



as the medical evidence of record failed to support appellant's entitlement to a schedule award of compensation greater than seven percent impairment of the left upper extremity.

On June 4, 2013 appellant's representative requested reconsideration of the schedule award based on an April 16, 2013 medical report from Dr. Nicholas Diamond, an osteopath. He noted that the request was sent in three parts *via* e-comp and *via* facsimile. On June 4, 2013 OWCP received Dr. Diamond's April 16, 2013 report in three parts. In his report, Dr. Diamond set forth the history of appellant's work injury and medical course, reviewed medical records provided, noted her complaints and set forth physical examination findings. He diagnosed: aggravation of preexisting cervical degenerative disc disease; right protruding disc herniation C4-C5, herniated nucleus pulposus C5-C6 and C6-C7; status post C6-C7 anterior cervical discectomy and fusion (metallic fixation); and bilateral upper extremity radiculitis C6-C7 by clinical impression. Dr. Diamond opined that appellant reached maximum medical improvement on April 16, 2013. Pursuant to the sixth edition of the A.M.A., *Guides*, he opined that she had 17 percent left upper extremity impairment and 8 percent right upper extremity impairment as a result of her work injuries. Dr. Diamond's impairment calculations under the A.M.A., *Guides* were provided.

In a July 7, 2013 report, an OWCP medical adviser reviewed the medical evidence of record along with Dr. Diamond's April 16, 2013 report. The medical adviser stated that the input by Dr. Diamond dated April 16, 2013 contained only a history and discussed diagnostic studies that have been done in the past. The medical adviser noted that the input by Dr. Diamond dated April 16, 2013 contained no examination findings by Dr. Diamond and referenced examination findings that were found by other physicians. The medical adviser concluded that Dr. Diamond in the report dated April 16, 2013 provided no examination findings that he himself made, thus the ratings for the right and left upper extremities found in the input could not be used to modify the previously processed schedule award due to the cervical spine condition accepted by OWCP.

By decision dated July 17, 2013, OWCP denied appellant's request for an additional schedule award. It relied on its medical adviser's review of Dr. Diamond's April 16, 2013 report and concluded that Dr. Diamond's report did not include descriptive detail and correlation with the tables in the A.M.A., *Guides* that included a thorough history, physical examination findings and explanation of the application of the specific procedures, sections, tables and figures of the A.M.A., *Guides*. OWCP further found that Dr. Diamond's report was not sufficient to overcome the weight of the medical evidence regarding the left upper extremity impairment previously awarded. It did not discuss or analyze Dr. Diamond's findings or indicate whether he properly applied the relevant tables of the A.M.A., *Guides*.

It is well established that, since the Board's jurisdiction of a case is limited to reviewing the evidence which was before OWCP at the time of its final decision, it is necessary that OWCP review all evidence submitted by a claimant and received by OWCP prior to issuance of its final decision.<sup>1</sup> As the Board's decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to OWCP prior to the

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<sup>1</sup> *William A. Couch*, 41 ECAB 548 (1990).

time of issuance of its final decision be addressed by OWCP. Appellant's representative contends, and the Board agrees, that Dr. Diamond's entire April 16, 2013 report was of record at the time of the medical adviser's review and had been submitted in three parts. However, OWCP and its medical adviser failed to review Dr. Diamond's entire April 16, 2013 report, which contained examination findings from Dr. Diamond. As Dr. Diamond's entire April 16, 2013 report was of record at the time of OWCP's July 17, 2013 decision, OWCP's July 17, 2013 decision is additionally flawed because it does not allow the Board a complete review of the basis of the decision.

The Board finds that OWCP failed to give proper consideration to the medical evidence of record in this case. Accordingly, the case will be set aside and remanded for consideration of the medical evidence pursuant to the standards set out in 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.126. After such further development as OWCP deems necessary, it should issue an appropriate decision to protect appellant's appeal rights.

**IT IS HEREBY ORDERED THAT** the July 17, 2013 decision be set aside and the case remanded to the Office of Workers' Compensation Programs for further proceedings consistent with this order of the Board.

Issued: June 23, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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