

Under previous claims, appellant was granted schedule awards for permanent impairment totaling 10 percent for her left upper extremity and 41 percent for her right upper extremity. On October 15, 2009 she was granted a schedule award in the instant case for an additional five percent impairment of the left upper extremity.² OWCP found that, as appellant had already been paid total disability compensation for the period of the schedule award, she was not entitled to receive a schedule award in the present case. On May 5, 2010 an OWCP hearing representative affirmed the prior decision that appellant was not entitled to receive a schedule award due to her concurrent receipt of disability compensation, but remanded the case for development of the medical evidence. In a July 1, 2010 decision, OWCP granted a schedule award for an additional two percent impairment of the left upper extremity, but determined that appellant could not receive the award because she had received disability benefits during the period of the award.³ Appellant sought review by an OWCP hearing representative, contending that she was not disabled due to her upper extremity conditions, but rather due to her accepted right knee condition under File No. xxxxxx794 and was, therefore, entitled to receive a schedule award for her upper extremity impairment.

By decision dated November 9, 2010, an OWCP hearing representative affirmed the July 1, 2010 decision regarding the amount of the schedule award and appellant's inability to receive the award due to her receipt of disability benefits in this case for the period of the award. He referred to appellant's accepted right knee claim, noting that OWCP had approved a total knee replacement on March 8, 2008 and that her physician had found her to be totally disabled due to the knee condition. The representative found, however, that because no final termination decision had been issued in this case, appellant remained totally disabled due to the accepted upper extremity conditions, thereby nullifying any schedule award for those upper extremities. He also stated that the district medical adviser had conducted a proper review of the medical evidence in determining appellant's entitlement to a schedule award.

The Board is unable to adjudicate the issue of the degree of appellant's permanent impairment based upon the evidence of record. The hearing representative did not provide any explanation as to how he or the medical adviser reached a determination as to the degree of appellant's permanent impairment. His cursory statement that the medical adviser conducted a proper review of the evidence does not meet the requirements of the Federal Employees' Compensation Act⁴ or OWCP's procedures.⁵

The Board is also unable to determine whether appellant is eligible to receive schedule award benefits for her upper extremity impairment. A claimant is not entitled to receive compensation for temporary total disability and a schedule award covering the same period of

² OWCP determined that appellant had a 28 percent right upper extremity impairment and a 15 percent left upper extremity impairment. Due to her receipt of prior awards, she was only entitled to an additional five percent award for the left upper extremity. The period of the award was from February 28 through June 16, 2008.

³ The period of the award was from February 28 through July 30, 2008.

⁴ 5 U.S.C. § 8101-8193.

⁵ 5 U.S.C. § 8124(a) provides: OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

time for the same condition.⁶ The record strongly suggests, however, that appellant's disability during the period of the schedule award was due to her accepted right knee condition under File No. xxxxxx794, rather than her upper extremity conditions. Appellant's receipt of compensation for her knee condition should not preclude receipt of a schedule award for an upper extremity condition under a different claim. The hearing representative found that appellant was considered disabled due to her upper extremity conditions because OWCP did not formally terminate her benefits for those conditions. Appellant's entitlement to compensation should be determined, however, by her actual physical condition. The Board finds that the record is unclear as to whether appellant's disability during the period of the schedule award was causally related to her upper extremity condition or her right knee condition. The medical evidence contained in File No. xxxxxx794 will necessarily bear directly on appellant's schedule award claim in File No. xxxxxx210.

Because it is essential for the Board to review the medical evidence contained in File No. xxxxxx794 in order to render a full and fair adjudication of the present appeal, this case will be remanded for OWCP to consolidate File Nos. xxxxxx794 and xxxxxx210. Reconstruction of the record will be followed by a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensations' Programs' November 9, 2010 decision be set aside and the case remanded for further development 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

⁶ *Robert T. Leonard*, 34 ECAB 1687, 1690 (1983); *Marie J. Born*, 27 ECAB 623, 628 (1976).