

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

K.K., Appellant)	
)	
and)	Docket No. 19-0652
)	Issued: September 19, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Tampa, FL, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

**ORDER DENYING MOTION TO DISMISS
AND ORDER REMANDING CASE**

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On February 1, 2019 appellant filed an appeal from a purported October 2, 2018 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 19-0652.

Appellant, then a 61-year old mail carrier, filed a traumatic injury claim (Form CA-1) on January 10, 2014 alleging she injured her right shoulder, neck, and thumb while in the performance of duty. On June 19, 2014 OWCP initially accepted the conditions of aggravation of right partial rotator cuff tear. On June 23, 2016 she was issued a schedule award for three percent of the right upper extremity.

On July 26, 2018 appellant filed a claim for an increased schedule award (Form CA-7) and submitted an updated impairment rating report from her attending physician, Mark A. Seldes, a Board-certified family practitioner, following a June 7, 2018 examination. By decision dated July 27, 2018 OWCP expanded the accepted conditions in her claim to include incomplete rotator cuff tear or rupture of right shoulder, not specified as traumatic and sprain of shoulder and upper arm, rotator cuff, right. On that same date OWCP updated the statement of accepted facts and referred the June 7, 2018 report of Dr. Seldes to a district medical adviser (DMA) for review. By

letter dated July 30, 2018 the DMA responded and concluded that appellant's accepted conditions had not resulted in permanent impairment greater than the three percent previously awarded.

In an October 2, 2018 letter, OWCP informed appellant that following its review of the DMA's July 30, 2018 report that "since you were previously awarded 3% for RUE PPI no additional rating has been provided."

On March 11, 2019 the Director of OWCP filed a motion to dismiss appellant's February 1, 2019 appeal to the Board. In her motion the Director asserts that the October 2, 2018 letter is not a final decision in a case arising under FECA and that the appeal should therefore be dismissed.

The Board's *Rules of Procedure* provide that the Board has jurisdiction to consider and decide appeals from the final decision of the Office in any case arising under FECA. In considering whether a document constitutes a final decision, it is not the form, but the content and the intention of the Office that is determinative.¹

The October 2, 2018 letter notes the review of the medical record by the DMA and appellant's request for an increased schedule award beyond the three percent right upper extremity permanent impairment previously awarded.² OWCP attached the DMA report in support of its decision to deny an increased schedule award, but did not make findings regarding the rating of Dr. Seldes.

A claimant may request an increased schedule award at any time and is entitled to a final decision on the claim.³ The October 2, 2018 letter made an adverse finding with respect to the increased schedule award claim and there is no indication that the finding was interlocutory or otherwise pending further development. Accordingly, the Board finds that the October 2, 2018 letter constitutes a final decision on the merits of appellant's claim for an additional schedule award and is therefore an appealable decision pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(a).

Section 8124(a) of the Federal Employees' Compensation Act⁴ (FECA) and section 10.126 of the implementing regulations⁵ require that final decisions of OWCP contain findings of fact and a statement of reasons. A decision denying a claim should contain a correct description of the basis for the denial in order that the parties of interest have a clear understanding of the precise defect of the claim and the kind of evidence which would overcome it.⁶ The Board finds that

¹ See *Henry F. Dyer*, Docket No. 05-452 (issued May 13, 2005) (the Board held that a July 22, 2004 letter with no appeal rights attached constituted a final decision. The letter noted that the medical evidence established 32 percent binaural hearing loss, but that appellant had previously received schedule awards for 53 percent binaural hearing loss and "there is not an increased hearing impairment documented at this time."); *Ralph Edmond Zollars*, 5 ECAB 617, 618 (1953) and the cases cited therein.

² See *C.C.*, Docket No. 17-1953 (issued February 8, 2019).

³ See *Dyer supra* note 2; *Paul R. Reedy*, 45 ECAB 488 (1994).

⁴ 5 U.S.C. § 8124.

⁵ 20 C.F.R. § 10.126.

⁶ *L.R.*, Docket No. 15-0235 (issued December 21, 2015); *Patrick Michael Duffy*, 43 ECAB 280 (1991).

OWCP's October 2, 2018 decision was incomplete as it did not make findings regarding the medical evidence appellant submitted from Dr. Seldes, nor did it provide a statement of reasons as to why it determined that the opinion of the DMA was sufficient to constitute the weight of the evidence on the issue of an increased schedule award. Appellant was therefore not apprised of the deficiencies OWCP had found in Dr. Seldes' impairment rating opinion. Because the October 2, 2018 decision does not explain the basis for the denial of the increased schedule award claim or the findings of fact reached therein, the Board finds that OWCP has not fulfilled its responsibility under section 8124 of FECA and section 10.126 of its implementing regulations in regards to appellant's formal request for expansion of her claim to include additional diagnosed conditions.

Accordingly, the case must be remanded to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding appellant's request for an increased schedule award. Following further development as OWCP deems necessary, it shall issue a *de novo* decision.

IT IS HEREBY ORDERED THAT the March 11, 2019 motion to dismiss is denied and the October 2, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: September 19, 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