

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

I.S., Appellant

and

**U.S. POSTAL SERVICE, PARCEL POST
ANNEX, Cleveland, OH, Employer**

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**Docket No. 15-1128
Issued: March 3, 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 April 22, 2015 the Clerk of the Appellate Boards received a medical report referencing appellant. Appellant later, on May 4, 2015, filed an appeal of a February 11, 2015 decision of the Office of Workers' Compensation Programs (OWCP) OWCP File No. xxxxxx451. The Board assigned Docket No. 15-1128. On May 12, 2015 an appeal was filed from an April 27, 2015 OWCP decision.

On August 19, 1977 appellant filed a traumatic injury claim (Form CA-1) alleging that on August 17, 1977 he injured his back while lifting a heavy trash can. OWCP accepted the claim for minimal spasm left paravertebral muscles, which was subsequently expanded to included left knee dislocation, loosening of a left knee arthroplasty, and right knee medial meniscus tear.¹

¹ This was assigned OWCP File No. xxxxxx451. A FECA nonfatal summary form noted concurrent disability not due to injury under OWCP File No. xxxxxx591 with a May 18, 1978 injury date and OWCP File No. xxxxxx105 with an injury date of November 29, 1978. OWCP accepted a lumbar strain for the May 18, 1978 injury and a recurrent right inguinal hernia with an April 1, 1979 repair due to a November 29, 1978 injury. A December 3, 2013 memorandum to file assigned OWCP File No. xxxxxx451 as the master file and there were subsidiary files. The subsidiary files included OWCP File Nos. xxxxxx968, xxxxxx590, xxxxxx105, and xxxxxx591.

On October 16, 2012 appellant filed a claim for a schedule award. By decision dated December 21, 2012, OWCP denied appellant's claim for a schedule award. Appellant subsequently submitted a May 1, 2013 report from Dr. Audley M. Mackel, III, a treating Board-certified orthopedic surgeon. Dr. Mackel determined that appellant had a 50 percent left lower extremity permanent impairment due to total knee replacement using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

An OWCP medical adviser reviewed Dr. Mackel's impairment rating and determined that appellant was entitled to an impairment rating of 23 percent for the left lower extremity.² By decision dated March 13, 2014, OWCP denied appellant's request for an additional schedule award. It found that, as he had previously received a schedule award on May 16, 1994 for 37 percent for each lower extremity under OWCP File No. xxxxx593 and the current medical evidence established a 23 percent left lower extremity impairment, he was not entitled to an additional schedule award.

In response to the denial of his request for an additional schedule award appellant submitted an October 31, 2014 report by Dr. Susan E. Stephens, an examining Board-certified orthopedic surgeon, who determined that appellant had a 30 percent whole person impairment using the sixth edition of the A.M.A., *Guides*. An OWCP medical adviser reviewed Dr. Stephens' impairment rating and determined that appellant was entitled to an impairment rating of 23 percent for the left lower extremity. By decision dated February 11, 2015, OWCP denied appellant's request for an additional schedule award. In support of the denial, it related that on September 28, 1976 appellant had previously been granted a schedule award for a 10 percent left lower extremity impairment under OWCP File No. xxxxxx590. OWCP stated that appellant had also been granted a schedule award for 37 percent right lower extremity impairment and 37 percent left lower extremity impairment under OWCP File No. xxxxx593. As he had previously received schedule awards totaling 47 percent left lower extremity impairment and the current medical evidence established 23 percent left lower extremity impairment, he was not entitled to an additional schedule award.

The Board has duly considered the matter and concludes that the case is not in posture for a decision. OWCP procedures provide that cases should be doubled when a new injury is reported for an employee who had previously filed an injury claim for a similar condition and it further states that the cases should be doubled as soon as the need to do so becomes apparent.³ The record contains evidence that under OWCP File No. xxxxxx593 it had accepted a claim for lumbosacral strain, L4 herniated disc, and postlaminectomy, secondary to 1992 back surgery. Under this claim appellant had been awarded 37 percent left lower extremity impairment and a 37 percent right lower extremity impairment.

² OWCP's medical adviser mistakenly referred to the right lower extremity instead of the left lower extremity. He referenced this error in his February 5, 2015 report.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Doubling Case Files*, Chapter 2.400.8(c)(1) (February 2000); see *T.M.*, Docket Nos. 09-1090 & 09-2226 (issued March 8, 2010).

As OWCP determined that appellant was not entitled to an additional schedule award since he had previously received a schedule award for 37 percent left lower extremity impairment under OWCP File No. xxxxxx593, the Board concludes that OWCP should have doubled the case files in accordance with its procedures. As the record before the Board does not contain evidence from the prior claim referenced by OWCP, the Board is unable to properly address and adjudicate the schedule award issue. On remand OWCP should combine the present case record, OWCP File No. xxxxxx451, with OWCP File No. xxxxxx593. After combining these case records, it should consider the evidence contained in the combined case record and, following any necessary further development, issue a *de novo* decision on the issue of whether appellant is entitled to an additional schedule award. Accordingly, the February 11, 2015 decision denying appellant's claim for an additional schedule award should be set aside.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 11, 2015 is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: March 3, 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