

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

R.I., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Moorhead, MN, Employer**

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**Docket No. 11-1086
Issued: November 25, 2011**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge

ALEC J. KOROMILAS, Judge

COLLEEN DUFFY KIKO, Judge

On March 29, 2011 appellant's counsel timely appealed the October 7, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP), which granted a schedule award for bilateral upper extremity impairment.¹ The Board docketed the appeal as No. 11-1086.

Appellant, a 60-year-old retired letter carrier, has an accepted occupational disease claim for bilateral carpal tunnel syndrome. As noted, OWCP issued an October 7, 2010 schedule award for five percent right upper extremity impairment and four percent left upper extremity impairment.² The decision indicated that appellant's schedule award was based on the

¹ Pursuant to the Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101-8193 (2006), and 20 C.F.R. §§ 501.2(c) and 501.3 (2011), the Board has jurisdiction over the merits of this case.

² The award was based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (2008), which OWCP adopted effective May 1, 2009. See Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6a (January 2010).

December 1, 2009 report of Dr. Scott J. Fillmore and the January 25, 2010 report of the district medical adviser (DMA).³

Under cover letter dated June 11, 2010, appellant's counsel submitted a May 27, 2010 impairment rating from Dr. William N. Grant, a Board-certified internist. Applying the sixth edition of the A.M.A., *Guides* (2008), Dr. Grant found nine percent impairment of each upper extremity based on appellant's carpal tunnel syndrome. OWCP received Dr. Grant's impairment rating on June 14, 2010 almost four months prior to the October 7, 2010 schedule award decision. Despite the timely submission of Dr. Grant's report, OWCP's October 7, 2010 decision did not specifically reference this evidence. Because Dr. Grant's report post-dated the DMA's January 25, 2010 report, it is clear the DMA did not review Dr. Grant's May 27, 2010 impairment rating.

As the Board's decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.⁴ In this instance, OWCP failed to consider relevant medical evidence it received prior to the issuance of the October 7, 2010 schedule award. Whether OWCP receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.⁵ As OWCP failed to address all relevant evidence before it at the time of its decision, the case is remanded for a proper review of the evidence and issuance of an appropriate *de novo* final decision.

³ Dr. Fillmore is a Board-certified physiatrist. He provided an April 27, 2009 impairment rating under the fifth edition of the A.M.A., *Guides* (2001). Dr. Fillmore found 14 percent impairment of both upper extremities based on motor and sensory deficits involving the median nerve. His December 1, 2009 report was similarly based on the Fifth Edition, but this latest report focused on impairment of the shoulders rather than the previously rated bilateral hand and wrist impairment. The DMA applied Dr. Fillmore's examinations findings under the sixth edition of the A.M.A., *Guides*, and found five percent right upper extremity impairment and four percent left upper extremity impairment due to carpal tunnel syndrome.

⁴ 20 C.F.R. § 501.6(d); see *William A. Couch*, 41 ECAB 548, 553 (1990).

⁵ *Willard McKennon*, 51 ECAB 145 (1999).

IT IS HEREBY ORDERED THAT the October 7, 2010 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order of the Board.

Issued: November 25, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board