

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

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**G.V., Appellant**

**and**

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

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**Docket No. 11-2137  
Issued: June 25, 2012**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge

On September 23, 2011 appellant filed an application for review of the Office of Workers' Compensation Programs (OWCP) June 21, 2011 merit decision regarding her claim for an increased schedule award to her lower extremities. The appeal was docketed as No. 11-2137.

The Board has duly considered the matter and finds that the case is not in posture for decision. The present appeal involves appellant's December 11, 2005 traumatic injury that was accepted for left hand contusion and left knee contusion (File No. xxxxxx764). By decision dated November 23, 2010, OWCP denied entitlement to an additional schedule award. It found that although appellant had 24 percent permanent impairment of the left leg under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter A.M.A., *Guides*), she had previously received a schedule award for 26 percent impairment of the left leg and thus did not establish an increased impairment. By decision dated June 21, 2011, an OWCP hearing representative affirmed the November 23, 2010 decision that appellant was not entitled to an additional award for her left leg. Appellant has argued that the schedule awards for the knee are separate from the back.

The record indicates that, in File No. xxxxx861, appellant's May 28, 2000 traumatic injury was accepted for lumbar disc displacement and neuritis. On June 25, 2002 OWCP granted her a schedule award for 26 percent permanent impairment to her left leg under that claim.

Under File No. xxxxxx692, OWCP accepted an occupational disease claim for the conditions of herniated disc at L2-L3 and L4-L5 with resultant radiculopathy. These claim files are not in the record transmitted to the Board.<sup>1</sup>

The Federal Employees' Compensation Act and its implementing regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.<sup>2</sup> Benefits payable under section 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.<sup>3</sup> The record in the instant case, however, does not contain any evidence relating to the development of the May 28, 2000 traumatic injury claim in File No. xxxxxx861 even though OWCP has relied on evidence in this other claim file in reaching its decision. The Board is therefore unable to determine whether the schedule award received in File No. xxxxxx764 was duplicative of that received in File No. xxxxxx861. The Board finds that the medical evidence contained in File No. xxxxxx861 is germane to appellant's claim for compensation in File No. xxxxxx764.

Because it is essential for the Board to review the medical evidence contained in File No. xxxxxx861 in order to render a full and fair adjudication of the present appeal, this case will be remanded for OWCP for consolidation with File No. xxxxxx764. 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.

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<sup>1</sup> On September 8, 2008 OWCP administratively combined these two files (xxxxxx692 and xxxxxx861) under master File No. xxxxxx861.

<sup>2</sup> 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

<sup>3</sup> 20 C.F.R. § 10.404(c)(1), (2).

**IT IS HEREBY ORDERED THAT** the June 21, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further development consistent with this order of the Board.

Issued: June 25, 2012  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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