United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 21-0024**
	)	**Issued: February 15, 2022**
DEPARTMENT OF VETERANS AFFAIRS, HARRY S. TRUMAN MEMORIAL VETERANS' HOSPITAL, Columbia, MO, Employer	)	

Appearances:
Shannon Bravo, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 8, 2020 appellant, through counsel, filed a timely appeal of April 13 and 30, 2020 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

ISSUES

The issues are: (1) whether appellant received an overpayment of compensation in the amount of $10,049.31 for the period May 13, 2015 through January 26, 2016, for which he was without fault, because he was not entitled to a schedule award for more than 25 percent permanent impairment of the right lower extremity; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether appellant has met his burden of proof to establish greater than 20 percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

On July 3, 2013 appellant, then a 54-year-old cook, filed an occupational disease claim (Form CA-2) alleging that he developed generative hip disease and a left heel spur due to factors of his federal employment, including constant walking, standing, and bending at work. He noted that he first became aware of his conditions and their relationship to his federal employment on April 26, 2011.

In an August 30, 2013 decision, OWCP denied appellant's claim based on his failure to establish the implicated factors of his federal employment. By decision dated June 10, 2014, an OWCP hearing representative set aside the August 30, 2013 decision finding that appellant had established the employment factors, but determined that while the medical evidence provided an affirmative opinion on causal relationship, such evidence was not sufficiently rationalized, and thus, remanded the case to OWCP for further development of the medical evidence. Following additional development, by decision dated April 14, 2015, OWCP accepted appellant's claim for aggravation of right hip degenerative joint disease. It retroactively authorized his October 17, 2013 total right hip replacement surgery.

On October 27, 2015 appellant filed a claim for compensation (Form CA-7) for a schedule award. In a May 24, 2016 decision, OWCP granted him a schedule award for 31 percent permanent impairment of the right hip, based on a May 13, 2015 medical report of Dr. John W. Ellis, a Board-certified family practitioner, and January 27, 2016 report of Dr. Eric M. Orenstein, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA). The period of the award ran for 89.28 weeks from May 13, 2015 through January 26, 2017.

On August 10, 2016 OWCP expanded the acceptance of appellant's claim to include right and left carpal tunnel syndrome, right and left hip traumatic athropathy, right pelvis/thigh

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the April 30, 2020 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

unspecified osteoarthritis, other intervertebral disc degeneration lumbosacral region, right and left elbow medial epicondylitis, and right and left elbow lateral epicondylitis.

OWCP subsequently received an additional report dated October 24, 2016 from Dr. Ellis who utilized the diagnosis-based impairment (DBI) method and determined that appellant had 16 percent permanent impairment of each upper extremity, 40 percent permanent impairment of the right lower extremity, and 12 percent permanent impairment of the left lower extremity in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).[4] Dr. Ellis further determined that appellant had reached maximum medical improvement (MMI) as of the date of his evaluation.

In a February 12, 2017 report, the DMA, Dr. Orenstein reviewed Dr. Ellis' October 24, 2016 findings. He disagreed with Dr. Ellis' right and left upper extremity impairment ratings. The DMA explained that Dr. Ellis included cubital tunnel syndrome in his calculation of appellant's bilateral upper extremity impairment although the condition had not been accepted as work related by OWCP. He further explained that he found no documentation of the presence of thenar or hypothenar atrophy utilized in Dr. Ellis' impairment report. Additionally, the DMA explained that there were no measurements recorded of appellant's pinch strength and/or grip strength of the upper extremities using a dynamometer.

OWCP subsequently referred appellant, along with a statement of accepted facts (SOAF) and the medical record, to Dr. Kevin D. Komes, a Board-certified physiatrist, for a second opinion examination to determine the extent of his permanent impairment. In a May 25, 2017 report, Dr. Komes indicated that he examined appellant on May 22, 2017. Using the range of motion (ROM) method of the sixth edition of the A.M.A., *Guides*, he calculated four percent permanent impairment of each upper extremity. Dr. Komes determined that appellant had reached MMI on February 28, 2012.

On June 12, 2017 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as an OWCP DMA, reviewed the medical record, including Dr. Komes' May 25, 2017 findings. He concurred with Dr. Komes that appellant had four percent permanent impairment of each upper extremity. The DMA determined that MMI was reached on May 22, 2017, the date of Dr. Komes' impairment evaluation.

