

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

C.G., Appellant)	
)	
and)	Docket No. 21-0779
)	Issued: December 3, 2021
U.S. POSTAL SERVICE, NORTH TEXAS)	
PROCESSING & DISTRIBUTION CENTER,)	
Coppell, TX, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On April 28, 2021 appellant filed a timely appeal from a December 31, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 21-0779.²

On November 19, 2011 appellant, then a 39-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained lumbar pain due to factors of her federal employment, including repetitive sweeping, bending, pushing, and pulling all-purpose containers. She noted that she first became aware of her condition on April 1, 2010 and realized its relation to her federal employment on October 28, 2011. On the reverse side of the claim form

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In light of the Board's disposition in this appeal, the oral argument request is denied.

² The Board notes that, following the December 31, 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.

the employing establishment indicated that appellant stopped work on October 28, 2011. By decision dated April 4, 2012, OWCP accepted the claim for sprain of the back, lumbar region and sacroiliitis, not elsewhere classified. It also authorized a series of coccygeal nerve blocks and sacroiliac joint injections performed from September 12 through December 12, 2012.

On August 20, 2020 appellant filed a notice of recurrence (Form CA-2a) claiming disability, commencing August 8, 2020. She stopped work completely as of August 11, 2020. Appellant reported standing while working nixie mail and then rotating to sitting down to work the waste mail. She indicated that these jobs and the associated activities of lifting trays back and forth caused shooting and stabbing back pain that worsened when bending, lifting, standing, walking, and pushing equipment. Following the original injury, appellant reported working light duty including restrictions on sitting, standing, walking, bending, pushing, and pulling. She noted that these restrictions were still in effect.

By decision dated October 5, 2020, OWCP denied appellant's claim for a recurrence of disability, finding that the medical evidence of record was insufficient to establish that her accepted employment injury had worsened to the extent that she was disabled from her work duties, commencing August 8, 2020. It noted that appellant described new work factors connected to her disability and recommended that she file a new claim.

On October 22, 2020 appellant requested reconsideration. By decision dated December 31, 2020, OWCP denied modification of the prior decision. It again recommended that she file a new claim.³

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

Under its procedures, OWCP has determined that cases should be administratively combined where a new injury case is reported for an employee who previously filed an injury claim for the same part of the body and where correct adjudication depends on cross-referencing between files.⁴ This will allow OWCP to consider all relevant claim files in developing this schedule award claim.

Appellant has a subsequently-filed claim under OWCP File No. xxxxxx092, which also alleges injury to appellant's back. Therefore, for a full and fair adjudication, the Board will remand the case to OWCP to administratively combine File Nos. xxxxxx362 and xxxxxx092. Following

³ By decision dated May 10, 2021, OWCP denied modification of the December 31, 2020 decision. The Board and OWCP may not exercise simultaneous jurisdiction over the same issues in a case on appeal. 20 C.F.R. § 501.2(c)(3). Following the docketing of an appeal before the Board, OWCP does not retain jurisdiction to render a further decision regarding the issue(s) on appeal until after the Board relinquishes jurisdiction. *Id.* As this appeal, filed on April 28, 2021, was pending when OWCP issued its May 10, 2021 decision, the May 10, 2021 is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See* 20 C.F.R. § 10.626; *see also* A.C., Docket No. 18-1730 (issued July 23, 2019); M.C., Docket No. 18-1278, n.1 (issued March 7, 2019); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000). *See also* *Order Remanding Case, M.W.*, 20-1221 (issued July 6, 2021).

this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the December 31, 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: December 3, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board