

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

M.D., Appellant

and

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

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**Docket No. 13-567
Issued: October 21, 2013**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

On January 15, 2013 appellant filed a timely appeal from a nonmerit January 3, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration.¹ The appeal was docketed as No. 13-567.

The Board has duly considered the matter and finds that the case must be remanded for further development. OWCP accepted that appellant sustained a left ankle sprain, left fifth metatarsal fracture, herniated thoracic discs and cervical and lumbar myofasciitis in two separate occupational incidents. By decision dated October 13, 2011, OWCP granted her schedule awards for permanent impairments of both upper extremities and the left lower extremity, injuries pertaining to one of her two claims.² OWCP also doubled appellant's claims, but did not include right leg impairment in the schedule award. It advised her on January 9, 2012 that it would issue a schedule award for a 21 percent impairment of the right lower extremity after the October 13, 2011 schedule award expired on August 31, 2013.

¹ This is appellant's second appeal before the Board in this case. By decision and order issued April 9, 1999, under File No. xxxxxx341, Docket No. 97-1876, the Board affirmed OWCP's February 18, 1997 decision affirming the prior termination of appellant's compensation.

² OWCP also combined File No. xxxxxx341 and File No. xxxxxx370, using File No. xxxxxx341 as the master claim number.

Appellant requested reconsideration on October 4, 2012, contending that, although OWCP doubled her claims, it improperly omitted right leg impairment from the schedule award and did not prepare a unified statement of accepted facts. She submitted a September 19, 2012 impairment rating from Dr. Nicholas Diamond, an attending osteopathic physician, finding impairments of all four extremities according to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, sixth edition.³ By decision dated January 3, 2013, OWCP denied reconsideration on the grounds that Dr. Diamond's report was irrelevant and appellant's legal arguments invalid.

The Board finds that OWCP's denial of reconsideration constituted an abuse of discretion under 5 U.S.C. § 8128(a).⁴ Appellant's legal argument on reconsideration regarding OWCP's failure to include the right leg impairment in the October 13, 2011 schedule award was both new and relevant. OWCP did not formally adjudicate the percentage of impairment for the right lower extremity with appropriate findings of fact or a statement of reasons.⁵ The case will be remanded for OWCP to exercise its discretion pursuant to 5 U.S.C. § 8128 and reopen appellant's claim for a merit review. The decision of OWCP dated January 3, 2013 is therefore set aside and the case is remanded to OWCP for review of the merits of her claim.

³ Appellant also submitted May 31, 2012 imaging studies.

⁴ *Carol Cherry (Donald Cherry)* 47 ECAB 658 (1996).

⁵ See *Paul M. Colosi*, 56 ECAB 294 (2005) (a final OWCP decision must include findings of fact and provide clear reasoning which allows the claimant to understand the precise defect of the claim and the kind of evidence which would tend to overcome it).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 3, 2013 is set aside, and the case remanded for further proceedings consistent with this order of the Board.

Issued: October 21, 2013
Washington, DC

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board