OWCP, by decision dated December 8, 2017, granted appellant a schedule award for four percent permanent impairment of each upper extremity based on the opinions of Dr. Komes and the DMA, Dr. Katz. The period of the award ran for 24.96 weeks from May 22 through November 12, 2017.

On December 28, 2017 OWCP requested that Dr. Katz review Dr. Ellis' October 24, 2016 report and provide whether he concurred with his impairment ratings. In a January 5, 2018 report, Dr. Katz opined that Dr. Ellis' right and left lower extremity impairment ratings were unacceptable for schedule award purposes, particularly regarding the issue of spinal nerve impairment. He recommended that OWCP refer appellant for a second opinion evaluation.

[4] A.M.A., *Guides* (6th ed. 2009).

On March 19, 2018 OWCP referred appellant to Dr. Christopher D. Main, a Board-certified orthopedic surgeon. April 26 and May 25, 2018 memoranda of telephone calls (Form CA-110) indicated that appellant was examined by Dr. Main on April 13, 2018, but Dr. Main's report had not been received by OWCP.

On June 13, 2018 OWCP again referred appellant to Dr. Komes for a second opinion evaluation regarding the extent of appellant's bilateral lower extremity permanent impairment.

Also, on June 13, 2018, OWCP received a February 28, 2018 report by Dr. Ellis who found that appellant had 14 percent permanent impairment of the right upper extremity, 16 percent permanent impairment of the left upper extremity, 31 percent permanent impairment of the right lower extremity, and 30 percent permanent impairment of the left lower extremity.

Dr. Komes, in a June 27, 2018 report, found that appellant had 23 percent right lower extremity permanent impairment due to his authorized October 17, 2013 right total hip replacement surgery. He noted that appellant had previously received a schedule award for 31 percent permanent impairment of the right lower extremity, and thus, no additional impairment was warranted. Dr. Komes determined that appellant had two percent permanent impairment of the left lower extremity due to his diagnosis of left hip arthropathy/osteoarthritis. He advised that appellant had no spinal nerve impairment as there was no radiographic evidence of intervertebral disc herniation and physical examination findings were normal. Dr. Komes advised that MMI was reached as of the date of his evaluation.

On August 14, 2018 the DMA, Dr. Katz, reviewed Dr. Komes' June 27, 2018 findings and agreed with his opinion that appellant had 23 percent permanent impairment of the right lower extremity and two percent permanent impairment of the left lower extremity. He determined that MMI was reached on June 27, 2018, the date of Dr. Komes' impairment evaluation.

OWCP, in a March 18, 2019 decision, granted appellant a schedule award for two percent permanent impairment of the left leg, based on the opinions of Dr. Komes and the DMA, Dr. Katz. The period of the award ran for 5.76 weeks from June 27 through August 6, 2019.

In a preliminary overpayment determination dated March 19, 2019, OWCP notified appellant that he had received a $13,430.35 overpayment of compensation for the period May 13, 2015 through January 26, 2017. It explained that he had received $52,313.23 for 31 percent permanent impairment of the right lower extremity when he was only entitled to $38,882.88 for 23 percent permanent impairment of the right lower extremity, creating an overpayment for the period May 13, 2015 through January 26, 2017. OWCP also made a preliminary determination that appellant was without fault in the creation of the overpayment. It requested that he complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, OWCP provided an overpayment action request form and notified appellant that, within 30 days of the date of the letter, he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In an April 16, 2019 overpayment action request form, appellant requested a telephonic prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. He requested waiver of recovery of the overpayment contending that he was unaware that he had been

overpaid. In an accompanying Form OWCP-20 of even date, appellant reported $1,728.00 in monthly income, $2,320.00 in monthly expenses, and $220.00 in assets. He did not submit any supporting financial documentation.

Also on April 16, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the March 18, 2019 schedule award decision.

By decision dated June 17, 2019, a second OWCP hearing representative found that the case was not in posture for a hearing regarding the March 18, 2019 schedule award decision. She set aside the March 18, 2019 schedule award decision and remanded the case to OWCP for further development of the medical evidence because the DMA, Dr. Katz, did not comment on Dr. Ellis' February 28, 2018 report, as that report was not available for Dr. Komes' review, and the SOAF did not contain all accepted conditions. The hearing representative directed OWCP to update the SOAF and forward the new SOAF along with Dr. Ellis' February 28, 2018 report to a DMA and request that the DMA provide an opinion regarding whether appellant had any additional permanent impairment.

