

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

R.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Trenton, NJ, Employer**

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**Docket No. 11-320
Issued: October 26, 2011**

Appearances:

*Thomas R. Uliase, 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 November 22, 2010 appellant, through counsel, filed a timely appeal from an August 4, 2010 decision of the Office of Workers' Compensation Programs (OWCP) affirming the denial of his claim for a schedule award. The Board docketed the appeal as No. 11-320.

The Board has duly considered the matter and notes that this case has previously been before the Board. By decision dated November 1, 2002, the Board affirmed a February 7, 2002 hearing representative's decision which affirmed in part a March 23, 2001 OWCP decision¹ finding that appellant did not establish an employment-related recurrence of disability beginning December 2, 1999 causally related to the accepted April 2, 1998 employment injury.² On February 14, 2005 appellant filed a claim for a schedule award. By decision dated January 25, 2010, OWCP denied appellant's claim for a schedule award as it found no ratable impairment, which was affirmed by an OWCP hearing representative on August 4, 2010. In his decision, OWCP's hearing representative found that the report from Dr. Stanley Askin, a second opinion

¹ In this decision, OWCP also denied appellant's claim that he sustained an injury on April 2, 1998 in the performance of duty. OWCP's hearing representative reversed this determination in his February 7, 2002 decision.

² On April 7, 1998 appellant, then a 42-year-old custodian/laborer, filed a traumatic injury claim alleging that he injured his lower back on April 2, 1998 while lifting garbage bags. OWCP's hearing representative accepted the claim for a lumbosacral strain.

Board-certified orthopedic surgeon, constituted the weight of the evidence. In support of this conclusion, he noted that Dr. Askin provided the only medical opinion from a physician conducting an examination of appellant, reviewing the medical records and utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed., 2009) (A.M.A., *Guides*). However, the record also contains a November 24, 2009 report from Dr. David Weiss, an attending osteopath, in which he updated his original May 16, 2001 report to provide an impairment rating using the sixth edition of the A.M.A., *Guides*. Board precedent holds that OWCP must review all the evidence submitted by a claimant and received by OWCP prior to the issuance of a final decision.³ As the Board's jurisdiction is final as to the subject matter, it is crucial that OWCP accomplish this.⁴

Because OWCP's hearing representative specifically found in its August 4, 2010 decision that Dr. Askin was the only physician who conducted a physical examination and utilized the sixth edition of the A.M.A., *Guides*, it is clear to this Board that OWCP's hearing representative did not consider the November 24, 2009 report from Dr. Weiss updating or supplementing his original report of May 16, 2001 in reaching his decision. The November 24, 2009 report was received by OWCP on December 11, 2009. As OWCP's hearing representative did not consider the supplemental report of Dr. Weiss, the Board concludes that the case must be remanded for review of this evidence. Following any further necessary development, OWCP shall issue an appropriate decision to protect appellant's rights to future appeals.

³ See *M.B.*, Docket No. 09-176 (issued September 23, 2009); *Yvette N. Davis*, 55 ECAB 475 (2004); *Linda Johnson*, 45 ECAB 439 (1994) (evidence received the same day as the issuance of the Office's decision); *William A. Couch*, 41 ECAB 548 (1990); 20 C.F.R. § 501.6(c).

⁴ See *id.*

IT IS HEREBY ORDERED THAT the August 4, 2010 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: October 26, 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