

FACTUAL HISTORY

Appellant, a 62-year-old former letter carrier, has several claims for employment-related injuries involving both lower extremities. On January 29, 2005 he slipped on ice and twisted his right ankle. OWCP accepted the claim for a closed right ankle bimalleolar fracture. Appellant underwent surgery (open reduction, internal fixation -- ORIF) on January 30, 2005. After a series of part-time limited-duty assignments, he resumed his full-time regular letter carrier duties in June 2005.

On June 1, 2007 OWCP granted appellant a schedule award for 23 percent impairment of the right leg. The award included a combination of impairments for the intraarticular ankle fracture with displacement 20 percent and right ankle pain 3 percent. Both appellant's physician and OWCP's district medical adviser calculated the lower extremity impairment under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides* 2001). At the time, there was a third-party recovery surplus of \$7,503.36 which OWCP deducted from the compensation owed appellant under the June 1, 2007 schedule award.

While delivering mail on December 31, 2009, appellant slipped on a snow-covered driveway and tore the patellar tendon in his left knee File No. xxxxxx656. OWCP accepted the claim and authorized a February 1, 2010 surgical procedure to repair his ruptured patellar tendon. Appellant returned to work in a limited-duty capacity on June 21, 2010, and resumed his regular letter carrier duties effective October 15, 2010. He recovered \$75,000.00 from the property owner and after reimbursing OWCP for various injury-related expenditures, he was left with a third-party recovery surplus of \$9,620.29.²

On November 5, 2010 appellant slipped on a step covered with wet leaves and injured his right knee. OWCP accepted the claim for right patellar tendon tear File No. xxxxxx915 and authorized surgery which was performed on December 2, 2010. Appellant subsequently returned to work in a limited-duty capacity and then retired effective July 31, 2011.

On July 15, 2011 appellant's former attorney wrote to OWCP requesting a schedule award for permanent impairment resulting from appellant's December 31, 2009 left knee injury under claim number File No. xxxxxx656.³ He had represented appellant in his third-party action.

OWCP subsequently received a September 13, 2011 impairment rating from Dr. Arthur F. Becan, an orthopedic surgeon. The rating was based on the A.M.A., *Guides* (6th ed. 2008). With respect to appellant's December 31, 2009 left knee injury, Dr. Becan found nine percent left lower extremity impairment for class 1 left patellar tendon rupture with mild motion deficits.⁴ He also found 13 percent right lower extremity impairment for class 1 right patellar

² On March 7, 2011 OWCP advised appellant of his rights and responsibilities with respect to his third-party recovery surplus under claim File No. xxxxxx656. The March 7, 2011 correspondence noted, *inter alia*, that any additional compensation due would be credited against the remainder of the recovery upon submission of appropriate claim forms.

³ A completed Form CA-7 followed.

⁴ Table 16-3, Knee Regional Grid (LEI), A.M.A., *Guides* 509 (6th ed. 2008).

tendon rupture with significant quadriceps weakness.⁵ This rating pertained to appellant's November 5, 2010 right knee injury. Regarding the January 29, 2005 right ankle injury, Dr. Becan found 13 percent lower extremity impairment for class 1 right bimalleolar fracture with mild motion deficits.⁶ The right knee 13 percent and right ankle 13 percent injuries represented a combined 24 percent right lower extremity impairment.⁷ Dr. Becan found that appellant reached maximum medical improvement as of September 13, 2011.

In an October 27, 2011 letter to OWCP, counsel requested a 13 percent right lower extremity award relative to appellant's right knee injury of November 5, 2010 File No. xxxxxx915. He noted that appellant had previously received a right lower extremity award for his 2005 ankle fracture File No. xxxxxx830. Counsel explained that the current claim was not for an increase of the prior award, but instead appellant was seeking a 13 percent award relative to his 2010 right knee injury. He further noted that Dr. Becan's September 13, 2011 impairment rating supported the current claim for a schedule award.

