

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Jersey City, NJ, Employer**

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**Docket No. 11-641
Issued: January 12, 2012**

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 January 18, 2011 appellant filed an application for review of an October 4, 2010 decision of the Office of Workers' Compensation Programs (OWCP). The appeal was docketed as No. 11-641.

Appellant, a 56-year-old mail handler, injured her left lower back on July 6, 1994 while reaching for a broken parcel on a slide. She filed a claim for benefits, which OWCP accepted for lumbosacral strain. In a Form CA-7 dated April 3, 2007, appellant requested a schedule award based on a partial loss of use of her left lower extremity. By decision dated March 23, 2010, OWCP found that appellant had no ratable impairment causally related to her accepted lumbosacral strain and therefore was not entitled to a schedule award. By decision dated October 4, 2010, an OWCP hearing representative affirmed the March 23, 2010 decision. In the October 4, 2010 decision, the hearing representative stated that it had reviewed a December 6, 2006 report from Dr. David O. Weiss, an osteopath, who found that the employee had a six percent impairment of the left lower extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (fifth edition). This document, however, is not included in the instant record. The report contained in the instant record from Dr. Weiss is actually a copy of a December 6, 2006 impairment evaluation for the right upper extremity. The Board notes that appellant has three other claims, case numbers

xxxxxx829, xxxxxx578 and xxxxxx611, which have been accepted for cervical and upper extremity conditions.

In addition, the record contains a December 8, 2009 memorandum from an OWCP claims examiner stating “medical schedule award document sent for [OWCP medical review] on November 19, 2009.” Appellant’s attorney, in his brief to the Board, contends that this OWCP medical adviser’s report, which recommended a zero percent impairment rating, created a conflict in the medical evidence with Dr. Weiss’ December 6, 2006 report finding that she had a six percent left lower extremity impairment. This referenced report from OWCP’s medical adviser, however, is also not included with the instant record.

The Board, having reviewed the case record submitted by OWCP, finds that the record is incomplete, as it does not contain evidence relevant to the issue at hand. This evidence was referenced in March 23 and October 4, 2010 OWCP decisions and by appellant’s attorney in his appeal to the Board.

Thus, the case file does not include a substantial portion of the record pertaining to the history and development of appellant’s claim, as is required for an informed adjudication of this case. As all the records pertaining to appellant’s claim are necessary for complete consideration and adjudication of the issue raised on appeal, the Board, therefore, finds that the appeal docketed as No. 11-641 is not in posture for a decision as the Board is unable to render an informed adjudication of the case. On remand, OWCP is directed to obtain Dr. Weiss’ December 6, 2006 impairment evaluation for the left lower extremity and OWCP’s medical adviser’s impairment evaluation -- issued in November or December 2009 -- which recommended a zero percent impairment for the left lower extremity.

Accordingly, the October 4, 2010 decision will be set aside and remanded for reconstruction of the record to include the entire case file pertaining to claim number xxxxxx957. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant’s appeal rights.

IT IS HEREBY ORDERED THAT the October 4, 2010 decision of the Office of Workers' Compensation Programs be remanded for reconstruction of the case record.

Issued: January 12, 2012
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