United States Department of Labor Employees' Compensation Appeals Board

L.M., Appellant	
and)) Docket No. 11-551
U.S. POSTAL SERVICE, POST OFFICE, Cincinnati, OH, Employer) Issued: September 28, 2011)))
Appearances: Alan J. Shapiro, Esq., for the appellant	Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On January 3, 2011 appellant filed a timely appeal from a December 7, 2010 decision of an Office of Workers' Compensation Programs' (OWCP) hearing representative that affirmed a May 5, 2010 decision granting appellant a schedule award for a two percent permanent impairment of the right leg. The claim was docketed as No. 11-551.

The Board has duly considered the matter and finds this case is not in posture for decision. In developing appellant's claim for a schedule award, OWCP issued a May 5, 2010 decision that granted appellant a schedule award for a two percent permanent impairment of the right leg. He requested a hearing that was held on September 28, 2010. Following the hearing, the record was left open for 30 days so that appellant could submit a medical report from Dr. Martin Fritzhand, an attending physician, that comported with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*). In a report dated October 11, 2010, received by OWCP on November 15,

Office of Solicitor, for the Director

¹ This case has previously been before the Board. In a December 15, 2004 decision, the Board found that a medical conflict had been created regarding whether appellant was entitled to a schedule award for accepted herniated discs at L3-4 and L4-5. The Board remanded the case to OWCP for referral to an appropriate impartial specialist to resolve the conflict. Docket No. 04-1213 (issued December 15, 2004), copy attached.

² A.M.A., *Guides* (6th ed. 2008).

2010, Dr. Fritzhand advised that he utilized the tables and figures found in Chapter 16, The Lower Extremities, of the sixth edition of the A.M.A., *Guides*, and concluded that appellant had a seven percent impairment of each lower extremity. In the December 7, 2010 decision, OWCP's hearing representative stated that no evidence was received following the hearing.

In the case of *William A. Couch*,³ the Board held that, when adjudicating a claim, OWCP is obligated to consider all relevant evidence properly submitted by a claimant and received by OWCP before the final decision is issued. Appellant submitted an October 11, 2010 report on November 15, 2010 that is relevant as to whether the accepted herniated discs caused a permanent impairment to his lower extremities. This report was not considered by OWCP's hearing representative when she rendered the December 7, 2010 decision. Thus, the case must be remanded to OWCP to review the October 11, 2010 report from Dr. Fritzhand, to be followed by an appropriate decision as to whether appellant is entitled to an increased schedule award for his right leg and whether he is entitled to a schedule award for his left leg.

IT IS HEREBY ORDERED THAT the December 7, 2010 decision of the Office of Workers' Compensation Programs be vacated and the case remanded to OWCP for proceedings consistent with this order of the Board.

Issued: September 28, 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

³ 41 ECAB 548 (1990); see Willard McKennon, 51 ECAB 145 (1999).