

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

J.T., Appellant)
)
and)
)
U.S. POSTAL SERVICE, POST OFFICE,)
New Orleans, LA, Employer)

**Docket No. 11-1934
Issued: June 12, 2012**

Appearances:
Appellant, pro se
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 August 25, 2011 appellant filed an application for review of an Office of Workers' Compensation Programs' (OWCP) decision dated July 11, 2011 which denied modification of a decision denying his schedule award claim.¹

On September 28, 2010 appellant filed a claim for a schedule award. On March 30, 2011 OWCP denied his claim for a schedule award. Thereafter, appellant requested reconsideration. He submitted evidence that included a May 4, 2011 impairment rating from a physical therapist who found that appellant had two percent impairment of the left leg, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*),² and a May 9, 2011 report from Dr. Kevin Watson, a Board-certified orthopedist, who concurred with this impairment rating. In a decision dated July 11, 2011, OWCP denied modification of the March 30, 2011 decision. It found that Dr. Watson did not note the basis of the impairment rating.

¹ On July 10, 2009 appellant, then a 39-year-old letter carrier, injured his left knee when he was attacked by a dog. OWCP accepted his claim for left knee sprain lateral collateral ligament and tear of the medial meniscus.

² A.M.A., *Guides* (6th ed. 2008).

The Board has duly considered the matter and finds that the case is not in posture for a decision and must be remanded to OWCP. In the case of *William A. Couch*,³ the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. Following a March 30, 2011 decision that denied appellant's claim for a schedule award, appellant requested reconsideration. As noted, he submitted a May 9, 2011 report from Dr. Watson who concurred with a physical therapist's May 4, 2011 impairment rating that was calculated with reference to the A.M.A., *Guides*. These documents were received by OWCP on May 16, 2011. In its July 11, 2011 decision, OWCP noted receipt of Dr. Watson's May 9, 2011 report but did not note receipt or consideration of the May 4, 2011 impairment rating with which Dr. Watson concurred. The Board finds that OWCP, in its July 22, 2011 decision, did not review the May 4, 2011 impairment rating by the physical therapist that was received by OWCP on May 16, 2011.

The Board further notes that OWCP made a medical determination without the benefit of medical advice or review by an OWCP medical adviser that appellant's injury did not cause or contribute to any permanent impairment. OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to the medical adviser for an opinion concerning the nature and percentage of any impairment in accordance with the A.M.A., *Guides*.⁴ In this case, the medical evidence was not forwarded to the medical adviser for review.

For these reasons, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the July 22, 2011 decision and referral of the matter to an OWCP medical adviser for further development consistent with this order. Following such further development as OWCP deems necessary, it shall issue an appropriate merit decision on the claim.

³ 41 ECAB 548 (1990).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002).

IT IS HEREBY ORDERED THAT the July 22, 2011 decision of the Office of Workers' Compensation Programs set aside. The case recorded is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: June 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