

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

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R.W., Appellant)	
)	
and)	
)	Docket No. 19-1109
)	Issued: January 2, 2020
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, San Diego, CA, Employer)	
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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
JANICE B. ASKIN, Judge

On April 17, 2019 appellant filed a timely appeal from a February 15, 2019 decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as Docket No. 19-1109.¹

On April 17, 1983 appellant, then a 28-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained a right shoulder injury when he slipped on water while transferring a patient. OWCP assigned this claim File No. xxxxxx622. It accepted the claim for right shoulder strain, tendinitis, and right shoulder impingement syndrome. Appellant underwent authorized right shoulder acromioplasty surgery on March 26, 1984.

On March 12, 1984 appellant filed a traumatic injury claim (Form CA-1) alleging that on that day he sustained a right shoulder injury while lifting a patient off the floor. This claim was

¹ The Board notes that appellant submitted additional evidence on appeal. 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.*

assigned File No. xxxxxx564. OWCP accepted this claim for right shoulder strain and impingement syndrome.

In a letter dated January 25, 2017, OWCP advised appellant that his claim in File No. xxxxxx564 had been accepted for sprain of shoulder and upper arm, acromioclavicular; and sprain of the right shoulder and upper arm superior glenoid labrum lesion. By decision dated February 5, 1987, it granted him a schedule award for 22 percent permanent impairment of the right upper extremity. OWCP authorized right shoulder arthroscopic surgery and right biceps tendon repair surgery, which occurred on May 31, 2017. It administratively combined the two case files with OWCP File No. xxxxxx564 serving as the master file.

On August 7, 2018 appellant filed a claim for an additional schedule award (Form CA7).

By decision dated October 4, 2018, OWCP denied appellant's claim for an additional schedule award. On October 30, 2018 appellant requested reconsideration.

On November 8, 2018 OWCP prepared a statement of accepted facts (SOAF) which noted the March 12, 1984 employment injury, the accepted conditions of right upper arm and shoulder acromioclavicular strain and right arm and shoulder superior glenoid labrum lesion strain, and that on February 5, 1987 appellant had been granted a schedule award for 22 percent right upper extremity permanent impairment.

On November 21, 2018 OWCP referred appellant for a second opinion evaluation with Dr. Blake Thompson, Board-certified in physiatry and pain medicine, to determine whether appellant was entitled to an additional schedule award for his right upper extremity permanent impairment. In a report dated January 2, 2019, Dr. Thomson, utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)² and determined that appellant had 13 percent right upper extremity permanent impairment using the range of motion (ROM) methodology.

On January 17, 2019 OWCP referred the SOAF and medical record for review by an OWCP district medical adviser. In a January 30, 2019 report, the DMA, based upon a review of the medical record and SOAF utilized the A.M.A., *Guides* to calculate that appellant had 12 percent right upper extremity permanent impairment. The DMA noted that both the ROM and diagnosis-based impairment (DBI) methodologies resulted in the same impairment rating.

The Board has duly considered the matter and concludes that this case is not in posture for a decision.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.³ OWCP's procedures dictate that when an DMA, second opinion specialist, or referee physician renders a medical opinion based on a SOAF which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the

² A.M.A., *Guides* (6th ed. 2009).

³ *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

probative value of the opinion is seriously diminished or negated altogether.⁴ OWCP did not provide either Dr. Thompson or the DMA with an accurate SOAF as it did not list all of appellant's consolidated claims which were accepted for a right shoulder injury, did not note the surgeries performed, or provide an accurate list of the accepted conditions.⁵ Thus, the Board finds that reports from Dr. Thompson and the DMA are not based on an accurate factual framework and cannot represent the weight of the medical evidence sufficient to deny appellant's claim for an additional schedule award.⁶

Once OWCP undertakes to develop the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.⁷ Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP should prepare a complete and accurate SOAF and request that Dr. Thompson and the DMA submit clarifying reports regarding appellant's right upper extremity permanent impairment. Following this and any further development deemed necessary, it shall issue a *de novo* decision.

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 of the Board.

⁴ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

⁵ The Board notes that due to the age of the record, the current record before the Board does not contain acceptance letters identifying the conditions accepted under either OWCP File No. xxxxxx564 or OWCP File No. xxxxxx622.

⁶ *G.C.*, Docket No 18-0842 (issued December 20, 2018).

⁷ *D.S.*, Docket No. 19-0292 (issued June 21, 2019); *G.C.*, *id.*

Issued: January 2, 2020
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