

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

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**J.H., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Drexel Hill, PA, Employer**

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**Docket No. 15-546  
Issued: May 20, 2015**

*Appearances:*

*Jeffrey P. Zeelander, Esq., for the appellant  
Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge

On January 13, 2015 appellant, through counsel, filed a timely application for review of the December 5, 2014 decision of the Office of Workers' Compensation Programs (OWCP), which denied an increased schedule award.

On the prior appeal,<sup>1</sup> the Board set aside OWCP's November 18, 2013 decision and remanded the case for a *de novo* decision on the extent of appellant's bilateral lower extremity impairment under Table 4-12, page 69 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) (6<sup>th</sup> ed. 2009). The Board found that neither Dr. Robert A. Smith, the Board-certified orthopedic surgeon and second opinion physician, nor OWCP medical adviser explained how they used the criteria of that table to determine appellant's impairment. Although Dr. Smith placed the impairment in class 2, he did not explain how appellant met the criteria. He did not explain how appellant's functional history

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<sup>1</sup> Docket No. 14-333 (issued June 25, 2014). On September 8, 1998 appellant, a 46-year-old letter carrier, sustained an injury in the performance of duty when he lifted his mail satchel. OWCP accepted his claim for lumbosacral strain, displacement of an intervertebral disc, aggravation of lumbar degenerative disc disease, phlebitis, and thrombophlebitis. Appellant received a schedule award for 18 percent impairment of his right lower extremity and for 10 percent impairment of his left lower extremity. On July 17, 2012 OWCP issued a schedule award for an additional 10 percent impairment of the left lower extremity, for a total rating of 20 percent on that side.

met the criteria for mild, nor did he explain how appellant's physical findings met the criteria for mild on the right and moderate on the left.

OWCP referred appellant to Dr. Willie E. Thompson, a Board-certified orthopedic surgeon, but he simply adopted Dr. Smith's earlier opinion, which he described as well-reasoned, clear, and succinct. An OWCP medical adviser agreed with Dr. Thompson's conclusion.

The Board finds that OWCP has not complied with the Board's June 25, 2014 decision. The Board remanded the case for further development because neither Dr. Smith nor the OWCP medical adviser explained how appellant met the stated criteria for a class 2 impairment under Table 4-12, page 69 of the A.M.A., *Guides*, nor did they explain how they chose the relevant grade modifiers. As appellant's representative correctly observes, the further development that OWCP undertook did nothing to resolve those issues. Dr. Thompson adopted Dr. Smith's opinion without elaboration or clarification. The Board will therefore set aside OWCP's December 5, 2014 decision and remand the case for further development that will answer the questions the Board raised in its June 25, 2014 decision. Following such development, OWCP shall issue a *de novo* decision on appellant's bilateral lower extremity impairment under Table 4-12 of the A.M.A., *Guides*.

**IT IS HEREBY ORDERED THAT** the December 5, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action.

Issued: May 20, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board