

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

V.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Iselin, NJ, Employer**

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**Docket No. 14-296
Issued: May 5, 2014**

Appearances:
Robert D. Campbell, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On November 20, 2013 appellant, through counsel, filed a timely appeal from a May 24, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly determined that appellant was not entitled to an additional schedule award for her right leg.

FACTUAL HISTORY

On April 18, 2009 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury on August 11, 2009 when she fell in the

¹ 5 U.S.C. § 8101 *et seq.*

performance of duty while carrying a bin. OWCP accepted the claim for a right ankle sprain, left knee contusion and sprain.

In a report dated September 22, 2010, Dr. Nicholas Diamond, an osteopath, provided a history and results on examination. He opined that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, appellant had an 18 percent right leg permanent impairment. Dr. Diamond indicated that the impairment was based on a right knee meniscal injury, right knee patellofemoral arthritis and right ankle instability. He also opined that appellant had a 17 percent left leg impairment.²

By report dated June 9, 2011, an OWCP medical adviser concurred that the right leg permanent impairment was 18 percent based on the right knee and ankle. The record also contains a September 17, 2011 report from another OWCP medical adviser indicating that the right leg impairment was 18 percent.

In a decision dated November 3, 2011, OWCP found appellant was not entitled to a schedule award for the right leg. According to it, she had received a schedule award for a 38 percent right leg permanent impairment under another claim (OWCP File No. xxxxxx270).

Appellant requested a hearing before an OWCP hearing representative, which was held on March 14, 2012. In a report dated November 2, 2011, Dr. Diamond again opined that appellant had an 18 percent right leg impairment.

In a decision dated June 6, 2012, OWCP's hearing representative stated that appellant had received schedule awards for 50 percent to the right leg under the other claim, which had been accepted for a bunion to the foot. The hearing representative indicated that the sixth edition of the A.M.A., *Guides* was now in use and found that further review by an OWCP medical adviser was warranted to determine if appellant was entitled to an additional award "for a combined rating."

In a report dated July 26, 2012, an OWCP medical adviser stated that there was no evidence that the right knee was ever directly injured. He found the impairment for right ankle instability was one percent. In a report dated November 28, 2012, an OWCP medical adviser stated that appellant had sustained an injury on June 21, 2000, accepted for bunion of the right foot and aggravation of bunionectomy. He reported that "apparently" appellant had received a schedule award for a 50 percent right leg impairment. The medical adviser opined that appellant's current impairment based on the right knee and ankle was 18 percent.

By decision dated January 17, 2013, OWCP found appellant was not entitled to an additional schedule award for the right leg. It noted that the November 28, 2012 report of OWCP's medical adviser found that she had an 18 percent right leg impairment, but she had previously received schedule awards for 50 percent.

Appellant requested a review of the written record. In a decision dated May 24, 2013, an OWCP hearing representative affirmed the January 17, 2013 decision. The hearing

² The decision on appeal discusses only the right leg; a permanent impairment to the left leg is not before the Board on this appeal.

representative found that, while appellant currently had an 18 percent right leg impairment, she had previously received an award for 50 percent impairment and was not entitled to an additional award.

LEGAL PRECEDENT

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.³ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.⁴ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁵

It is well established under FECA regulations that benefits payable under section 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.⁶ The Board has held that OWCP must adequately explain how the latter impairment duplicated the compensation the claimant previously received under a separate file number.⁷

ANALYSIS

In the present case, OWCP found that appellant was not entitled to a right leg schedule award resulting from her August 11, 2009 employment injury. It acknowledged that the medical evidence established an 18 percent right leg impairment based on the right knee and ankle. The stated reason for denying a schedule award was that appellant had previously received a schedule award for a 50 percent right leg impairment under a prior 2000 claim, which is not administratively associated with the current claim. Since the 18 percent current impairment is less than 50 percent, OWCP found appellant was not entitled to an additional schedule award.

OWCP findings in this case are not in accord with the above legal precedent. To reduce current entitlement to a schedule award, the prior schedule award must not only be for the same member, but it must also duplicate the prior impairment. The information provided in the current file indicated that the prior award was for a right foot bunion, while the current

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(b).

⁴ A. *George Lampo*, 45 ECAB 441 (1994).

⁵ FECA Bulletin No. 09-03 (issued March 15, 2009).

⁶ 20 C.F.R. § 10.404(d).

⁷ *T.S.*, Docket No. 09-1308 (issued December 22, 2009).

impairment was based on the right knee and ankle. OWCP did not cite to the appropriate legal precedent, did not properly develop the medical evidence on the issue or otherwise explain how the current impairment duplicated the prior impairment.⁸

The case will be remanded to OWCP for proper findings on the schedule award issue presented. To aid adjudication of the issue, OWCP should administratively combine the relevant case files with respect to a right leg permanent impairment.⁹ After such further development as OWCP deems necessary, it should issue an appropriate decision.

CONCLUSION

The Board finds the case is not in posture for decision and is remanded to OWCP to properly adjudicate the schedule award issue presented.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 24, 2013 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: May 5, 2014
Washington, DC

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

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁸ See, e.g., *R.H.*, Docket No. 11-1754 (issued April 24, 2010) (where an OWCP medical adviser found that a current carpal tunnel impairment did not duplicate a prior lateral epicondylitis impairment).

⁹ See *R.B.*, Docket No. 13-792 (issued July 25, 2013) (OWCP was directed to combine case files with respect to whether a prior schedule award duplicated a current impairment).