In a December 11, 2011 report, Dr. Arnold T. Berman, an OWCP medical adviser, reviewed the record, and found nine percent impairment of the left lower extremity pursuant to the A.M.A., *Guides* (6th ed. 2008). He also found a combined 24 percent impairment of the right lower extremity. Dr. Berman noted that this represented a net one percent increase over the previous schedule award.⁸

On December 23, 2011 OWCP disbursed payment in the amount of \$10,683.43 under claim File No. xxxxxx830; appellant's January 29, 2005 right ankle injury. Neither of appellant's representatives specifically requested any additional compensation under claim File No. xxxxxx830.

On January 11, 2012 counsel wrote to OWCP explaining that appellant recently received a check for \$10,683.43 that appeared to be related to a schedule award; however, no decision accompanied the payment. He requested that it issue a formal schedule award decision so that appellant could be availed of his appeal rights.⁹

On January 14, 2012 OWCP made an electronic funds transfer (EFT) to appellant's bank in the amount of \$3,116.00. This disbursement was under claim File No. xxxxxx830.

By decision dated January 25, 2012, OWCP granted a schedule award for nine percent left leg impairment. The award covered a period of 25.92 weeks from September 13, 2011 through March 12, 2012. Although OWCP issued the January 25, 2012 schedule award under

⁵ *Id.*

⁶ Table 16-2, Foot and Ankle Regional Grid (LEI), A.M.A., *Guides* 503 (6th ed. 2008).

⁷ Appendix A -- Combined Values Chart, A.M.A., *Guides* 604 (6th ed. 2008).

⁸ Dr. Berman, a Board-certified orthopedic surgeon, also served as OWCP's medical adviser with respect to the June 1, 2007 schedule award under claim File No. xxxxxx830.

⁹ Several years earlier, OWCP had disbursed payment(s) well in advance of the June 1, 2007 schedule award decision. At the time, counsel similarly prompted OWCP to issue a formal schedule award decision.

claim File No. xxxxxx830 with a January 29, 2005 date of injury, the nine percent left leg rating specifically referenced claim File No. xxxxxx656; appellant's December 31, 2009 injury. OWCP further explained that once he had been fully compensated for his 9 percent left leg impairment, it would process an additional 1 percent impairment of the right lower extremity for a total impairment of 24 percent.¹⁰

On February 3, 2012 counsel requested reconsideration. He did not contest the percentage impairment awarded, but instead took issue with the pay rate that OWCP used and the number of weeks of compensation awarded. OWCP had calculated the left lower extremity schedule award based on a January 29, 2005 date-of-injury pay rate under claim File No. xxxxxx830. Counsel argued that OWCP should have applied the pay rate associated with the December 31, 2009 left knee injury under claim File No. xxxxxx656. He also argued that the additional one percent right lower extremity impairment should be paid under appellant's right knee injury claim File No. xxxxxx915, with a November 5, 2010 date of injury. Lastly, counsel argued that OWCP should have awarded 28.8 weeks of compensation 10 percent instead of 25.92 weeks.

In a March 28, 2012 decision, OWCP vacated the January 25, 2012 schedule award. It acknowledged having mistakenly paid a schedule award for appellant's December 2009 left knee injury claim File No. xxxxxx656 under his January 2005 right ankle claim File No. xxxxxx830. Additionally, OWCP noted it had relied on an incorrect pay rate. It explained that there was a third-party recovery surplus under claim File No. xxxxxx656. In light of the existing surplus, OWCP should have reduced the compensation owed under the nine percent left leg schedule award by \$9,620.29. Thus, the mistake(s) resulted in an overpayment of benefits. OWCP indicated that the additional impairment of the right lower extremity one percent 2.88 weeks should be based upon appellant's November 5, 2010 date-of-injury pay rate.

