

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

D.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pittsburgh, PA, Employer**

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**Docket No. 12-176
Issued: October 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
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On November 7, 2011 appellant filed a timely appeal from an Office of Workers' Compensation Programs' (OWCP) decision dated August 5, 2011, claim number xxxxxx031, which modified its prior January 13, 2011 decision and found that she had a one percent permanent impairment of the left upper extremity, rather than an impairment of the right upper extremity.

On June 19, 2002 appellant, a 51-year-old mail processor, filed a Form CA-2 claim for benefits, alleging that she developed a bilateral de Quervain's tenosynovitis condition in her wrists, causally related to factors of her employment. On June 5, 2002 she underwent surgery, a radical extensor tenosynovectomy of the first dorsal compartment of the right wrist, to ameliorate the condition of chronic tenosynovitis.

On April 27, 2006 OWCP accepted the claim for the condition of bilateral radial styloid tenosynovitis, including the June 5, 2002 right wrist surgery. It stated, however, that based on the October 25, 2005 report of the impartial medical specialist, Dr. James Nutt, appellant had recovered from the effects of this condition as it related to her right upper extremity. OWCP advised that surgical release on the left side was still medically necessary and also authorized by OWCP.

On July 16, 2010 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left and right upper extremities.

In an April 6, 2010 report, Dr. Nicholas Diamond, an osteopath, found that appellant had a 10 percent impairment of the left upper extremity and a 2 percent right upper extremity impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*).

In a July 9, 2010 statement of accepted facts (SOAF), it was indicated that appellant had filed another claim under case number xxxxxx561 which OWCP accepted for left lateral elbow tendinitis; she first became aware of this condition on March 3, 1998. The SOAF stated that pursuant to this claim, appellant accepted a limited-duty offer on April 2, 2002 for the position of mail processor with restrictions. In addition, OWCP accepted a claim for right forearm strain which occurred on September 12, 1998 under case number xxxxxx640.

In a July 13, 2010 report, Dr. Morley Slutsky, a specialist in occupational medicine and an OWCP medical adviser, evaluated appellant's schedule claim based upon the accepted conditions of bilateral radial styloid tenosynovitis and found that she had a one percent impairment of the left upper extremity for her accepted de Quervain's tenosynovitis condition and a zero percent impairment of her right upper extremity pursuant to the sixth edition of the A.M.A., *Guides*. He disputed additional findings of permanent impairment of both upper extremities made by appellant's treating physician, Dr. Diamond.

By decision dated January 13, 2011, OWCP granted appellant a schedule award for a one percent permanent impairment of the right upper extremity for the period April 6 to 20, 2011, for a total of 3.12 weeks of compensation.

By letter dated May 13, 2011, appellant's attorney requested a review of the written record. By decision dated August 5, 2011, an OWCP hearing representative amended its prior decision and found that appellant had a one percent impairment of her left upper extremity, instead of a permanent impairment of the right upper extremity. In all other respects, it affirmed the January 13, 2011 schedule award decision.

The Board has duly considered the matter and finds that the case is not in posture for decision. The case before the Board, case number xxxxxx031, involves appellant's claim for a schedule award for both upper extremities. In the statement of accepted facts, OWCP noted that appellant has two other accepted claims for upper extremity conditions. Case number xxxxxx561 which OWCP accepted for left lateral elbow tendinitis; and case number xxxxxx640 which was accepted for right arm strain. It is well established that preexisting impairments to the scheduled member are to be included when determining entitlement to a schedule award.¹ Dr. Slutsky however only evaluated appellant's schedule claim based upon the accepted conditions of bilateral radial styloid tenosynovitis.

Pursuant to its procedures, OWCP has determined that cases should be combined where proper adjudication depends on cross-referencing between files. For a full and fair adjudication,

¹ Carol A. Smart, 57 ECAB 340 (2006).

OWCP claims with evidence germane to appellant's upper extremity conditions should be combined pursuant to OWCP procedures.² This will allow OWCP to consider all relevant claim files in developing appellant's claim. Moreover, to consider appellant's appeal at this stage would involve a piecemeal adjudication of the issues in this case and raise the possibility of inconsistent results.³

The case will be remanded to OWCP to combine the records of all three relevant case numbers. Following this and such other development as deemed necessary, OWCP shall issue an appropriate decision.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 5, 2011 decision be set aside and the matter remanded to OWCP for further proceedings consistent with this order.

Issued: October 12, 2012
Washington, D.C.

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8(c) (February 2000).

³ See *William T. McCracken*, 33 ECAB 1197 (1982).