

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

B.C., Appellant

and

**DEPARTMENT OF HEALTH & HUMAN
SERVICES, INDIAN HEALTH SERVICE,
Claremore, OK, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 20-1423
Issued: July 21, 2021**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 13, 2020 appellant filed a timely appeal from a March 31, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned Docket No. 20-1423.

Appellant, then a 41-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on March 25, 1999 she sustained left hand and thumb injuries due to picking up several files and a thick chart while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxxx573 and accepted it for left wrist and thumb tenosynovitis, and recurrent major depression. It authorized left wrist first extensor compartment surgery, which was performed on June 17, 1999.²

¹ Appellant's Application for Review (AB-1) Form notes the date of the decision on appeal as July 7, 2020. The case record as transmitted to the Board, however, does not contain a decision of that date. The only decision within the Board's jurisdiction is OWCP's March 31, 2020 decision.

² Under OWCP File No. xxxxxx436, OWCP accepted a right shoulder strain and aggravation of right rotator cuff due to an accepted September 19, 1995 employment injury and authorized right rotator cuff repair and decompression surgery, which was performed on November 2, 1995. Under OWCP File No. xxxxxx845, it accepted left thumb tendinitis due to repetitive work duties. OWCP administratively combined OWCP File No. xxxxxx436 and OWCP File No. xxxxxx845 with OWCP File No. xxxxxx573, with the latter serving as the master file number.

Appellant filed a traumatic injury claim (Form CA-1) alleging that on September 7, 1999 she sustained left wrist injury while stocking intravenous (IV) bags. OWCP assigned that claim File No. xxxxxx800. It accepted the claim for aggravation of left wrist tendinitis and authorized left first dorsal release surgery, which was performed on November 18, 1999. Subsequently, OWCP expanded acceptance of her claim to include major depression, reflex sympathetic dystrophy, pneumonia organism unspecified, and dental caries.³ The record reflects that OWCP has been paying appellant wage-loss compensation on the periodic rolls for temporary total disability since June 16, 2002.

On September 4, 2018 appellant filed a claim for a schedule award (Form CA-7) in OWCP File No. xxxxxx800.

In a letter dated April 24, 2019, OWCP notified appellant that it had scheduled a June 10, 2019 second opinion examination with Dr. Christopher Jordan, a Board-certified orthopedic surgeon, to determine her eligibility for a schedule award.⁴ An attached statement of accepted facts (SOAF) listed the accepted conditions and also noted that appellant had an accepted left upper extremity condition under OWCP File No. xxxxxx573. The SOAF indicated that no prior schedule awards had been paid for permanent impairment of the upper extremities. On July 11, 2019 OWCP notified appellant that it had rescheduled her second opinion examination with Dr. Jordan for August 1, 2019.⁵

In a letter dated July 24, 2019, appellant questioned why OWCP scheduled her for a second opinion permanent impairment evaluation as she had previously been approved for a schedule award, which had not been paid. She asserted that a second opinion evaluation was not necessary and was causing undue stress. Appellant requested that her schedule award be paid without further delay.

On August 23, 2019 appellant submitted reports dated October 15 and 22, 2001 from an OWCP district medical adviser (DMA) concerning permanent impairment ratings for her upper extremities with a date of maximum medical improvement (MMI) date of May 9, 2001. She explained that when her schedule award was approved on October 15, 2001 OWCP did not inform her that she would be required to undergo another permanent impairment evaluation if she opted not to have her wage-loss compensation interrupted for payment of her schedule award.

Appellant submitted an October 23, 2001 letter from OWCP which advised that the DMA's reports from October 2001 indicated that appellant had 25 percent permanent impairment of the right upper extremity, which was 7 percent greater than the previous schedule award paid under OWCP File No. xxxxxx436, and 75 percent permanent loss of use of the left upper extremity. OWCP requested that appellant advise whether her wage-loss compensation should be interrupted

³ OWCP File No. xxxxxx800 has been administratively combined with OWCP File No. xxxxxx573, with the latter serving as the master file number.

⁴ Appellant did not attend the scheduled appointment with Dr. Jordan on June 10, 2019.

⁵ The record reflects appellant also did not attend the scheduled appointment with Dr. Jordan on August 1, 2019. On August 13, 2019 OWCP issued a notice proposing to suspend appellant's wage-loss compensation, pursuant to 5 U.S.C. § 8123(d), due to her failure to attend the scheduled appointment with Dr. Jordan. However no final decision has been issued suspending appellant's wage-loss benefits for her failure to attend the scheduled appointments with Dr. Jordan.

for payment of her schedule award, or whether she wanted the schedule award to start at a later date.

By decision dated October 17, 2019, OWCP denied appellant's claim for a schedule award.

On November 8, 2019 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. In support of her request, she resubmitted an October 22, 2001 impairment rating by a DMA and the October 23, 2001 letter from OWCP.

On February 6, 2020 appellant submitted a follow-up note and report dated May 9, 2001 from Dr. Mike A. Royal, a Board-certified pain medicine physician, providing a permanent impairment evaluation of appellant's upper and lower extremities using the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.⁶

By decision dated March 31, 2020, OWCP's hearing representative affirmed the October 17, 2019 decision denying her claim for a schedule award.

The Board had duly considered the matter and finds that this case is not in posture for decision. The hearing representative only adjudicated whether appellant had any permanent impairment. Appellant, however, was previously issued schedule awards for 25 percent permanent impairment of the right upper extremity and 75 percent permanent impairment of the left upper extremity.⁷ The hearing representative did not address whether she is entitled an additional schedule award for permanent impairment. She summarily denied appellant's request for reconsideration without complying with the review requirements of FECA and its implementing regulations.⁸ Section 8124(a) of FECA provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.⁹ Its regulations provide that the decision of the Director of OWCP shall contain findings of fact and a statement of reasons.¹⁰ As well, OWCP's procedures provide that the reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.¹¹

The Board will therefore set aside OWCP's March 31, 2020 decision and remand the case for a *de novo* decision regarding whether appellant has greater than 25 percent permanent impairment of her right upper extremity, greater than 75 percent permanent impairment of the left upper extremity, or any permanent impairment of her lower extremities.¹² Accordingly,

⁶ A.M.A., *Guides* (5th ed. 2001).

⁷ The case record as transmitted to the Board indicates that while appellant was previously issued these schedule awards, she was never paid schedule award compensation.

⁸ See *C.G.*, Docket No. 20-0051 (issued June 29, 2020); *T.P.*, Docket No. 19-1533 (issued April 30, 2020); see also 20 C.F.R. § 10.607(b).

⁹ 5 U.S.C. § 8124(a).

¹⁰ 20 C.F.R. § 10.126.

¹¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

¹² 5 U.S.C. § 8124(a). 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

IT IS HEREBY ORDERED THAT the March 31, 2020 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: July 21, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).