

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

D.R., Appellant	)	
	)	
and	)	<b>Docket No. 14-551</b>
	)	<b>Issued: July 10, 2014</b>
U.S. POSTAL SERVICE, POST OFFICE, Schaumburg, IL, Employer	)	
	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
RICHARD J. DASCHBACH, Chief Judge  
PATRICIA HOWARD FITZGERALD, Acting Chief Judge<sup>1</sup>  
COLLEEN DUFFY KIKO, Judge

On January 13, 2014 appellant timely appealed the August 30, 2013 merit decision of the Office of Workers’ Compensation Programs (OWCP), which granted a schedule award for right upper extremity impairment.<sup>2</sup> The Board docketed the appeal as No. 14-551.

Appellant, a 37-year-old former letter carrier, has an accepted traumatic injury claim for right shoulder acromioclavicular (AC) sprain and right bicipital tenosynovitis which occurred on March 15, 2010.<sup>3</sup> She voluntarily resigned within six months of her March 2010 employment injury. As noted, OWCP issued an August 30, 2013 schedule award for three percent right upper extremity impairment.<sup>4</sup> The decision indicated that appellant’s schedule award was based on the

<sup>1</sup> Effective May 20, 2014, Patricia Howard Fitzgerald was appointed Acting Chief Judge.

<sup>2</sup> 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 (2012), the Board has jurisdiction over the merits of this case.

<sup>3</sup> OWCP also authorized a November 5, 2010 right shoulder arthroscopy which included subacromial decompression, distal clavicle excision and open proximal biceps tenodesis.

<sup>4</sup> 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 and Permanent Disability Claims*, Chapter 2.808.6a (February 2013).

May 13, 2013 report of Dr. David M. Zoellick, a Board-certified orthopedic surgeon, and the June 22, 2013 report of the district medical adviser (DMA). OWCP explained that the percentage of impairment was calculated by the DMA, who applied the A.M.A., *Guides* (6<sup>th</sup> ed. 2008) to Dr. Zoellick's examination findings. It further noted that, while Dr. Zoellick did not submit an actual impairment rating, appellant's physician stated that appellant's impairment rating should be based on the primary diagnosis of bicipital tendinitis.

More than a month prior to issuing its August 30, 2013 schedule award decision, OWCP received a July 16, 2013 impairment rating from Dr. Zoellick, who found 12 percent right upper extremity impairment under Table 15-5, Shoulder Regional Grid, A.M.A., *Guides* 401, 403 (6<sup>th</sup> ed. 2008). Dr. Zoellick's July 16, 2013 impairment rating was based on a diagnosis of AC joint injury, status post distal clavicle resection. OWCP received this evidence on July 26, 2013; well in advance of the August 30, 2013 schedule award decision. Despite its timely submission, there is no mention of Dr. Zoellick's July 16, 2013 impairment rating in OWCP's August 30, 2013 decision. Also, because his July 16, 2013 report postdated the DMA's June 22, 2013 report, it is apparent the DMA was not privy to Dr. Zoellick's latest findings.

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.<sup>5</sup> In this instance, OWCP failed to consider relevant medical evidence it received prior to the issuance of the August 30, 2013 schedule award. Whether it receives relevant evidence on the date of the decision or several days prior, such evidence must be considered.<sup>6</sup> As OWCP failed to address all relevant evidenced before it at the time, the case is remanded for a proper review of the evidence and issuance of an appropriate final decision.

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<sup>5</sup> 20 C.F.R. § 501.6(d); see *William A. Couch*, 41 ECAB 548, 553 (1990).

<sup>6</sup> *Willard McKennon*, 51 ECAB 145 (1999).

**IT IS HEREBY ORDERED THAT** the August 30, 2013 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.<sup>7</sup>

Issued: July 10, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>7</sup> Richard J. Daschbach, Chief Judge, who participated in the preparation of the order, was no longer a member of the Board after May 16, 2014.