On August 12, 2019 appellant filed a Form CA-7 for an additional schedule award. In support of his claim, he submitted a July 30, 2019 report from Dr. Ellis. Dr. Ellis referenced the sixth edition of the A.M.A., *Guides* and calculated 13 percent permanent impairment of the right upper extremity, 10 percent permanent impairment of the left upper extremity, 37 percent permanent impairment of the right lower extremity, and 16 percent permanent impairment of the left lower extremity.

On August 28, 2019 OWCP found a conflict in medical opinion between Dr. Ellis and Dr. Komes regarding the extent of appellant's bilateral upper and lower extremity permanent impairment, and referred appellant for an impartial medical examination in order to resolve the conflict. In a September 27, 2019 report, Dr. Michael H. Ralph, a Board-certified orthopedic surgeon serving as an impartial medical examiner (IME), reviewed appellant's medical records and noted examination findings. He diagnosed status post right total hip replacement that was objectively doing well, moderate arthritis of the left hip with correlated loss of ROM, degenerative arthritis of the right and left elbows, and minimal right and left carpal tunnel syndrome by nerve conduction velocities only. Dr. Ralph also found no evidence of radicular symptoms regarding the lumbar spine. He noted that appellant had normal reflexes throughout the lower extremity, he could walk on his toes and heels, and he had no clinical evidence of radicular symptoms. Dr. Ralph utilized the DBI method to find that, under Table 16-4 (Hip Regional Grid) of the sixth edition of the A.M.A., *Guides* appellant had 25 percent permanent impairment of the right lower extremity due to his authorized total right hip replacement. He utilized the same table and found that appellant had 20 percent permanent impairment of the left lower extremity due to degenerative arthritis of the left hip. Dr. Ralph determined that he had zero percent bilateral elbow permanent impairment as there were no clinical findings related to the accepted conditions of bilateral elbow medial and lateral epicondylitis. Using Table 15-23 (Entrapment/Compression Neuropathy Impairment), he found one percent permanent impairment of each upper extremity due to only mild elevation of nerve conduction velocity on electrodiagnostic studies, noting that there was no clinical evidence of carpal tunnel syndrome on either side.

On October 2, 2019 OWCP referred the medical evidence and a SOAF to Dr. Katz, the DMA, to review the findings in the September 27, 2019 report by Dr. Ralph and evaluate appellant's permanent impairment under the sixth edition of the A.M.A., *Guides*. In an October 11, 2019 report, Dr. Katz found that Dr. Ralph's report could not be accepted as probative because it lacked sufficient detail, including an explanation of the methodology used and calculations made to arrive at his impairment ratings, reference to x-ray studies used to grade lower extremity arthritis, the required ROM measurements to rate upper extremity impairment, and the date of MMI. He recommended that a supplemental report be obtained from Dr. Ralph addressing his concerns.

By letter dated December 18, 2019, OWCP requested that Dr. Ralph provide a supplemental opinion, which addressed the concerns expressed by Dr. Katz in his October 11, 2019 report. In a January 15, 2020 supplemental report, Dr. Ralph indicated that he had reviewed his impairment ratings and rationale provided in support of them and maintained that no correction was necessary. He noted that any modification of default values would not be affected by ROM. Dr. Ralph further noted that his diagnoses were based on medical records. Specifically, he related that he had interpreted a left hip x-ray report which showed moderate arthritis, but he did not have any of the x-rays. Dr. Ralph maintained that the x-rays would not have changed his opinion. He concluded that his impairment ratings were appropriate and there was no basis from an objective standpoint to change them. Dr. Ralph advised that appellant had reached MMI on September 27, 2019, the date of his impairment evaluation.

OWCP, in an April 13, 2020 decision, finalized its preliminary overpayment determination. It found that appellant had received an overpayment of compensation in the amount of $13,430.35, which was reduced to $10,049.23 because Dr. Ralph determined that he had 25 percent right lower extremity permanent impairment rather than 31 percent permanent impairment for which he previously received schedule award compensation. OWCP further found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because he had not responded to the March 19, 2019 preliminary overpayment determination. It requested that he repay the overpayment in full.

