

<sup>1</sup> 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.

On January 22, 2019 appellant underwent an OWCP-authorized right shoulder subacromial decompression and debridement and arthroscopic rotator cuff repair.

On December 9, 2019 appellant filed a claim for compensation (Form CA-7) requesting a schedule award.

In a December 11, 2019 development letter, OWCP informed appellant of the type of evidence required to establish her schedule award claim. It afforded her 30 days to provide the requested evidence.

By decision dated January 30, 2020, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body.

On November 5, 2020 appellant, through counsel, requested reconsideration and provided additional medical evidence, including an October 19, 2020 report wherein Dr. Neil Allen, a Board-certified internist and neurologist, found five percent permanent impairment of the right upper extremity pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>2</sup> causally related to her July 15, 2017 accepted employment injury.

OWCP subsequently received additional evidence, wherein, Dr. Allen, addressed permanent impairment due to appellant's May 1, 2014 employment injuries in OWCP File No. xxxxxx590.<sup>3</sup>

By decision dated August 11, 2021, OWCP denied modification.

The Board has duly considered the matter and finds that this case is not in posture for decision.

In the case of *William A. Couch*,<sup>4</sup> the Board held that when adjudicating a claim OWCP is obligated to consider and address all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, on reconsideration, appellant submitted an October 19, 2020 report, wherein Dr. Allen found five percent permanent impairment of the right upper extremity in accordance with the A.M.A., *Guides*. OWCP, however, did not consider and address this evidence in its August 11, 2021 decision. It, thus, failed to follow its

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

<sup>3</sup> By decision dated July 21, 2021, under OWCP File No. xxxxxx590, OWCP granted appellant a schedule award for one percent permanent impairment of each upper extremity.

<sup>4</sup> 41 ECAB 548 (1990); *see also E.W., Order Remanding Case*, Docket No. 20-1569 (issued January 10, 2022); *K.B.*, Docket No. 20-1320 (issued February 8, 2021); *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

procedures by not considering and addressing all of the relevant evidence of record.<sup>5</sup> As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP consider and address all relevant evidence received prior to the issuance of its final decision.<sup>6</sup>

The Board further finds that OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.<sup>7</sup> For example, if a new injury claim is reported for an employee who previously filed an injury claim for a similar condition of the same part of the body, doubling is required.<sup>8</sup> Herein, appellant has a prior claim under OWCP File No. xxxxxx590 for the right upper extremity, which is the same region of the body at issue in the claim presently before the Board. Therefore, for full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx435, with OWCP File No. xxxxxx590.

The case will be remanded to OWCP to administratively combine the current file with OWCP File No. xxxxxx590 and to properly consider and address all of the evidence of record. On remand, following other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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

<sup>6</sup> See *Order Remanding Case, L.B.*, Docket No. 21-0140 (issued August 25, 2021); *Order Remanding Case, E.D.*, Docket No. 20-0620 (issued November 18, 2020); *William A. Couch*, *supra* note 4.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

<sup>8</sup> *Id.*; *Order Remanding Case, H.B.*, Docket No. 20-1298 (issued November 22, 2021); *Order Remanding Case, S.G.*, Docket No. 21-0396 (issued September 27, 2021); *Order Remanding Case, R.L.*, Docket No. 20-0901 (issued July 27, 2021).

**IT IS HEREBY ORDERED THAT** the August 11, 2021 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: February 16, 2023  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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