December 7, 2022 employment incident occurred as alleged, and that a medical condition was diagnosed in connection with the accepted employment incident. However, the claim remained denied as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed conditions and the December 7, 2022 employment incident.

The Board has duly considered this matter and 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.³ 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.⁴ Herein, appellant had a prior claim under OWCP File No. xxxxxx213 for a right foot and ankle condition.

Therefore, for a full and fair adjudication, the case must be remanded for OWCP to administratively combine the current case record, OWCP File No. xxxxxx863, with OWCP File No. xxxxxx213. On remand, OWCP shall review all relevant evidence to determine whether appellant has established a traumatic injury in the performance of duty on December 7, 2022 as

² Appellant has a prior traumatic injury claim under OWCP File No. xxxxxx213, which was accepted for right ankle sprain, right peroneal tendon tear, and right foot metatarsalgia.

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

⁴ *Id.*; *S.A.*, Docket No. 23-0164 (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).

alleged. Following this and other such further development as deemed necessary, it shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the January 5, 2024 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 2, 2024
Washington, DC

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

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

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