-United States Department of Labor Employees' Compensation Appeals Board

R.G., Appellant	-))
and) Docket No. 10-1622
U.S. POSTAL SERVICE, POST OFFICE, Alliance, OH, Employer) Issued: April 8, 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 June 3, 2010 appellant, through his attorney, filed a timely appeal of a May 13, 2010 Office of Workers' Compensation Programs' schedule award decision. The Board docketed the appeal as No.10-1622. By its May 13, 2010 decision, the Office hearing representative affirmed the Office's October 15, 2009 decision, finding that appellant had no more than one percent impairment of his left lower extremity for which he received a schedule award. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

The Board has duly considered the matter and notes that in the case of *William A. Couch*, the Board held that, when adjudicating a claim, the Office is obligated to consider all evidence properly submitted by a claimant and received by the Office before the final decision is issued. In the present case, the Office hearing representative, during the February 19, 2010 telephonic hearing, agreed to leave the record open for an unspecified time to allow appellant to submit additional medical evidence. The Office received the additional medical evidence on May 11, 2010. By decision dated May 13, 2010, the hearing representative affirmed the Office's October 15, 2009 decision, finding that appellant had no more than one percent impairment of his left lower extremity. He noted that appellant's attorney indicated at the telephonic hearing that he was attempting to obtain a new impairment rating from a physician and that the case record was held open for an additional period following the hearing to allow appellant to submit

¹ 41 ECAB 548 (1990).

medical evidence in support of his claim. The hearing representative specifically stated, "To date no additional medical evidence or impairment rating has been received."

It appears that the hearing representative in his May 13, 2010 decision did not review the additional evidence properly submitted by appellant and received by the Office on May 11, 2010, as no reference is made to the evidence in the decision. For this reason, the case will be remanded to the Branch of Hearings and Review to enable the Office to properly consider all the evidence submitted prior to the issuance of its May 13, 2010 decision. Following such further development as the Office deems necessary, it shall issue an appropriate decision on the merits.

IT IS HEREBY ORDERED THAT the May 13, 2010 decision of the Office of Workers' Compensation Programs is set aside; the case record is remanded to the Office for further proceedings consistent with this order of the Board.

Issued: April 8, 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