

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

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| C.P., Appellant |) | |
| |) | |
| and |) | Docket No. 18-0786 |
| |) | Issued: March 7, 2019 |
| DEPARTMENT OF THE NAVY, |) | |
| COMMANDER, NAVY INSTALLATIONS |) | |
| COMMAND, San Diego, CA, Employer |) | |
| |) | |

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
ALEC J. KOROMILAS, Alternate Judge

On March 1, 2018 appellant filed a timely appeal from a February 1, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 18-0786.

On June 3, 2016 appellant, then a 51-year-old firefighter, filed a traumatic injury claim (Form CA-1) for a left shoulder injury that allegedly occurred on May 21, 2016 while in the performance of duty. He claimed to have been injured playing volleyball, which was authorized for physical training. OWCP accepted appellant's claim for sprain of the left rotator cuff capsule. It also authorized an August 24, 2016 left shoulder arthroscopic procedure.¹

On April 5, 2017 appellant filed a claim for a schedule award (Form CA-7).²

¹ OWCP paid appellant disability compensation on the daily rolls from August 7, 2016 to January 21, 2017. He returned to his regular duties for the employing establishment on January 22, 2017.

² In development of the schedule award claim OWCP noted that appellant had a prior work-related left shoulder injury (OWCP File No. xxxxxx527) for which he had previously received a schedule award for 12 percent of the left upper extremity.

By decision dated February 1, 2018, OWCP determined that appellant was not entitled to additional schedule award compensation for permanent impairment of his left upper extremity. It noted: “The evidence of record was not sufficient to establish your claim because [under OWCP File No. xxxxxx527] you were paid a 12 percent impairment of the left upper extremity.... The DMA provided a report that stated you do have impairment; however, this impairment does not exceed the 12 [percent] previously awarded.”

The Board finds that the case is not in posture for decision. Pursuant to 20 C.F.R. § 501.2(c)(1), the Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final 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.³ Evidence may not be incorporated by reference, nor may evidence from another claimant’s case file be used.⁴ 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.⁵ All evidence that forms the basis of a decision must be in that claimant’s case record.⁶

In adjudicating appellant’s current claim for a left upper extremity schedule award (OWCP File No. xxxxxx757), OWCP specifically referenced evidence obtained from his earlier claim (OWCP File No. xxxxxx527), including a prior award for permanent impairment of the left upper extremity.⁷ However, it did not combine the two case records related to appellant’s left upper extremity or incorporate the referenced evidence into the current case record.⁸ As noted, all evidence that forms the basis of a decision must be included in the case record. Because OWCP neglected to include evidence that helped to form the basis for its schedule award determination in the current case record, *i.e.*, the referenced information from OWCP File No. xxxxxx527, the Board is not in a position to make an informed decision regarding appellant’s entitlement to FECA benefits.⁹ Therefore, the case shall be remanded to OWCP to administratively combine File Nos. xxxxxx757 and xxxxxx527. After OWCP has developed the record consistent with the above-

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.5a (June 2011).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ OWCP did not identify the date of the earlier schedule award, but it noted that the schedule award compensated appellant for 12 percent permanent impairment of his left upper extremity, nor did OWCP indicate the portion or portions of the left upper extremity which were evaluated when calculating the earlier schedule award. The present case record contains only three documents from appellant’s earlier left upper extremity claim (OWCP File No. xxxxxx527) and it lacks such documents as the medical report(s) OWCP previously considered and relied upon.

⁸ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000) (cases should be doubled/combined when correct adjudication of the issues depends on frequent cross-reference between files).

⁹ *See L.H.*, Docket No. 17-1960 (issued August 16, 2018); *K.P.*, Docket No. 15-1945 (issued February 10, 2016); *M.C.*, Docket No. 15-1706 (issued October 22, 2015).

noted directive, it shall issue a *de novo* decision regarding the extent of permanent impairment of appellant's left upper extremity under OWCP File No. xxxxxx757.

ORDER

IT IS HEREBY ORDERED THAT the February 1, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further action consistent with this order.

Issued: March 7, 2019
Washington, DC

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

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

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