On March 29, 2012 OWCP issued a schedule award for an additional 1 percent right lower extremity impairment, with a maximum impairment of 24 percent. The award covered a period 2.88 weeks from March 12 to April 2, 2012. Although OWCP issued the decision under claim File No. xxxxxx830, the schedule award relied on appellant's November 5, 2010 date-of-injury pay rate under claim File No. xxxxxx915. OWCP also noted that appellant had been overpaid under claim File No. xxxxxx830 and further explained that the current schedule award was being absorbed in its entirety by the third-party surplus in claim File No. xxxxxx656. Thus, it did not disburse any additional funds.¹¹

On March 29, 2012 OWCP issued a preliminary finding of overpayment under claim File No. xxxxxx656. The overpayment occurred because it paid appellant's nine percent left lower extremity schedule award under the wrong claim and neglected to offset his third-party recovery

¹⁰ The January 25, 2012 schedule award did not reference appellant's November 5, 2010 right knee injury under claim File No. xxxxxx915.

¹¹ The March 29, 2012 schedule award incorrectly noted that appellant was entitled to 5.76 weeks' compensation. However, the amount of compensation awarded and the March 12 to April 2, 2012 period of the award reflect that OWCP awarded only 2.88 weeks' compensation.

surplus. OWCP found that appellant had been overpaid \$6,699.91.¹² Additionally, OWCP found him at fault in the creation of the overpayment. It determined that appellant knew or should have known he was not entitled to the full amount of the schedule award while the third-party surplus existed.

On April 4, 2012 OWCP issued a schedule award for nine percent left lower extremity impairment under claim File No. xxxxxx656. Based on appellant's December 31, 2009 date-of-injury pay rate, it found him entitled to \$20,810.48 (25.92 weeks' compensation). Subtracting the third-party surplus (\$9,620.29), appellant was entitled to receive \$11,190.19. The decision further noted that OWCP had mistakenly paid him \$20,232.54 under claim File No. xxxxxx830, which resulted in an overpayment of benefits.

Counsel requested hearings with respect to the March 29 and April 4, 2012 schedule awards. He also requested a prerecoupment hearing regarding the March 29, 2012 preliminary overpayment determination. The Branch of Hearings and Review consolidated the three hearing requests and OWCP doubled appellant's two right lower extremity injury claims and assigned File No. xxxxxx915 as the master file. The hearing was held on July 10, 2012. Appellant subsequently submitted an August 2, 2012 overpayment recovery questionnaire (Form OWCP-20) with supporting financial documentation.

On September 26, 2012 OWCP's hearing representative issued three decisions. She finalized the overpayment determination, including that appellant was at fault in creating the overpayment. The other two decisions affirmed OWCP's March 29 and April 4, 2012 schedule awards.¹³

On appeal, counsel challenged OWCP's finding of fault with respect to the creation of the overpayment. He argued that it erred in withholding compensation due with respect to appellant's right lower extremity impairment. Counsel also argued that appellant was entitled to a separate award for 13 percent right lower extremity impairment associated with his December 2009 knee injury.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of FECA sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body.¹⁴ FECA, however, does not specify the manner by which the percentage loss of a member, function or

¹² The actual amount of the overpayment was higher; however, OWCP credited appellant \$578.94 for a pay rate error. It also reduced the overpayment by \$2,341.44, which was the amount he was entitled to receive based on his additional one percent right lower extremity impairment under a separate claim.

¹³ Regarding the March 29, 2012 schedule award for an additional one percent right lower extremity impairment, OWCP's hearing representative directed that the decision be reissued under claim File No. xxxxxx915; appellant's November 5, 2010 right knee injury. OWCP complied with the hearing representative's order on September 27, 2012.

