

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

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**O.R., Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSING &  
DISTRIBUTION CENTER, Kansas City, MO,  
Employer**

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**Docket No. 19-0973  
Issued: November 26, 2019**

*Appearances:*  
*Alan J. Shapiro, Esq.,* for the appellant<sup>1</sup>  
*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  
JANICE B. ASKIN, Judge

On April 5, 2019 appellant, through counsel, filed a timely appeal from a February 15, 2019 decision of the Office of Workers' Compensation Programs. The Clerk of the Appellate Boards assigned Docket No. 19-0973.<sup>2</sup>

On October 16, 2014 appellant, then a 45-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that she injured her left knee at work that day while moving a full skid of mail that weighed more than 70 pounds. OWCP assigned the claim File No. xxxxxx183. After initially denying appellant's claim, it accepted that she sustained left knee medial and lateral

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> The Board notes that following the February 15, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "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. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

meniscus tears, and left knee anterior cruciate ligament tear.<sup>3</sup> On March 16, 2016 appellant underwent left knee arthroscopic surgery, which OWCP authorized. OWCP paid appellant wage-loss compensation for temporary total disability on the supplemental rolls through July 17, 2016. Appellant was released to resume her full-time, regular duties, effective July 18, 2016.

On March 30, 2017 appellant filed a claim for a schedule award (Form CA-7). In a September 13, 2017 report, Dr. M. Stephen Wilson, a Board-certified physiatrist, found 10 percent left lower extremity permanent impairment pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>4</sup> Dr. Wilson rated appellant based on a diagnosis of partial medial and lateral meniscectomy.<sup>5</sup>

In a January 2, 2018 report, Dr. Todd Fellars, acting as district medical adviser (DMA), agreed with Dr. Wilson's impairment rating of 10 percent for the left lower extremity, but noted it was the total impairment rating not added to any previous impairment already paid.

By decision dated July 17, 2018, OWCP denied appellant's schedule award claim. It indicated that appellant was previously paid a schedule award for 10 percent impairment of the left lower extremity under a prior claim in File No. xxxxxx597. OWCP further explained that neither Dr. Wilson nor the DMA had found that there had been any increase in the 10 percent permanent impairment previously awarded.

Counsel subsequently requested a hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated February 15, 2019, the hearing representative referenced three prior claims involving appellant's left knee and noted that, in one of those claims, OWCP File No. xxxxxx597, appellant previously received a schedule award for 10 percent permanent impairment of the left lower extremity. He further noted that the current medical evidence established 10 percent permanent impairment of the left lower extremity and, therefore, failed to demonstrate an increased permanent impairment for schedule award purposes. Consequently, the hearing representative affirmed OWCP's July 17, 2018 decision. Additionally, he advised that OWCP should combine all of appellant's left knee claims as they were for the same part of the body and required cross referencing.

The Board finds that this 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.<sup>6</sup> Evidence may not be incorporated by reference, nor

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<sup>3</sup> After OWCP initially denied appellant's left knee traumatic injury claim, she filed an occupational disease claim (Form CA-2) for a knee injury that allegedly occurred on October 16, 2014. It assigned the claim File No. xxxxxx941, and later combined appellant's two October 16, 2014 left knee injury claims, with File No. xxxxxx183 designated the master file.

<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>5</sup> Table 16-3, Knee Regional Grid, A.M.A., *Guides* 509 (6<sup>th</sup> ed. 2009).

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

may evidence from another claimant's case file be used.<sup>7</sup> 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.<sup>8</sup> All evidence that forms the basis of a decision must be in that claimant's case record.<sup>9</sup>

In adjudicating appellant's claim for a schedule award under OWCP File No. xxxxxx183, OWCP's hearing representative specifically referenced medical evidence obtained from her other claim, OWCP File No. xxxxxx597. However, OWCP has not combined the case records for her left lower extremity claims or otherwise incorporated the referenced evidence into the current case record.<sup>10</sup> As OWCP neglected to include the referenced information from OWCP File No. xxxxxx597 in the current case record, the Board is not in a position to make an informed decision regarding appellant's entitlement to FECA benefits.<sup>11</sup> Therefore, the case shall be remanded to OWCP to combine appellant's multiple left knee injury claims in accordance with the hearing representative's February 15, 2019 directive. After OWCP has developed the record consistent with this order, it shall issue a *de novo* decision regarding appellant's entitlement to a schedule award with respect to her October 16, 2014 traumatic injury claim. Accordingly,

**IT IS HEREBY ORDERED THAT** the February 15, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this order.

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See *supra* note 6 at *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

<sup>11</sup> See *L.H.*, Docket No. 17-1960 (issued August 16, 2018); *K.P.*, Docket No. 15-1945 (issued February 10, 2016).

Issued: November 26, 2019  
Washington, DC

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

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board