United States Department of Labor Employees' Compensation Appeals Board

)	
R.B., Appellant)	
and)	Docket No. 13-792 Issued: July 25, 2013
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, Coppell, TX, Employer)	Issued. July 23, 2013
)	
Appearances: Appellant, pro se Office of Solicitor, for the Director		Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge

COLLEEN DUFFY KIKO, Judge PATRICIA HOWARD FITZGERALD, Judge

On February 19, 2013 appellant filed an application for review of a February 4, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP) denying his schedule award claim, assigned File No. xxxxxxx810. While OWCP found that the medical evidence established a left leg impairment of 10 percent due to partial medial and lateral meniscectomies undertaken on June 6, 2012, it pointed out that he received a prior schedule award on November 22, 2004 for 30 percent permanent impairment of the left lower extremity. This award was granted under File No. xxxxxxx589. Because the new rating did not exceed the percentage already paid, OWCP concluded that appellant was not entitled to an additional schedule award.

Having duly reviewed the matter, the Board finds that the case is not in posture for decision. The Federal Employees' Compensation Act¹ and its regulations provide for the reduction of compensation for subsequent injury to the same scheduled member. Specifically, benefits payable under section 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function;

_

¹ 5 U.S.C. § 8101 et seq.

and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.² The Board has held that OWCP must adequately explain how the latter impairment duplicated the compensation the claimant previously received under a separate file number.³

In this case, OWCP did not detail how appellant's 10 percent permanent impairment of the left lower extremity under File No. xxxxxx810 duplicated the schedule award previously paid for 30 percent permanent impairment of the same member under File No. xxxxxx589. The case record, however, is limited to File No. xxxxxx810. Pursuant to its procedures, OWCP has determined that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files. In order to obtain sufficient clarification as to whether appellant's recent rating would duplicate the prior schedule award in whole or in part, his claims must be doubled. On remand, OWCP shall combine File Nos. xxxxxxx810 and xxxxxxx589 and, following this and other development deemed necessary, issue an appropriate decision.

IT IS HEREBY ORDERED THAT the February 4, 2013 Office of Workers' Compensation Programs decision be set aside and the case remanded for further action consistent with this order.

Issued: July 25, 2013 Washington, DC

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

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Patricia Howard Fitzgerald, Judge Employees' Compensation Appeals Board

² Id. at § 8108; 20 C.F.R. § 10.404(d). See also R.B., Docket No. 09-1786 (issued July 1, 2010).

³ T.S., Docket No. 09-1308 (issued December 22, 2009).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).