OWCP, in an April 30, 2020 decision, granted appellant an increased schedule award for 18 percent permanent impairment of the left leg/hip, resulting in a total of 20 percent permanent impairment of the left lower extremity, based on the September 27, 2019 and January 15, 2020 reports of Dr. Ralph. The period of the award ran for 51.84 weeks from September 28, 2019 through September 23, 2020.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provisions of FECA[5] and its implementing regulations[6] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body. However, FECA does not

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.[7] As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).[8] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[9]

Section 8129(a) of FECA provides that, "when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled."[10] When OWCP makes a determination that an overpayment of compensation has occurred because the claimant received an erroneous schedule award, it must properly resolve the schedule award issue. Before the amount of the overpayment can be determined, the evidence must establish the degree of permanent impairment.[11]

Section 8123(a) of FECA which provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[12] This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.[13] When there exist opposing reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.[14]

[7] *Id*. *See also Ronald R. Kraynak*, 53 ECAB 130 (2001).

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); Federal Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (March 2017).

[9] *P.R.*, Docket No. 19-0022 (issued April 9, 2018); *Isidoro Rivera*, 12 ECAB 348 (1961).

[10] 5 U.S.C. § 8129(a).

[11] *See S.F.*, Docket No. 18-0003 (issued April 19, 2018); *L.S.*, Docket No. 08-1247 (issued December 12, 2008); *Richard Saldibar*, 51 ECAB 585 (2000).

[12] 5 U.S.C. § 8123(a); *L.S.*, Docket No. 19-1730 (issued August 26, 2020); *M.S.*, 58 ECAB 328 (2007).

[13] 20 C.F.R. § 10.321; *see also R.C.*, 58 ECAB 238 (2006).

[14] *P.B.*, Docket No. 20-0984 (issued November 25, 2020); *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

ANALYSIS -- ISSUE 1

The Board finds that this case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of $10,049.31 for the period May 13, 2015 through January 26, 2016.[15]

In its April 13, 2020 overpayment determination, OWCP found that an overpayment of compensation occurred because appellant was incorrectly paid $52,313.31 based on 31 percent permanent impairment of the right lower extremity. It found that he was only entitled to $42,264.00 for 25 percent permanent impairment of the right lower extremity, resulting in an overpayment of $10,049.31.

When OWCP makes a determination that an overpayment of compensation has occurred because the claimant received an erroneous schedule award, it must first properly calculate the schedule award.[16] The Board finds that the overpayment issue is not in posture for decision as OWCP has not properly resolved the underlying issue of appellant's entitlement to a schedule award.

OWCP properly found that a conflict in the medical opinion evidence existed between appellant's treating physician, Dr. Ellis, and its second opinion physician, Dr. Komes, regarding the extent of appellant's bilateral upper and lower extremity permanent impairment. It properly referred appellant's case to Dr. Ralph, pursuant to 5 U.S.C. § 8123(a), for an impartial medical examination in order to resolve the conflict in the medical opinion.[17] However, the Board finds that further development is warranted as the reports by Dr. Ralph are insufficient to carry the special weight of the medical evidence.

In his September 27, 2019 report, Dr. Ralph utilized the DBI method to find that under Table 16-4 (Hip Regional Grid) of the sixth edition of the A.M.A., *Guides* appellant had 25 percent permanent impairment of the right lower extremity due to his authorized October 17, 2013 total right hip replacement surgery.

Following his review of Dr. Ralph's September 27, 2019 report, the DMA, Dr. Katz, recommended that OWCP obtain a supplemental report from the physician because he failed to provide a sufficiently detailed explanation of the methodology used and calculations made to arrive at his impairment ratings and refer to x-ray studies used to grade lower extremity arthritis.

Dr. Ralph, in his January 15, 2020 supplemental report, advised that his previous impairment ratings, including his 25 percent right lower extremity impairment rating, remained unchanged. He noted that while he had reviewed a left hip x-ray report, which showed moderate arthritis, he did not actually have the x-rays. Dr. Ralph maintained that the x-rays would not have

[15] *S.F., supra* note 11.

[16] *See S.F., id.*; *W.M.*, Docket No. 13-0291 (issued June 12, 2013); Federal (FECA) Procedure Manual, *supra* note 8 at Chapter 2.808.9(e) (February 2013).

[17] *H.M.,* Docket No. 21-0046 (issued June 1, 2021); *W.C.*, Docket No. 19-1740 (issued June 4, 2020).

changed his opinion. He concluded that his impairment ratings were appropriate and there was no basis from an objective standpoint to change them.

