

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

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**T.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Grand Rapids, MI, Employer**

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**Docket No. 13-2135  
Issued: April 3, 2014**

*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  
ALEC J. KOROMILAS, Alternate Judge

On September 12, 2013 appellant filed a timely appeal from an August 28, 2013 decision of the Office of Workers' Compensation Programs (OWCP). The Board assigned Docket No. 13-2135.

The Board, having duly considered the matter, notes that the case must be remanded to OWCP. In its August 28, 2013 decision, OWCP denied appellant's request for further review of the merits of its November 27, 2012 decision denying his request for additional schedule award compensation.<sup>1</sup> In its July 8, 2013 decision, the Board set aside OWCP's November 27, 2012 decision and remanded the case to OWCP for further development to include the issuance of a new merit decision containing adequate facts, findings and reasoning regarding appellant's claim that OWCP used an improper pay rate with respect to his schedule award compensation.<sup>2</sup> OWCP's August 28, 2013 decision did not address the Board's July 8, 2013 decision or otherwise direct the development contemplated in the Board's decision.

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<sup>1</sup> On July 17, 1990 OWCP granted appellant a schedule award for 10 percent permanent impairment of his left leg. The award ran from June 23, 1979 to January 10, 1980. Appellant argued that, by using a retroactive date of maximum medical improvement (June 23, 1979) as the starting date of the schedule award, OWCP applied an improper pay rate for his schedule award compensation. He did not contest the percentage of impairment. OWCP's November 27, 2012 decision was the last OWCP merit decision to address his claim that an improper pay rate was used for his schedule award compensation.

<sup>2</sup> T.S., Docket No. 13-767 (issued July 8, 2013).

The Board has final authority to determine questions of law and fact. The Board's determinations are binding upon OWCP and must, of necessity, be so accepted and acted upon by the Director of OWCP.<sup>3</sup> A decision of the Board is final upon the expiration of 30 days following the date of its order and, in the absence of new review by the Director, the subject matter is *res judicata* and not subject to further consideration by the Board.<sup>4</sup> The Board has already considered appellant's claim that OWCP applied an improper pay rate with respect to his schedule award compensation in its July 8, 2013 decision which set aside OWCP's November 27, 2012 decision, the last OWCP merit decision to address this matter.

OWCP has not issued a decision in which it followed the directives of the Board in its July 8, 2013 decision, *i.e.*, it has not issued a merit decision containing adequate facts, findings and reasoning regarding appellant's claim that OWCP used an improper pay rate with respect to his schedule award compensation. The case is remanded to OWCP for further development to include issuance of such a merit decision.

**IT IS HEREBY ORDERED THAT** the August 28, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: April 3, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>3</sup> See *Paul Raymond Kuyoth*, 27 ECAB 498, 503-04 (1976); *Anthony Greco*, 3 ECAB 84 (1949). See also *Frank W. White*, 42 ECAB 693 (1991) (the Board's order in a prior appeal imposed an obligation on the Director to take particular actions as directed). See *L.C.*, Docket No. 09-1816 (issued March 17, 2010) (OWCP did not follow the Board's instructions in ascertaining the information necessary to determine pay rate).

<sup>4</sup> See 20 C.F.R. § 501.6(d); *Clinton E. Anthony, Jr.*, 49 ECAB 476, 479 (1998). There is no indication that a petition for reconsideration was filed within 30 days of the issuance of the Board's July 8, 2013 decision and therefore the decision became final after 30 days had passed. 20 C.F.R. § 501.6(d).