

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

R.A., Appellant)	
)	
and)	Docket No. 21-0081
)	Issued: January 25, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Gastonia, NC, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On October 26, 2020 appellant filed a timely appeal from an October 21, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards docketed the appeal as No. 21-0081.

On October 19, 2017 appellant, then a 71-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained a right shoulder condition due to factors of his federal employment. He alleged that on August 5, 2017 he aggravated his right shoulder condition due to factors of his federal employment. Appellant noted that on November 24, 2012 he had suffered a complete rotator cuff tear to his right shoulder for which he underwent surgery and physical therapy. Appellant indicated that he continued to have problems with his right shoulder even after the surgery, which he elaborated upon in an undated narrative. He stopped

¹ The Board notes that following the October 21, 2020 decision, OWCP received additional evidence. 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.*

work on August 3, 2017. OWCP assigned this claim File No. xxxxxx849 and accepted a complete rotator cuff tear or rupture of right shoulder. It paid appellant wage-loss compensation.²

On June 2, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated April 15, 2020, OWCP granted appellant a schedule award for 10 percent permanent impairment of the right upper extremity (arm), for a total combined schedule award of 20 percent permanent impairment of the right upper extremity (arm). The percentage of permanent impairment was based on the November 27, 2019, and February 29 and April 10, 2020 reports of the district medical adviser (DMA) who applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*)³ to the medical findings and report of Dr. Hamid dated June 19, 2019. The DMA noted that the prior 10 percent right upper extremity impairment rating for the right shoulder under OWCP File No. xxxxxx897 was included in the current total schedule award of 20 percent permanent impairment of the right upper extremity.⁴

On August 3, 2020 appellant filed a Form CA-7 claim for an increased schedule award.

In support thereof, appellant submitted a July 24, 2020 note, wherein Dr. Hamid indicated that he last saw appellant on July 6, 2020. He opined that, at this point, appellant's permanent impairment rating remained at 40 percent.

In a September 14, 2020 report, Dr. Hamid indicated that appellant was status post May 2018 right reversal shoulder arthroplasty and that he reached maximum medical improvement (MMI) approximately 12 months postoperatively and was at MMI at his May 28, 2019 postoperative appointment. He indicated that he assigned appellant a 40 percent permanent impairment rating due to the nature of the complex surgery and appellant's current functional abilities. Dr. Hamid indicated that appellant lacked 20 degrees of forward elevation and his internal rotation was significantly limited compared to his contralateral arm. Appellant also lacked 40 degrees of abduction compared to his other arm and lacked 30 degrees of external rotation. Dr. Hamid also noted crepitus with range of motion, deltoid atrophy, and weakness in appellant's periscapular muscles. He further noted that appellant's rotator cuff strength was good, but asymmetric weaker compared to his contralateral side. Dr. Hamid indicated that for those reasons, appellant had a rating of 40 percent permanent impairment of the right upper extremity.

² The record reflects that a appellant also has an accepted traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx897 for right rotator cuff tear with a November 24, 2012 date of injury. By decision dated May 6, 2015, OWCP granted appellant a schedule award for 10 percent permanent impairment of his right upper extremity (arm). The award ran for 31.2 weeks from November 7, 2014 to June 13, 2015. The record also reflects that under OWCP File No. xxxxxx774 appellant filed a traumatic injury claim for a n October 30, 2012 right shoulder and bicep injury. OWCP denied acceptance of this claim.

³ A.M.A., *Guides* (6th ed. 2009).

⁴ *Id.*

By decision dated October 21, 2020, OWCP denied appellant's claim for an increased schedule award, finding that the medical evidence of record was insufficient to meet the requirements for entitlement to an additional schedule award.

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

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depend on frequent cross-referencing between the files.⁵ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁶ Herein, appellant filed an occupational disease claim, assigned OWCP File No. xxxxxx849 alleging that he aggravated his right shoulder condition due to factors of his federal employment. The record reflects that appellant has previously filed a traumatic injury claim under OWCP File No. xxxxxx897 for a November 24, 2012 injury which OWCP accepted for a right rotator cuff tear and, by decision dated May 6, 2015, OWCP granted appellant a schedule award for 10 percent permanent impairment of his right upper extremity (arm). The record also reflects that under OWCP File No. xxxxxx774 appellant filed a traumatic injury claim for an October 30, 2012 right shoulder and bicep injury, which OWCP did not accept. The evidence pertaining to OWCP File Nos. xxxxxx774 and xxxxxx897, however, is not part of the case record presently before the Board.

For a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File Nos. xxxxxx774 and xxxxxx897. Following this and other such further development as OWCP deems necessary, it shall issue a *de novo* decision. Accordingly,

⁵ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

⁶ *Id.*; *H.E.*, Docket No. 21-1070 (issued March 18, 2022); *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

IT IS HEREBY ORDERED THAT the October 21, 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: January 25, 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