Dr. Ralph did not adequately explain how he arrived at his right lower extremity permanent impairment rating, did not discuss grade modifiers for functional history, physical examination, or clinical studies, and did not adjust the impairment based on the net adjustment formula.[18] As he failed to adequately explain his opinion in accordance with the relevant standards of the A.M.A., *Guides*, the Board finds that his opinion is insufficient to resolve a conflict in the medical evidence. Further, at OWCP's request, Dr. Katz reviewed the October 11, 2019 report of Dr. Ralph and found that this report could not be accepted as probative because it lacked sufficient detail, including an explanation of the methodology used and calculations made to arrive at his impairment ratings, reference to x-ray studies used to grade lower extremity arthritis, the required ROM measurements to rate upper extremity impairment, and the date of MMI.

The Board will, therefore, remand the case to OWCP for referral of the case record, a SOAF, and appellant to a new IME for the purposes of determining the extent and degree of his right lower extremity permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.[19] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.[20]

LEGAL PRECEDENT -- ISSUE 3

As noted above, the schedule award provisions of FECA,[21] and its implementing federal regulations,[22] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such a determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*, published in 2009.[23] The Board has approved the use by OWCP of the A.M.A., *Guides* for the purpose of determining the percentage loss of use of a member of the body for schedule award purposes.[24]

[18] *D.O.,* Docket No. 19-1729 (issued November 3, 2020).

[19] *See K.W.,* Docket No. 20-0047 (issued November 12, 2020); *D.O., id.*; *B.S.,* Docket No. 19-1717 (issued August 11, 2020); *K.C.*, Docket No. 18-0234 (issued September 14, 2018).

[20] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

[21] *Supra* notes 5.

[22] *Supra* note 6.

[23] *Supra* note 8.

[24] *Supra* note 9.

As noted above, section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, OWCP shall appoint a third physician (known as a referee physician or impartial medical specialist) who shall make an examination.[25] When the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.[26]

ANALYSIS -- ISSUE 3

The Board finds that this case is not posture for decision as to whether appellant has met his burden of proof to establish greater than 20 percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation.

By decision dated March 18, 2019, OWCP granted appellant a schedule award for two percent permanent impairment of the left lower extremity. Subsequently, in an April 30, 2020 decision, it granted him an additional schedule award for 18 percent permanent impairment of the left lower extremity, totaling 20 percent permanent impairment. OWCP based its decision on the opinion of Dr. Ralph, who, as noted above, was properly selected as the IME to resolve a conflict in medical opinion regarding the extent of appellant's bilateral upper and lower extremity permanent impairment. However, the Board again finds that further development is warranted as the reports by Dr. Ralph are insufficient to carry the special weight of the medical evidence.

In his September 27, 2019 and January 15, 2020 reports, Dr. Ralph opined that appellant had 20 percent permanent impairment of the left lower extremity due to degenerative arthritis of the left hip. He noted that while he had reviewed a left hip x-ray report, which showed moderate arthritis, he did not actually have the x-rays. Dr. Ralph maintained that the x-rays would not have changed his opinion. The Board notes that OWCP has not accepted a work-related left hip degenerative arthritis condition.[27] Dr. Ralph did not explain how he arrived at his left lower extremity permanent impairment rating, did not discuss grade modifiers for functional history, physical examination, or clinical studies, and did not adjust the impairment based on the net adjustment formula.[28] As he failed to adequately explain his opinion in accordance with the relevant standards of the A.M.A., *Guides*, the Board finds that Dr. Ralph's opinion is insufficient to resolve a conflict in the medical evidence. The Board will, therefore, remand the case to OWCP for referral of the case record, a SOAF, and appellant to a new IME for the purposes of determining the extent and degree of his left lower extremity permanent impairment in accordance with the sixth edition of the A.M.A., *Guides*.[29] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

[25] *Supra* note 12.

[26] *Supra* note 14.

[27] *P.H.*, Docket No. 20-0108 (issued December 18, 2020).

[28] *D.O., supra* note 18.

[29] *See supra* note 19.

CONCLUSION

The Board finds that this case is not in posture for decision regarding whether appellant received an overpayment of compensation in the amount of $10,049.31 for the period May 13, 2015 through January 26, 2016.[30] The Board further finds that this case is not in posture for decision regarding whether appellant met his burden of proof to establish greater than 20 percent permanent impairment of the left lower extremity, for which he previously received schedule award compensation.

ORDER

IT IS HEREBY ORDERED THAT the April 30 and 13, 2021 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 15, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

[30] *See supra* note 20.