

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

T.L., Appellant)	
)	
and)	Docket No. 13-134
)	Issued: April 12, 2013
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Tomah WI, Employer)	

Appearances:
Appellant, pro se
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 October 25, 2012 appellant filed an application for review of an Office of Workers' Compensation Programs' (OWCP) decision dated August 6, 2012 which affirmed a decision denying appellant's claim for a schedule award.¹

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*,² 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 an April 20, 2012 decision that denied appellant's claim for a schedule award, appellant requested a review of the written record on April 25, 2012. Appellant also submitted additional evidence. This included a new May 4, 2012 report from Dr. Steven Kirkhorn, a physiatrist, who performed a new examination and opined that appellant had seven percent permanent impairment of the right leg in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)³ In his report, Dr. Kirkhorn rated

¹ On September 25, 2009 appellant injured her right ankle while using a lift to move a patient. OWCP accepted right ankle sprain and authorized arthroscopic surgery.

² 41 ECAB 548 (1990).

³ A.M.A., *Guides* (6th ed. 2008).

appellant's impairment under the Foot and Ankle Regional Grid, Table 16.2, and provided an explanation of his calculation referencing the grade modifiers for functional history, clinical studies and physical examination under Table 16.7 and 16.8.⁴ He further noted that post-traumatic arthritis was not an accepted condition and was not considered in the impairment rating. This was received by OWCP on May 14, 2012. In the August 6, 2012 decision, an OWCP hearing representative denied appellant's claim for a schedule award and found that Dr. Kirkhorn's August 16, 2011 report, which found 18 percent impairment of the right leg, was insufficient to establish permanent impairment as it considered post-traumatic arthrosis which was not an accepted condition. OWCP found that the second opinion physician and the medical adviser's reports provided rationale supporting that appellant did not have permanent impairment of the right lower extremity. The hearing representative did not note receipt or consideration of the May 4, 2012 report from Dr. Kirkhorn.

The Board finds that OWCP, in its August 6, 2012 decision, did not review the May 4, 2012 report from Dr. Kirkhorn that was received by OWCP on May 14, 2012. For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted at the time of the August 6, 2012 decision. Following such further development as OWCP deems necessary, it shall issue an appropriate merit decision on the claim.

IT IS HEREBY ORDERED THAT the August 6, 2012 decision of the Office of Workers' Compensation Programs be set aside. The case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: April 12, 2013
Washington, DC

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

⁴ *Id.* at 517.