

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

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**A.C., Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Winter Springs, FL,  
Employer**

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**Docket No. 10-1793  
Issued: April 14, 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 June 24, 2010 appellant filed an appeal of a merit decision of the Office of Workers' Compensation Programs dated March 5, 2010. The appeal was docketed as No. 10-1793.

On a prior appeal, the Board found a conflict under 5 U.S.C. § 8123(a) with respect to a permanent impairment in the right leg.<sup>1</sup> The Board noted the attending orthopedic surgeon, Dr. Joseph Billings, had found a permanent impairment based on muscle weakness and arthritis, while a second opinion orthopedic surgeon, Dr. David Lotman, based his impairment rating on a partial medial meniscectomy. The Office was directed to refer the case to a referee physician to resolve the conflict in the medical evidence.

On return of the case record, the Office referred appellant to Dr. Narinder Aujla, an orthopedic surgeon, for a second opinion evaluation. There is no indication that Dr. Aujla was selected as a referee physician in accord with established Office procedure.<sup>2</sup> Following receipt of Dr. Aujla's October 1, 2009 report, the Office referred the case to an Office medical adviser.

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<sup>1</sup> Docket No. 08-2316 (issued May 22, 2009). In a prior appeal, the Board had set aside a November 29, 2005 Office decision and remanded the case for further development with respect to permanent impairment. Docket No. 07-199 (issued April 16, 2007).

<sup>2</sup> Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4 (May 2003).

By decision dated March 5, 2010, the Office issued a schedule award for an additional eight percent right leg permanent impairment.<sup>3</sup>

The Board finds that the Office failed to refer appellant for a referee examination and resolve the conflict in the medical evidence. As the Board noted in its prior decision, there was a conflict regarding the nature and extent of a right leg permanent impairment. Pursuant to 5 U.S.C. § 8123(a), the issue should be resolved by a physician selected as a referee physician.<sup>4</sup> The case will be remanded to the Office to secure a rationalized opinion from a referee physician under the current edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. After such further development as the Office deems necessary, it should issue an appropriate decision.

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated March 5, 2010 is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 14, 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

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<sup>3</sup> Appellant had previously received a schedule award for a two percent right leg permanent impairment.

<sup>4</sup> The Federal Employees' Compensation Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make the examination. 5 U.S.C. § 8123(a). The implementing regulation states that if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an Office medical adviser, the Office shall appoint a third physician to make an examination. This is called a referee examination and the Office will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case. 20 C.F.R. § 10.321 (1999).