¹⁴ For a total or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2).

organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.¹⁵ Effective May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides*.¹⁶

FECA and its implementing regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.¹⁷ Benefits payable under 5 U.S.C. § 8107(c) shall be reduced by the period of compensation paid 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; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.¹⁸

ANALYSIS -- ISSUE 1

Counsel did not challenge OWCP's hearing representative's finding regarding appellant's entitlement to a schedule award for nine percent impairment of the left lower extremity under claim File No. xxxxxx656. The nine percent award under the A.M.A., *Guides* (6th ed. 2008) is consistent with the findings of both the district medical adviser and Dr. Becan, appellant's physician.¹⁹ Although counsel challenged OWCP's reliance on a January 29, 2005 date-of-injury pay rate, the issue has since been resolved in appellant's favor. The hearing representative correctly noted that OWCP's April 4, 2012 schedule award under claim File No. xxxxxx656 was based on a December 31, 2009 date-of-injury pay rate. Relying on the appropriate weekly pay rate of \$1,050.37, OWCP properly found appellant entitled to \$20,810.48 for the period September 13, 2011 to March 12, 2012 (25.92 weeks). Accordingly, the hearing representative's September 26, 2012 decision regarding appellant's left lower extremity schedule award under claim File No. xxxxxx656 shall be affirmed.

Counsel also did not challenge the medical findings regarding the current extent of appellant's right lower extremity impairment under claim File No. xxxxxx915. He did not dispute the finding that appellant had 13 percent impairment of the right knee and 13 percent impairment of the right ankle, for a combined right lower extremity rating of 24 percent under the A.M.A., *Guides* (6th ed. 2008). The district medical adviser and Dr. Becan each explained their respective findings of 24 percent right lower extremity impairment. Counsel does not challenge the impairment rating, but instead takes issue with OWCP's decision to offset the current right lower extremity rating against appellant's June 1, 2007 schedule award.

¹⁵ 20 C.F.R. § 10.404.

¹⁶ 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 and Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

¹⁷ 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

¹⁸ 20 C.F.R. § 10.404(c)(1) and (c)(2).

¹⁹ See *supra* note 16.

The previous award was for 23 percent impairment of the right lower extremity due to appellant's January 29, 2005 right ankle fracture. This award was based on the then-applicable fifth edition of the A.M.A., *Guides* (2001). The overall rating included a diagnosis-based impairment estimate for intraarticular ankle fracture with displacement 20 percent.²⁰ It also included additional impairment for right ankle pain three percent.

Schedule award benefits shall be reduced by the period of compensation paid 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; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.²¹

As noted, Dr. Becan and the district medical adviser found 13 percent lower extremity impairment due to appellant's right patellar tendon rupture.²² They also found 13 percent impairment of the right ankle, which combined with the knee impairment, represented 24 percent right lower extremity impairment. OWCP subtracted the previous award 23 percent from the current rating 24 percent and awarded an additional 1 percent for the right lower extremity. Counsel's position is that the previous award was for a January 2005 ankle injury, and therefore, an award for 13 percent right lower extremity impairment as a result of appellant's November 5, 2010 right knee injury would not duplicate, in whole or in part, the preexisting right ankle impairment.

The medical record does not support appellant's position. The record also does not fully support OWCP's decision to award only an additional one percent right lower extremity impairment. Dr. Berman did not specifically address whether the current right knee impairment 13 percent would duplicate the compensation payable for the preexisting right ankle impairment. He stated that the current rating "represents a net increase of 1 percent over the previous award of 23 percent." Accordingly, the question of whether the two right lower extremity schedule awards are subject to offset is not in posture for decision. The case shall be remanded for further medical development.²³

²⁰ See Table 17-33, Impairment Estimates for Certain Lower Extremity Impairments, A.M.A., *Guides* 546-47 (5th ed. 2001).

²¹ 20 C.F.R. § 10.404(c)(1) and (c)(2).

²² See Table 16-3, Knee Regional Grid, A.M.A., *Guides* 509 (6th ed. 2008).

