

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

K.P., Appellant

and

**DEPARTMENT OF THE ARMY,
CORPS OF ENGINEERS, Memphis, TN,
Employer**

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**Docket No. 15-1945
Issued: February 10, 2016**

Appearances:
Appellant, pro se
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 September 28, 2015 appellant timely appealed the September 8, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP), which granted a schedule award for bilateral upper extremity impairment.¹ The Board docketed the appeal as No. 15-1945.

Appellant, a 58-year-old retired motor vehicle operator, has an accepted occupational disease claim for bilateral carpal, cubital, and radial tunnel syndromes, bilateral hand/wrist tendinitis, and bilateral medial epicondylitis. His employment-related bilateral upper extremity conditions arose on or about March 20, 2012.²

The September 8, 2015 schedule award decision, which is the subject of the current appeal, referenced a prior claim (xxxxxxx464) under which appellant had reportedly received a schedule award for 16 percent impairment of the left arm. According to an April 1, 2015 statement of accepted facts (SOAF), the referenced traumatic injury claim was accepted for

¹ Pursuant to the Federal Employees' Compensation Act (FECA), 5 U.S.C. §§ 8101-8193 (2006), and 20 C.F.R. §§ 501.2(c) and 501.3 (2014), the Board has jurisdiction over the merits of this case.

² Appellant retired effective April 1, 2014.

lacerations of the left index and long fingers, which occurred on September 6, 1995, but the latest SOAF did not specifically mention a prior upper extremity schedule award.³

In calculating appellant's current left upper extremity impairment, the district medical adviser (DMA) combined the prior 16 percent award (xxxxxx464) with appellant's latest 4 percent impairment rating for epicondylitis and entrapment/compression neuropathy, and found a total left upper extremity (arm) impairment of 19 percent. OWCP then reduced the 19 percent impairment rating by the prior award (16 percent), and thus, granted an additional 3 percent for appellant's left upper extremity (arm).⁴ The Board does not have access to appellant's file under claim number xxxxxx464.⁵ Moreover, the current claim (xxxxxx618) file does not include the referenced 16 percent left arm award or any of the relevant medical evidence that formed the basis of that particular decision.

The Board finds that the case is not in posture for decision. Decisions on claims are based on the written record, which may include forms, reports, letters, and other evidence of various types such as photographs, videotapes, or drawings.⁶ Evidence may not be incorporated by reference, nor may evidence from another claimant's case file be used.⁷ Evidence contained in another of the claimant's case files may be used, but a copy of that evidence should be placed into the case file being adjudicated.⁸ All evidence that forms the basis of a decision must be in that claimant's case record.⁹ Both the DMA and OWCP relied on evidence and information reportedly contained in one of appellant's other claim files (xxxxxx464). However, OWCP failed to include all the evidence and information it relied upon in the current file. Because of this oversight, the Board is not in a position to make an informed decision regarding appellant's entitlement to a schedule award.

As the record lacks sufficient evidence for the Board to render an informed decision, the case shall be remanded to OWCP for further development. As noted, all evidence that forms the basis of a decision must be included in the case record.¹⁰ After OWCP has developed the record

³ Elsewhere in the record there was reference to a February 8, 2000 schedule award for 16 percent impairment of the left upper extremity, and a March 19, 1996 schedule award for 11 percent impairment of the left hand. Both awards were reportedly issued under claim number xx-xxxx464.

⁴ The September 8, 2015 decision also award six percent impairment of the right upper extremity (arm).

⁵ OWCP did not double/combine the respective case files associated with appellant's upper extremity claims. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000) (cases should be doubled when correct adjudication of the issues depends on frequent cross-reference between files).

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

consistent with the above-noted directive, it shall issue a *de novo* decision regarding appellant's request for reconsideration.

IT IS HEREBY ORDERED THAT the September 8, 2015 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded for further action consistent with this order.

Issued: February 10, 2016
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