

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

P.T., Appellant)	
)	
and)	Docket No. 23-0113
)	Issued: May 24, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Chicago, IL, 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
JANICE B. ASKIN, Judge

On November 1, 2022 appellant, through counsel, filed a timely appeal from an August 22, 2022 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0113.

On February 27, 2022 appellant, then a 60-year-old electronic technician, filed an occupational disease claim (Form CA-2) alleging that he experienced exacerbation of knee

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.

² The Board notes that, following the August 22, 2022 decision, OWCP received additional evidence. 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.*

osteoarthritis³ due to factors of his federal employment, including working on a machine. He related that he immediately notified a supervisor and went to a physician. Appellant noted that he first became aware of his condition and realized its relation to his federal employment on February 2, 2022. He did not stop work.

In support of his claim, appellant submitted an undated statement recounting his medical history and prior knee injuries under OWCP File Nos. xxxxxx907, xxxxxx160, and xxxxxx634.

In a March 18, 2022 development letter, OWCP advised appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a factual questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information regarding appellant's claim, including comments from a knowledgeable supervisor. It afforded both parties 30 days to respond.

Thereafter, OWCP received November 6, 2020 and May 18, 2021 reports from Dr. Sean Odell, a Board-certified orthopedic surgeon and sports medicine practitioner, relating that he has been treating appellant since September 14, 2020 for a work-related left knee injury under OWCP File No. xxxxxx907.

By decision dated April 20, 2022, OWCP denied appellant's claim, finding that the medical evidence of record was insufficient to establish causal relationship between his diagnosed condition and the accepted factors of his federal employment.

In a May 5, 2022 report, Dr. Odell again referenced appellant's prior knee injuries under OWCP File Nos. xxxxxx332 and xxxxxx907 and reiterated that he had been treating appellant since September 14, 2020 for a previous left knee injury.

On August 3, 2022 appellant, through counsel, requested reconsideration of the April 20, 2022 decision and submitted a copy of Dr. Odell's May 5, 2022 report.

By decision dated August 22, 2022, OWCP denied appellant's request for reconsideration of the merits of the claim under 5 U.S.C. § 8128(a). It noted that Dr. Odell's May 5, 2022 report linked appellant's current knee conditions to his previously accepted September 8, 2020 employment injury under OWCP File No. xxxxxx907.

The Board has duly considered this matter and concludes 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

³ OWCP assigned the present claim OWCP File No. xxxxxx332. Appellant has a previously-accepted September 8, 2020 traumatic injury for a sprain of unspecified site of the right knee under OWCP File No. xxxxxx907, and a previously-accepted December 19, 2010 traumatic injury for bilateral knee contusions under OWCP File No. xxxxxx634. He also previously filed an October 16, 2016 traumatic injury claim for a right knee contusion under OWCP File No. xxxxxx160. 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).

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.⁵ Herein, appellant has prior claims for bilateral knee contusions, a right knee contusion, and a right knee sprain under OWCP File Nos. xxxxxx634, xxxxxx160, and xxxxxx907. He subsequently filed a Form CA-2 for exacerbation of knee osteoarthritis which was assigned OWCP File No. xxxxxx332, the claim presently before the Board. Thus, for a full and fair adjudication, this case must be returned to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx634, xxxxxx160, and xxxxxx907, so that it can consider all relevant claim files and accompanying evidence in adjudicating the present claim.⁶ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the August 22, 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 24, 2023
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

⁵ *Id.*; *M.L.*, Docket No. 20-1176 (issued April 29, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No. 18-1777 (issued July 2, 2019).

⁶ *Supra* note 4 at Chapter 2.400.8c(1); *W.D.*, Docket No. 19-0961 (issued March 31, 2021); *L.P.*, Docket Nos. 18-1558, 18-1568 (issued June 21, 2019).