²³ If a claimant who has received a schedule award calculated under a previous edition of the A.M.A., *Guides* is entitled to additional benefits, the increased award will be calculated according to the sixth edition. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.9d (February 2013). Should the subsequent calculation result in a percentage of impairment lower than the original award, as sometimes occurs, a finding should be made that the claimant has no more than the percentage of impairment originally awarded, that the evidence does not establish an increased impairment, and that OWCP has no basis for declaring an overpayment. *Id.* Similarly, awards made prior to May 1, 2009, the effective date for use of the sixth edition, should not be reconsidered merely on the basis that the A.M.A., *Guides* have changed. *Id.*

LEGAL PRECEDENT -- ISSUE 2

FECA provides that where an injury or death for which compensation is payable is caused under circumstances creating a legal liability in a person other than the United States to pay damages and a beneficiary entitled to compensation from the United States for that injury or death receives money or other property in satisfaction of that liability as a result of suit or settlement by him or in his behalf, the beneficiary, after deducting therefrom the costs of suit and a reasonable attorney's fee, shall refund to the United States the amount of compensation paid by the United States and credit any surplus on future payments of compensation payable to him for the same injury.²⁴

The applicable regulations reiterate that after the refund owed to the United States is calculated, FECA beneficiary retains any surplus remaining and this amount is credited, dollar for dollar, against future compensation for the same injury.²⁵ OWCP will resume the payment of compensation only after FECA beneficiary has been awarded compensation which exceeds the amount of the surplus.²⁶

The procedure manual further explains that where a beneficiary has received a third-party recovery resulting in a surplus, compensation payments are calculated and continue to be charged against the surplus, as are medical expenses that have been paid by the claimant and submitted for reimbursement.²⁷ Where a beneficiary who has received a third-party recovery has made the required refund, but subsequent events result in payment of compensation benefits, including medical benefits, for a period of time during which a third-party surplus was in the process of being absorbed from continuing compensation entitlement, this results in an overpayment of compensation.²⁸ Such an overpayment of compensation should be adjudicated and processed by OWCP according to the usual overpayment procedures.²⁹

ANALYSIS -- ISSUE 2

Between December 23, 2011 and March 30, 2012, OWCP paid appellant a total of \$20,232.54 under claim File No. xxxxxx830. The funds pertained to the nine percent left lower extremity schedule award which OWCP issued on January 25, 2012. OWCP mistakenly issued the left lower extremity schedule award under a previous claim for a right ankle injury. It also applied an incorrect pay rate in calculating the amount of the award. The matter was further complicated by OWCP's failure to reduce the schedule award by appellant's \$9,620.29 third-party recovery surplus under claim File No. xxxxxx656. The above-noted surplus represents the

²⁴ 5 U.S.C. § 8132; *see P.C.*, 59 ECAB 587, 590 (2008).

²⁵ 20 C.F.R. § 10.711.

²⁶ *Id.*

²⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *FECA Third-Party Subrogation Guidelines*, Chapter 2.1100.10b(3) (March 2006).

²⁸ *Id.* at Chapter 2.1100.10b(2).

²⁹ *Id.*

amount appellant was overpaid. OWCP then reduced the \$9,620.29 overpayment by \$2,341.44, which appellant was due under claim File No. xxxxxx915. The overpayment was further reduced by \$577.94. This amount represented an adjustment to the nine percent left leg schedule award once OWCP applied the correct December 31, 2009 date-of-injury pay rate. Taking into account the above-noted deductions, the outstanding balance of the overpayment was \$6,700.91 as of September 26, 2012 when the hearing representative issued her final overpayment decision.³⁰ Appellant has since made payments further reducing the overpayment balance; however, OWCP's additional collection efforts are beyond the purview of the current appeal.

As noted, the overpayment was the result of OWCP's failure to reduce appellant's nine percent left leg schedule award by the \$9,620.29 third-party recovery surplus under claim File No. xxxxxx656. This reduction was required under 5 U.S.C. § 8132. Accordingly, the Board will affirm OWCP's findings with respect to the fact and amount of the \$9,620.29 overpayment.

Counsel questioned OWCP's decision to reduce the overpayment balance by withholding funds due under a separate injury claim. The March 29, 2012 schedule award decision under claim File Nos. xxxxxx830 and xxxxxx915 indicated that the compensation due \$2,341.44 had been "absorbed by the third[-]party surplus" under claim File No. xxxxxx656. OWCP's action was contrary to 5 U.S.C. § 8132 which provides for a third-party surplus credit/reduction on future payments of compensation payable for the "same injury," however, it is authorized to recover an overpayment by decreasing later payments of compensation.³¹ The Board notes that OWCP's collection efforts should have been postponed at least until after a final overpayment decision had been issued.³² Counsel cited no authority that would otherwise restrict OWCP's recovery of the debt from amongst appellant's various claims.

