

Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹ It afforded him 30 days to submit additional evidence.

In a February 27, 2019 functional capacity evaluation Elliott Skorupa, a physical therapist, evaluated the residual functional capacity of appellant's right ankle in relation to his November 13, 2015 right ankle sprain. He referenced Table 16-22 (Ankle Motion Impairments) at page 549 of the A.M.A., *Guides* to find seven percent impairment for maximum dorsiflexion measured at 10 degrees and zero percent impairment for maximum plantar flexion measured at 24 degrees, which combined to seven percent impairment of the right lower extremity. In a March 11, 2019 medical report, Dr. Cheatham reviewed Mr. Skorupa's right ankle functional capacity evaluation and countersigned the results, opining that his findings were valid.

On May 22, 2019 OWCP referred the medical record and statement of accepted facts (SOAF) to Dr. Norman Marcus, a Board-certified orthopedic surgeon, for a second opinion examination and an opinion on permanent impairment in accordance with the A.M.A., *Guides*.

In his June 14, 2019 medical report, Dr. Marcus noted his review of the medical evidence of record and the SOAF, and his own examination findings. Dr. Marcus reasoned that the right ankle injury had not reached maximum medical improvement (MMI) and was therefore not suitable for an impairment rating.

In an August 14, 2019 addendum, Dr. Marcus noted his review of imaging scans. He provided an impairment rating of zero percent as status post ankle sprain.

By decision dated September 18, 2019, OWCP denied appellant's request for a schedule award.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for decision.²

In the case of *William A. Couch*,³ the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its September 18, 2019 decision, OWCP denied appellant's request for a schedule award. While the September 18, 2019 decision discussed Dr. Marcus' opinion of zero percent permanent impairment, it failed to acknowledge Mr. Skorupa's⁴ medical examination findings and Dr. Cheatham's February 27, 2019 medical report which found seven percent impairment of the

¹ A.M.A., *Guides* (6th ed. 2009).

² See *K.F.*, Docket No. 19-0888 (issued January 2, 2020); *J.J.*, Docket No. 13-1666 (issued August 18, 2014).

³ 41 ECAB 548, 553 (1990).

⁴ A report from a physician assistant, physical therapist or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

right lower extremity. As OWCP did not note receipt or consideration of this medical report, it failed to follow its own procedures to properly discuss the relevant medical reports of record.⁵

As the Board's decisions are final as to the subject matter appealed, it is crucial that all evidence relevant to the subject matter of the claim which was properly submitted to OWCP prior to the time of issuance of its final decision be reviewed and addressed by OWCP.⁶ Because OWCP failed to consider Dr. Cheatham's February 27 2019 medical report, the Board cannot review such evidence for the first time on appeal.⁷

For this reason, the case will be remanded to OWCP to properly consider⁸ all of the evidence of record.⁹ Following this and other such further development as deemed necessary, OWCP shall issue a decision *de novo*.¹⁰ Accordingly,

⁵ All evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value should also be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

⁶ See *S.K.*, Docket No. 18-0478 (issued January 2, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); see also *Linda Johnson*, 45 ECAB 439 (1994).

⁷ 20 C.F.R. § 501.2(c). See also *G.M.*, Docket No. 16-1766 (issued February 16, 2017).

⁸ On remand OWCP should request that Dr. Marcus clarify and elaborate on his August 14, 2019 addendum in accordance with the sixth edition of the A.M.A., *Guides*.

⁹ *M.J.*, Docket No. 18-0605 (issued April 12, 2019).

¹⁰ *B.N.*, Docket No. 17-0787 (issued July 6, 2018).

IT IS HEREBY ORDERED THAT the September 18, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for proceedings consistent with this order of the Board.

Issued: September 28, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board