

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

A.B., Appellant)	
)	
and)	Docket No. 20-1376
)	Issued: March 25, 2021
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. COAST GUARD, Washington, DC,)	
Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 9, 2020 appellant filed a timely appeal from a March 25, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 20-1376.

On April 14, 2017 appellant, then a 55-year-old strategic advisor for intelligence, filed a traumatic injury claim (Form CA-1) alleging that on April 6, 2017 he injured his left shoulder, neck, and low back while in the performance of duty. He explained that the elevator he was riding suddenly dropped then jolted to a stop. Appellant stopped work on that day. On May 16, 2017 OWCP accepted the claim for strain of muscle, fascia, and tendon at neck level, left shoulder and upper arm strain, other lesions of the left shoulder, and a lumbar sprain. It paid appellant wage-loss compensation for work absences, commencing May 22, 2017

On December 11, 2017 appellant underwent an authorized left shoulder arthroscopy, arthroscopic subacromial decompression, acromioclavicular joint excision, debridement of the labrum and biceps tendons, and open mini-biceps proximal tenodesis.

On November 9, 2018 appellant filed a claim for a schedule award (Form CA-7). In support of his claim, he provided a September 17, 2018 report by Dr. John Paulson, a Board-certified obstetrician and gynecologist. Dr. Paulson opined that appellant had sustained 10 percent

permanent impairment of the left upper extremity utilizing the range of motion (ROM) method at Table 15-5, page 403 (Shoulder Regional Grid: Upper Extremity Impairments) of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).¹ Additionally, he assessed 11 percent permanent impairment of the left lower extremity due to spinal nerve root impairment at L4-5. Dr. Paulson noted that appellant had attained maximum medical improvement (MMI).

On November 13, 2018 OWCP referred Dr. Paulson's report to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review and rating of appellant's permanent impairment of the left lower extremity in accordance with the sixth edition of the A.M.A., *Guides*. In a November 15, 2018 report, Dr. Harris found eight percent permanent impairment of the left upper extremity, according to Table 15-34, page 475, and a nine percent permanent impairment of the left lower extremity and zero percent impairment of the right lower extremity according to Table 16-11, page 533 (Sensory and Motor Severity) and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*).²

In a September 18, 2019 letter, appellant, through his then counsel, requested an update on the status of his schedule award claim. He submitted an August 21, 2019 impairment rating by, Dr. John W. Ellis, a Board-certified family practitioner. Dr. Ellis referenced the A.M.A., *Guides* to calculate 21 percent permanent impairment of the left upper extremity, utilizing the ROM or diagnosis-based impairment (DBI) method, and 13 percent permanent impairment of the left and right lower extremities due to spinal nerve root impairment.³

By decision dated March 25, 2020, OWCP granted appellant a schedule award for an eight percent permanent impairment of the left upper extremity and a nine percent permanent impairment of the left lower extremity. The period of the award, 50.88 weeks, ran from September 7, 2018 through August 29, 2019. OWCP based the award on the September 7, 2018 report of Dr. Paulson and the DMA's November 15, 2018 opinion.

Having duly reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for decision.⁴

¹ A.M.A., *Guides* (6th ed. 2009).

² On January 23, 2019 OWCP obtained a second opinion from Dr. Rafael Lopez Steuart, a Board-certified orthopedic surgeon, on whether appellant's ongoing condition remained related to the accepted injury or to a preexisting or underlying condition. It did not request that Dr. Steuart address whether the accepted injury caused a ratable permanent impairment of a scheduled member.

³ In a letter dated November 29, 2019, OWCP advised appellant that "a schedule award had been approved for \$90,032.93, which was paid on November 18, 2019," but that a formal decision had not yet been issued.

⁴ *T.C.*, Docket No. 20-0618 (issued September 28, 2020); *see K.F.*, Docket No. 19-0888 (issued January 2, 2020); *J.J.*, Docket No. 13-1666 (issued August 18, 2014).

In the case of *William A. Couch*,⁵ 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 March 25, 2020 decision, OWCP granted appellant a schedule award for eight percent permanent impairment of the left upper extremity and nine percent permanent impairment of the left lower extremity. While the March 25, 2020 decision discussed Dr. Paulson's September 17, 2018 opinion of 10 percent permanent impairment of the left upper extremity and 11 percent permanent impairment of the left lower extremity, and Dr. Harris' November 15, 2018 review finding 8 percent permanent impairment of the left upper extremity and 9 percent permanent impairment of the left lower extremity, it failed to acknowledge or address Dr. Ellis' August 21, 2019 medical report, which found 21 percent permanent impairment of the left upper extremity, 13 percent permanent impairment of the left upper extremity, 13 percent permanent impairment of the left lower extremity, and 13 percent permanent impairment of the 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.⁶

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.⁷ Because OWCP failed to consider Dr. Ellis' August 21, 2019 medical report, the Board cannot review such evidence for the first time on appeal.⁸

For this reason, the case will be remanded to OWCP to properly consider 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 41 ECAB 548, 553 (1990).

⁶All 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).

⁷*T.C.*, *supra* note 4; *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).

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

⁹ *T.C.*, *supra* note 4; *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 March 25, 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: March 25, 2021
Washington, DC

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

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

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