

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

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**F.B., Appellant**

**and**

**DEPARTMENT OF THE ARMY,  
Redstone Arsenal, AL, Employer**

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**Docket No. 10-1382  
Issued: April 13, 2011**

*Appearances:*  
*Appellant, pro se*  
*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 April 16, 2010 appellant filed an application for review of an October 20, 2009 merit decision of the Office of Workers' Compensation Programs denying her request for a schedule award. The appeal was docketed as number 10-1382.

The Office accepted appellant's February 5, 2008 traumatic injury claim for sprain of the neck, back, lumbar region, right ankle sprain, right knee sprain, lateral collateral ligament and contusion of the right hip and thigh. Appellant requested a schedule award on October 8, 2008. The Office denied appellant's schedule award claim in a January 15, 2009 decision. After appellant requested a hearing, an Office hearing representative, in an August 11, 2009 decision, set aside the schedule award decision and remanded the case for the Office to refer appellant to a qualified physician for an opinion on permanent impairment of appellant's right leg based upon the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.<sup>1</sup>

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<sup>1</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2008).

On September 4, 2009 the Office referred appellant to Dr. Steven Fuller, an osteopath and Board-certified orthopedic surgeon. An August 21, 2009 Office letter containing questions for Dr. Fuller noted that appellant was being referred to determine the extent of her work-related disability and permanent impairment of the right leg. The list of questions posed to Dr. Fuller did not specifically ask that he address whether appellant had permanent impairment of the right leg pursuant to the sixth edition of the A.M.A., *Guides*. Instead, the questions posed to Dr. Fuller pertained to whether appellant had objective findings, whether her current condition was causally related to her work injury, whether her accepted conditions resolved and the current status of her right knee. In a September 23, 2009 report, Dr. Fuller noted findings and addressed the Office's August 21, 2009 questions. He did not address whether appellant had permanent impairment of the right leg under the sixth edition of the A.M.A., *Guides*. On October 20, 2009 the Office denied appellant's claim for a schedule award.

The Board has duly considered the matter and finds that the case is not in posture for a decision as the Office did not conduct the medical development directed by the hearing representative in her August 11, 2009 decision. The hearing representative directed the Office to refer appellant to an appropriate physician for an opinion on permanent impairment under the sixth edition of the A.M.A., *Guides*.<sup>2</sup> While the Office referred appellant to Dr. Fuller, it did not request that he render an opinion on permanent impairment under the sixth edition of the A.M.A., *Guides*. The Board has held that, once the Office begins to development of the medical evidence, it has the responsibility to obtain an evaluation which will resolve the issue involved in the case.<sup>3</sup> The case must be remanded for the Office to refer appellant to an appropriate Board-certified specialist for an opinion regarding whether appellant has a permanent impairment of the right leg, due to her work injury, pursuant to the sixth edition of the A.M.A., *Guides*. Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision regarding appellant's entitlement to a schedule award for the right leg.

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<sup>2</sup> See FECA Bulletin No. 09-03 (issued March 15, 2008) (effective May 1, 2009, the Office is required to use the sixth edition of the A.M.A., *Guides* in calculating schedule awards).

<sup>3</sup> *Mae Z. Hackett*, 34 ECAB 1421 (1983).

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' October 20, 2009 decision be set aside, and the case is remanded for further development consistent with this order.

Issued: April 13, 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