

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

M.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Willowick, OH, Employer**

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**Docket No. 12-1932
Issued: March 25, 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 September 19, 2012 appellant, through his attorney, filed a timely appeal from an August 20, 2012 decision of the Office of Workers Compensation Programs (OWCP) hearing representative regarding his schedule award claim. The appeal was docketed as No. 12-1932. On appeal, counsel argues that the decision is contrary to fact and law.

The Board has duly considered the matter and notes that the case is not in posture for a decision. OWCP has accepted appellant's claim for contusion of the back, contusion of the left elbow, lumbar sprain, lumbosacral neuritis or radiculitis and herniated disc as a result of the December 27, 2002 and April 9, 2003 work-related injuries.¹ On August 29, 2008 appellant requested a schedule award and submitted evidence. OWCP subsequently referred appellant to Dr. Bienvenido D. Ortega, a Board-certified neurologist, for a second opinion regarding his schedule award claim. In a March 20, 2010 report, Dr. Ortega reviewed appellant's history, examined him and opined that there was no medical evidence that appellant had any permanent impairment due to any current objective findings as a result of the work-related injury. On April 11, 2012 an OWCP medical adviser reviewed Dr. Ortega's March 20, 2010 impairment evaluation as well as an August 25, 2010 report from Dr. Bruce T. Cohn, a Board-certified orthopedic surgeon who released appellant to full-duty work. The medical adviser found no

¹ This claim involves master case file number xxxxxx520 and subsidiary case file number xxxxxx026.

motor or sensory deficits of the bilateral lower extremities under the sixth edition of the American Medical Association's supplemental publication (hereinafter *The Guides Newsletter*). He agreed with Dr. Ortega that there was no residual lower extremity impairment. In an April 20, 2012 decision, OWCP denied appellant's schedule award claim. Weight of the medical evidence was accorded to the medical adviser's opinion.

Appellant requested an oral hearing, which was held on July 18, 2012. Submitted was a June 19, 2012 report from Dr. John L. Dunne, an osteopath, who noted the history of injury, his review of medical records and examination findings. Dr. Dunne opined that appellant had no impairment for a fully resolved contusion of the left elbow. He also opined that there was 12 percent impairment of the whole person for the lumbar spine for the lumbar allowances of the claim. Dr. Dunne explained there had been an alteration of motion segment integrity at a single level and explained the methodologies used to compute the impairment rating. By decision dated August 20, 2012, an OWCP hearing representative affirmed the prior decision of April 20, 2012. The hearing representative noted that Dr. Dunne's report "neither utilizes the guidelines in the *The Guides Newsletter* nor addresses Dr. [Ortega's] lack of any objective findings of ongoing herniation or radiculopathy."²

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment. These procedures contemplate that the medical adviser shall review all germane medical reports as they specify that, when more than one evaluation of the impairment is present, it will be especially important for the medical adviser to provide medical reasoning.³ In this instance, OWCP did not have its medical adviser review Dr. Dunne's June 19, 2012 report. The hearing representative did not explain why it was unnecessary to have an OWCP medical adviser review Dr. Dunne's findings on permanent impairment in light of its procedures. While the hearing representative attempted to distinguish Dr. Dunne's findings from Dr. Ortega's findings, Dr. Dunne specifically found alteration of motion segment integrity at the clinically appropriate level with residual radiculopathy. A medical adviser should review this report as it is germane to the question of whether there is work-related permanent impairment. Accordingly, the case shall be remanded for further development.

On remand, OWCP shall forward the complete record to OWCP's medical adviser for a determination of whether appellant has any impairment due to his employment injuries of December 27, 2002 and April 9, 2003. After such further development as OWCP deems appropriate, a *de novo* decision shall be issued regarding appellant's claim for a schedule award.

² While the hearing representative refers to the second opinion examiner as Dr. Ortiz, this should be Dr. Ortega.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards & Permanent Disability Claims*, Chapter 2.808.6d (January 2010).

IT IS HEREBY ORDERED THAT the August 20, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: March 25, 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