

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

H.S., Appellant

and

**U.S. POSTAL SERVICE, CHEEKTOWAGA
POST OFFICE, Cheektowaga, NY, Employer**

)
)
)
)
)
)
)
)
)
)
)

**Docket No. 11-31
Issued: September 15, 2011**

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

Case Submitted on the Record

ORDER GRANTING REMAND

Before:

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

On October 4, 2010 appellant filed a timely appeal from June 22 and September 2, 2010 decisions of the Office of Workers' Compensation Programs (OWCP). By the June 22, 2010 decision, OWCP denied appellant's claim for a schedule award on the grounds that there was no employment-related impairment. In the September 2, 2010 decision, OWCP denied appellant's request for reconsideration of the merits of her claim. However, OWCP noted that, pursuant to appellant's request, it was referring her for a second opinion examination to be followed by a new decision on her entitlement to a schedule award.

The Director of OWCP filed a motion on April 29, 2011 requesting the Board to set aside the June 22 and September 2, 2010 decisions and to remand the case for specified further development. The Director stated that appellant underwent an examination conducted by a second opinion physician on November 17, 2010 and that, on review, an OWCP medical adviser determined that appellant had sustained a permanent impairment causally related to her accepted employment conditions. The Director, citing to the Board's holding in *Jimmy W. Galetka*,¹ acknowledged that the Board acquired jurisdiction over the instant appeal when the Board received appellant's request for review on October 4, 2010. The Director concluded, therefore, that OWCP was without jurisdiction "to issue any binding new determination on appellant's

¹ 43 ECAB 432 (1992).

claim for a schedule award” despite the subsequently acquired medical evidence and, thus, the June 22 and September 2, 2010 decisions remain in force. Notwithstanding, the Director requested that, since OWCP has developed the medical evidence and has concluded that appellant is entitled to compensation for a permanent impairment due to her employment-related injury, the Board set aside the June 22 and September 2, 2010 decisions and remand the case to OWCP. On remand, the Director stated that OWCP would properly develop appellant’s request for a schedule award and issue a *de novo* decision on appellant’s claim for permanent impairment under the Federal Employees’ Compensation Act.

On April 29, 2011 the Clerk of the Board served appellant with a copy of the Director’s motion to remand.

The Board has duly considered the matter and concludes that, for all of the reasons espoused by the Director in his motion to remand, said motion should be granted. Accordingly,

IT IS HEREBY ORDERED THAT the June 22 and September 2, 2010 decisions of the Office of Workers’ Compensation Programs are set aside; the case is remanded for further proceedings consistent with this order of the Board.

Issued: September 15, 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