

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

V.B., Appellant)
and)
DEPARTMENT OF VETERANS AFFAIRS,) Docket No. 19-1942
BAY PINES VETERANS MEDICAL CENTER,) Issued: April 30, 2020
St. Petersburg, FL, Employer)

)

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On September 19, 2019 appellant filed a timely appeal from a July 31, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-1942.¹

On July 3, 2018 appellant, then a 55-year-old medical support assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 14, 2018 he injured his left knee when he turned to stand up from his desk and his chair rolled out from under him, causing him to lose his balance and slip while in the performance of duty. On August 15, 2018 OWCP accepted the claim, assigned File No. xxxxxx661, for aggravation of derangement of other medial meniscus due to a

¹ The Board notes that, following the July 31, 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." 20C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

prior tear or injury of the left knee.² On November 28, 2018 appellant underwent left knee arthroscopic surgery.

On February 8, 2019 appellant filed a claim for a schedule award (Form CA-7). By decision dated July 31, 2019, OWCP denied appellant's schedule award claim, finding that medical evidence of record failed to support an increase in the permanent impairment beyond the previously awarded six percent permanent impairment of the left lower extremity under OWCP File No. xxxxxx309.

While the record currently before the Board does contain appellant's May 24, 2011 schedule award for six percent permanent impairment of the left lower extremity and a May 5, 2011 report by a district medical adviser (DMA) regarding appellant's permanent impairment, it does not contain all of the relevant impairment rating medical reports under OWCP File No. xxxxxx309.³ The DMA's May 5, 2011 report did not provide sufficient detail explaining the basis of the permanent impairment rating. The Board has previously held that simply comparing the prior percentage of permanent impairment awarded to the current impairment for the same member is not always sufficient to deny an increased schedule award claim.⁴ The issue is not whether the current permanent impairment rating is greater than the prior impairment ratings, but whether it duplicates in whole or in part the prior impairment rating.⁵

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁶ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁷ Because they both involve schedule awards for accepted injuries to appellant's left lower extremity, for a full and fair adjudication, the claims in OWCP File Nos. xxxxxx661 and xxxxxx309 must be administratively combined.⁸

Accordingly, the Board will remand the case to OWCP to administratively combine the case records for File Nos. xxxxxx661 and xxxxxx309. Following this and other such further

² OWCP previously accepted that appellant sustained a left lower extremity impairment of six percent due to his accepted conditions of lateral collateral ligament knee sprain and left knee medial meniscus tear in OWCP File No. xxxxxx309.

³ The Board notes that the May 3, 2011 DMA report references an April 15, 2011 medical report from appellant's attending physician received by OWCP in response to their development of his schedule award claim.

⁴ *R.K.*, Docket No. 19-0247 (issued August 1, 2019).

⁵ *Id.*

⁶ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁷ *Id.*; *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

⁸ See *B.O.*, Docket No. 18-1100 (issued February 24, 2020).

development, as deemed necessary, OWCP shall issue a *de novo* decision on appellant's schedule award claim.

IT IS HEREBY ORDERED THAT the July 31, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 30, 2020
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board