

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

S.G., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
El Paso, AR, Employer**

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**Docket No. 12-1428
Issued: February 1, 2013**

Appearances:

*Alan J. Shapiro, 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 June 18, 2012 appellant, through her attorney filed a timely appeal from a February 14, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision denying an additional schedule award and from a May 17, 2012 nonmerit decision declining to reopen the schedule award claim. The Board assigned Docket No. 12-1428. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merit and nonmerit issues of the case.

The Board has duly considered the matter and finds that the case is not in posture for 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.

On June 30, 2011 OWCP issued a merit schedule award decision granting appellant one percent impairment of her left upper extremity. Appellant requested an oral hearing before an OWCP hearing representative. She testified and later submitted a report dated January 13, 2012 from Dr. M. Stephen Wilson, an orthopedic surgeon. This report included an impairment rating of appellant's left upper extremity under the sixth edition of the American Medical Association,

¹ 5 U.S.C. § 8101 *et seq.*

² 41 ECAB 548 (1990). *See also B.B.*, Docket No. 12-657 (issued November 13, 2012).

*Guides to the Evaluation of Permanent Impairment.*³ OWCP received this report on January 20, 2012.

OWCP's February 14, 2012 merit decision did not mention Dr. Wilson's report. The hearing representative's decision specifically stated that no additional medical evidence was submitted. Appellant requested reconsideration of the February 14, 2012 merit decision on March 1, 2012 and resubmitted Dr. Wilson's January 13, 2012 report. In its May 17, 2012 decision, OWCP declined to reopen appellant's claim for consideration of the merits on the grounds that Dr. Wilson's report was considered in the February 14, 2012 decision and was repetitious.⁴

The Board finds that OWCP, in the February 14 and May 17, 2012 decisions, did not review the January 13, 2012 medical report from Dr. Wilson. For this reason, the case will be remanded to OWCP to enable it to properly consider all the evidence submitted prior to these decisions. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on the claim.

IT IS HEREBY ORDERED THAT the May 17 and February 14, 2012 decisions of the Office of Workers' Compensation Programs are set aside. The case record is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: February 1, 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

³ A.M.A., *Guides*, 6th ed. (2009).

⁴ Section 10.606(b) of the Code of Federal Regulations provide that a claimant may obtain review of the merits of the claim by submitting in writing an application for reconsideration which sets forth arguments or evidence and shows that OWCP erroneously applied or interpreted a specific point of law; or advances a relevant legal argument not previously considered by OWCP; or includes relevant and pertinent new evidence not previously considered by OWCP. 20 C.F.R. § 10.606.