LEGAL PRECEDENT -- ISSUE 3

OWCP may consider waving an overpayment only if the individual to whom it was made was not at fault in either accepting or creating the overpayment.³³ Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he receives from OWCP are proper.³⁴ A recipient will be found to be at fault with respect to creating an overpayment if the individual "[a]ccepted a payment which he or she knew or should have known to be incorrect."³⁵

³⁰ OWCP's hearing representative found a \$6,699.91 overpayment balance; however, this figure was based on the mistaken belief that OWCP had paid appellant \$20,231.54 rather than \$20,232.54.

³¹ 20 C.F.R. § 10.441.

³² Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Debt Liquidation*, Chapter 6.300.8a (May 2004).

³³ 5 U.S.C. § 8129(b); 20 C.F.R. § 10.433(a).

³⁴ 20 C.F.R. § 10.433(a).

³⁵ *Id.*

ANALYSIS -- ISSUE 3

Regarding the issue of fault, OWCP's hearing representative noted that OWCP previously advised appellant of his rights and responsibilities regarding the third-party recovery surplus under claim File No. xxxxxx656. The hearing representative also noted that appellant was represented by legal counsel in March 2011 when OWCP informed him of the third-party surplus. Several months afterwards, appellant filed a claim (Form CA-7) for a schedule award. Based on these factors, the hearing representative found that appellant should have known the \$9,620.29 third-party surplus should have been deducted from the schedule award payment for the left lower extremity "paid on January 25, 2012."

The Board notes that the overpayment occurred before OWCP issued its January 25, 2012 schedule award decision. Prior to issuance of the schedule award OWCP had disbursed compensation payments totaling \$13,799.43. Appellant had legal representation at the time and even counsel could not determine the exact status of the payments appellant received. Counsel wrote OWCP on January 11, 2012 advising that appellant recently received a check for \$10,683.43 that was apparently related to a schedule award, but no decision accompanied the payment. He specifically asked OWCP to issue a formal schedule award decision. OWCP disbursed another payment of \$3,116.00 before issuing its January 25, 2012 schedule award decision. The above-noted payments were disbursed under claim File No. xxxxxx830; appellant's January 2005 right ankle injury. Counsel's January 11, 2012 correspondence similarly referenced claim File No. xxxxxx830.

The January 25, 2012 decision under claim File No. xxxxxx830 appears to have been the first indication to either appellant or his counsel that the schedule award pertained to the December 2009 left knee injury under claim File No. xxxxxx656. Because incorrect information accompanied the payments issued, appellant could not have reasonably known that the payments he accepted were incorrect or should have been offset by the \$9,620.29 third-party surplus. Accordingly, the Board finds that he was not at fault in creating the overpayment. OWCP's finding of fault is set aside and the case will be remanded for consideration of waiver of recovery of the overpayment.

CONCLUSION

Appellant has not established that he has greater than nine percent impairment of the left leg under claim File No. xxxxxx656. The Board further finds that he received an overpayment of \$9,620.29 due to OWCP's failure to account for a third-party surplus under claim File No. xxxxxx656. Appellant was not at fault in creating the above-noted overpayment. The issue of whether OWCP properly reduced appellant's right lower extremity schedule award under claim File No. xxxxxx915 is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the September 26, 2012 decision of the Office of Workers' Compensation Programs regarding entitlement to a schedule award under claim File No. xxxxxx656 is affirmed. OWCP's September 26, 2012 decision regarding overpayment is affirmed in part and set aside in part. Its September 26, 2012 decision regarding entitlement to a schedule award under claim File No. xxxxxx915 is set aside. The case is remanded for further action consistent with this decision of the Board.

Issued: February 6, 2014
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board