

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

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<b>N.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 19-0622</b>
	)	<b>Issued: March 26, 2020</b>
<b>DEPARTMENT OF JUSTICE, FEDERAL</b>	)	
<b>BUREAU OF INVESTIGATION,</b>	)	
<b>Washington, DC, Employer</b>	)	
	)	

*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  
 JANICE B. ASKIN, Judge  
 PATRICIA H. FITZGERALD, Alternate Judge

On January 28, 2019 appellant filed a timely appeal from August 23 and December 12, 2018 decisions of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0622.

On August 7, 2007 appellant, then a 38-year-old alternative dispute resolution manager, filed a traumatic injury claim (Form CA-1) alleging that when she was attending a work-related conference in San Francisco, CA on August 2, 2007, she was struck by a taxicab in a crosswalk while in the performance of duty. OWCP accepted her claim for bilateral lower leg/knee contusion and sprain and patellofemoral and medial compartment mild arthritis, left worse than right.<sup>1</sup>

On July 30, 2014 appellant filed a claim for a schedule award (Form CA-7). In a December 18, 2014 report Dr. Steven H. Bernstein, a Board-certified orthopedic surgeon, utilized the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) and found 7 percent permanent impairment of the whole body or 16 percent of the left lower extremity. In an April 14, 2015 report, OWCP's district medical adviser

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<sup>1</sup> On April 18, 2008 and December 10, 2010 appellant underwent OWCP-approved left knee arthroscopic procedures to address her degenerative arthritis.

(DMA) reviewed the relevant evidence, including Dr. Bernstein's report, and using his examination findings applied the sixth edition of the A.M.A., *Guides*<sup>2</sup> and found 8 percent left lower extremity permanent impairment based on a diagnosis of left knee primary joint arthritis with full-thickness articular cartilage defect under Table 16-3, Knee Regional Grid, of the A.M.A., *Guides*.

By decision dated April 23, 2015, OWCP granted appellant a schedule award for eight percent permanent impairment of the left lower extremity. The award covered a 23.04-week period from December 18, 2014 through May 28, 2015.

On May 17, 2018 appellant filed a claim for an increased schedule award (Form CA-7).

In a May 18, 2018 report, Dr. Bernstein noted that he had evaluated appellant's left knee condition and he provided range of motion measurements, observing near full range of motion on the right and 95 degrees of flexion on the left. He explained that there was a progressive decrease in flexion from her prior examination.

By decision dated August 23, 2018, OWCP denied appellant's claim for an increased schedule award finding that no medical evidence was submitted to "support a permanent impairment to a scheduled member or function of the body."

On September 14, 2018 appellant requested reconsideration. By decision dated December 12, 2018, OWCP denied her request for reconsideration.

In denying appellant's May 2018 schedule award claim, OWCP failed to consider all the relevant medical evidence. In its August 23, 2018 decision, it found that no additional medical evidence had been submitted to support a permanent impairment to a scheduled member or function of the body. However, Dr. Bernstein's May 18, 2018 report, finding progressive decrease in flexion of the left knee, was not addressed.

Because Board decisions are final with regard to the subject matter appealed,<sup>3</sup> it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.<sup>4</sup> As OWCP did not review Dr. Bernstein's May 18, 2018 report, the Board finds that this case is not in posture for decision.<sup>5</sup> On remand OWCP shall review all relevant evidence of record and, following any further development of the medical evidence deemed necessary, it shall issue a *de novo* decision on appellant's schedule award claim.<sup>6</sup>

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<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>3</sup> 20 C.F.R. § 501.6(d).

<sup>4</sup> *See B.C.*, Docket No. 15-1222 (issued October 20, 2015); *William A. Couch*, 41 ECAB 548, 553 (1990).

<sup>5</sup> *See H.H.*, Docket No. 14-1985 (issued June 26, 2015).

<sup>6</sup> In light of the Board's disposition of the schedule award issue, the nonmerit issue of whether OWCP properly denied appellant's request for reconsideration of the merits of the claim is rendered moot. *See W.G.*, Docket No. 18-0451 (issued February 21, 2019).

**IT IS HEREBY ORDERED THAT** the August 23, 2018 and December 12, 2018 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this order of the Board.

Issued: March 26, 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