

to include the additional conditions of bilateral tarsal tunnel syndrome and bilateral lesion of the plantar nerve as work related.²

On April 30, 2018 appellant filed a claim for a schedule award (Form CA-7) under File No. xxxxxx040. The record indicates that she submitted medical reports dated January 15, 2016 through September 8, 2017 regarding her right knee condition.

In a development letter dated May 7, 2018, OWCP notified appellant that she had previously received a schedule award for 23 percent permanent impairment of the right lower extremity under OWCP File No. xxxxxx102,³ in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴ In order to receive an additional award for her accepted right knee conditions, it advised that appellant should submit a new permanent impairment rating which established a greater than 23 percent permanent impairment of the right lower extremity as a result of a new period of exposure or progression of the work-related condition. Appellant was afforded 30 days to submit the necessary evidence.

In a case doubling memorandum transfer sheet, the OWCP claims examiner indicated that File Nos. xxxxxx040 and xxxxxx102 should be doubled as there was a pending request for an additional schedule award. The claims examiner noted that appellant had previously received multiple schedule awards under multiple claims. Under File No. xxxxxx030, which had since been retired, the claims examiner noted a schedule award had been paid for four percent permanent impairment of the right lower extremity. With regard to the bilateral foot conditions accepted under File No. xxxxxx102, the claims examiner reported that multiple right lower extremity

² The record further reflects a prior claim involving the right lower extremity under OWCP File No. xxxxxx030 which has since been retired. No further information pertaining to this case is available. The record also reflects that appellant had previously filed a claim for a traumatic injury on April 12, 1985, while employed as a commodity grader with the Department of Agriculture, which was accepted by OWCP for lumbosacral strain under OWCP File No. xxxxxx224.

³ The record reflects that, under OWCP File No. xxxxxx102, by decision dated May 30, 2013, OWCP issued a schedule award for a reflecting a total of 16 percent permanent impairment of the left lower extremity and 23 percent permanent impairment of the right lower extremity. Appellant requested reconsideration of the schedule award decision and was referred to a second opinion examination conducted by Dr. Allan Brecher, a Board-certified orthopedic surgeon. By decision dated April 7, 2014, OWCP determined that the evidence of record was insufficient to modify the prior schedule award decision. On August 4, 2014 appellant appealed to the Board. By decision dated July 2, 2015, the Board determined that Dr. Brecher did not base his report on an accurate factual history and remanded the case to OWCP for further medical development. Docket No. 14-1689 (issued July 2, 2015).

On remand appellant was referred to Dr. James Elmes, a Board-certified orthopedic surgeon, for a second opinion evaluation. On April 29, 2016 Dr. Michael M. Katz, a Board-certified orthopedic surgeon and OWCP DMA, reviewed Dr. Elmes' calculations and concluded that he correctly determined impairment. However, he noted that appellant's right knee conditions were accepted under a different claim and therefore, Dr. Elmes' determination of eight percent permanent impairment for the right lower extremity pertaining to the right knee should not be considered. By decision dated May 13, 2016, OWCP found that appellant had not established greater than 16 percent permanent impairment of her left lower extremity and 23 percent permanent impairment of her right lower extremity for which she previously received schedule awards. On May 15, 2017 the Board affirmed OWCP's May 13, 2016 decision. Docket No. 16-1826 (issued May 15, 2017).

⁴ A.M.A., *Guides* (6th ed. 2009).

schedule awards had been granted totaling 23 percent permanent impairment of the right lower extremity. The claims examiner noted that appellant now claimed that she was entitled to eight percent permanent impairment of the right knee based upon her injury in OWCP File No. xxxxxx040. The claims examiner related that the claims would be doubled and the case would be referred back to the DMA.

On June 12, 2018, OWCP combined this claim, File No. xxxxxx040, with File Nos. xxxxxx030 and xxxxxx102, and the last file was designated the master file.

On June 12, 2018, OWCP referred a May 20, 2014 statement of accepted facts (SOAF) and the case file to Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to determine if appellant was entitled to additional impairment of the right knee. It indicated that the case files had been doubled.

In a June 13, 2018 report, Dr. Katz noted that he previously had not recommended payment of a schedule award for right knee impairment in his April 29, 2016 report regarding OWCP File No. xxxxxx102 as he was not then aware that the case files were combined. He reported that based on his current review, if prior awards paid for the right lower extremity included eight percent on the basis of conditions of the right knee, then there would be no additional award. Dr. Katz reported that a schedule award for 10 percent permanent impairment of the right lower extremity permanent impairment for a right knee condition had been recommended in a medical report dated October 4, 2002, under File No. xxxxxx040, and so it would be reasonable to assume that at some point appellant was paid at least eight percent permanent impairment for her right knee condition. As such, he determined that she would be entitled to no further award for impairment of the right knee.

On August 20, 2018, OWCP requested an addendum report from the DMA, as to whether appellant had additional permanent impairment of the right lower extremity. It noted that he should review the SOAF dated May 20, 2014. OWCP noted again that appellant had received schedule award compensation for 23 percent permanent impairment of the right lower extremity. It instructed the DMA that in providing a rating of appellant's current permanent impairment of the right knee, he should stipulate whether the rating was included in the prior percentage awarded or if there should be consideration of an additional award.

The Board notes that the May 20, 2014 SOAF provided to the DMA did not include any information regarding appellant's right lower extremity permanent impairment claims or schedule awards paid under any of the combined OWCP files.

In an August 31, 2018 addendum report, the DMA again related that while medical evidence had been received in OWCP File No. xxxxxx102 regarding appellant's right knee permanent impairment and an eight percent permanent impairment had been proposed, he had not recommended acceptance of the proposed impairment rating in his April 29, 2016 report as the claims had not been combined. He concluded however that based on OWCP's August 20, 2018 memorandum, it appeared that all prior recommended awards had been paid and thus, the prior awards paid with respect to the conditions of the right knee exceeded the present impairment of eight percent permanent impairment of the right lower extremity.

By decision dated September 6, 2018, OWCP denied appellant's claim for a schedule award finding that she had no greater impairment of the right lower extremity than the 23 percent previously awarded.

The Board, having reviewed the case record submitted by OWCP, finds that this case is not in posture for decision.

On April 30, 2018 appellant filed a claim for a schedule award pertaining to her accepted right knee conditions under OWCP File No. xxxxxx040.

While OWCP recognized that the record was unclear as to whether appellant's prior schedule awards, under multiple OWCP file numbers, incorporated a rating for permanent impairment of appellant's right knee, the August 20, 2018 clarification request to the DMA failed to resolve the issue as he had not been presented with a proper SOAF.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.⁵ OWCP's procedures dictate that when a 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 probative value of the opinion is seriously diminished or negated altogether.⁶ OWCP did not provide the DMA with an accurate SOAF as it did not list the previous schedule awards appellant had received for her right lower extremity and did not clarify whether the awards were paid for permanent impairment of appellant's right knee or for permanent impairment of other regions of appellant's right lower extremity. Thus, the Board finds that reports from the DMA were 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.⁷

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.⁸ 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 he DMA submit clarifying reports regarding appellant's right lower extremity permanent impairment. Following this and any further development deemed necessary, it shall issue a *de novo* decision.

⁵ *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁶ *R.W.*, Docket No. 19-1109 (issued January 2, 2020); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990).

⁷ *G.C.*, Docket No 18-0842 (issued December 20, 2018).

⁸ *D.S.*, Docket No. 19-0292 (issued June 21, 2019); *G.C.*, *id.*

IT IS HEREBY ORDERED THAT the September 6, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this order.

Issued: March 20, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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