

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

_____)	
W.B., Appellant)	
)	
and)	Docket No. 20-1276
)	Issued: February 3, 2021
DEPARTMENT OF JUSTICE, BUREAU OF)	
PRISONS, FEDERAL CORRECTIONAL)	
INSTITUTION GREENVILLE, Greenville, 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
 JANICE B. ASKIN, Judge
 PATRICIA H. FITZGERALD, Alternate Judge

On June 17, 2020 appellant, through counsel, filed a timely appeal from an April 29, 2020 nonmerit decision of the Office of Workers’ Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1276.

On June 28, 2017 appellant, then a 41-year-old supervisory correctional officer, filed a traumatic injury claim (Form CA-1) alleging that on June 18, 2017 he sustained an injury to his lower back while in the performance of duty. He explained that, while sitting at his computer to complete the nightly paperwork, he started to cough and immediately felt pain in his lower back. Appellant recounted that he began to feel dizzy and light headed before he blacked out and fell out of his chair. He stopped work on June 19, 2017.

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.

Appellant submitted medical evidence in support of his claim, including a series of reports dated from June 20 to July 11, 2017 from Dr. Matthew Chenault, a chiropractor.

By development letter dated January 29, 2019, OWCP informed appellant that his claim initially appeared to be a minor injury that resulted in minimal or no lost time from work, and while limited expenses had been authorized, a formal decision was now required. It advised appellant of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary evidence.

Appellant subsequently submitted chiropractic treatment notes dated January 15 and March 6, 2019 from Dr. Chenault.

By decision dated March 12, 2019, OWCP denied appellant's traumatic injury claim, finding that he had not submitted medical evidence containing a diagnosis in connection with the accepted employment incident. It concluded therefore that the requirements had not been met to establish an injury as defined under FECA.

On March 25, 2019 appellant filed a traumatic injury claim for a March 11, 2019 employment incident that resulted in a left knee injury and lower back injury. OWCP assigned that claim OWCP File No. xxxxxx913 and accepted it for a contusion of the left knee.

On April 10, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a June 10, 2019 notice, OWCP's hearing representative informed appellant that his oral hearing was scheduled for August 1, 2019 at 10:00 a.m. Eastern Standard Time. Appellant did not call-in for the hearing and no request for postponement of the hearing was made.

By decision dated August 16, 2019, OWCP found that appellant failed to appear at the oral hearing and had, therefore, abandoned his request. It further noted that there was no indication in the record that appellant had contacted the Branch of Hearings and Review either prior to or subsequent to the scheduled hearing to explain his failure to appear.

On February 28, 2020 appellant, through counsel, requested reconsideration of the March 12, 2019 merit decision and submitted additional medical evidence.

By decision dated April 29, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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 depends on cross-referencing between files and where two or more injuries occur to the same part of the body.² In the instant case, appellant filed an occupational disease

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

claim for a lower back injury. The Board notes that appellant's subsequent claim under File No. xxxxxx913 also involves a lower back injury. However, OWCP has not administratively combined the present claim with File No. xxxxxx913.

For a full and fair adjudication, the Board finds that this case must be remanded to OWCP to administratively combine the present claim with File No. xxxxxx913. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.³

IT IS HEREBY ORDERED THAT the April 29, 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: February 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

³ *R.G.*, Docket No. 19-1755 (issued July 7, 2020); *L.M.*, Docket No. 19-1490 (issued January 29, 2020).