

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

P.D., Appellant	)	
	)	
and	)	Docket No. 22-1372
	)	Issued: January 25, 2023
U.S. POSTAL SERVICE, POST OFFICE,	)	
Birmingham, AL, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On September 29, 2022 appellant filed a timely appeal from an August 1, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> The Clerk of the Appellate Boards docketed the appeal as No. 22-1372.

On July 29, 2021 appellant, then a 32-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2021 he injured his right shoulder when he picked up a package to load in a hamper while in the performance of duty. He stopped work on June 11, 2021. OWCP accepted the claim for right shoulder strain. On October 20, 2021 appellant underwent an arthroscopic superior labrum anterior and posterior (SLAP) tear repair of the right shoulder, and a right subacromial decompression with bursectomy. OWCP paid appellant wage-loss compensation on the supplemental rolls beginning January 1, 2022. Appellant returned to work on January 31, 2022.

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<sup>1</sup> The Board notes that following the August 1, 2022 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.*

In a March 9, 2022 note, Dr. Jeffrey Hayden Goodman, a Board-certified orthopedic surgeon, found that appellant had reached maximum medical improvement (MMI). He reported that appellant was neurovascularly intact in his upper extremity with minimal shoulder pain. Dr. Goodman found 140 degrees of forward flexion, 140 degrees of abduction, 30 degrees of extension, 60 degrees of internal rotation, and 60 degrees of external rotation. He applied the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>2</sup> to these range of motion findings, and determined that appellant had eight percent permanent impairment of the right upper extremity.

On May 18, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a development letter dated June 2, 2022, OWCP requested that appellant's treating physician provide a medical report, which included an impairment rating utilizing the sixth edition of the A.M.A., *Guides*. It afforded him 30 days to submit the requested information.

By decision dated August 1, 2022, 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, warranting a schedule award. No medical evidence was referenced.

The Board has duly considered this matter and finds that this case is not in posture for decision and must be remanded to OWCP for further development.

In the case of *William A. Couch*,<sup>3</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.

In its August 1, 2022 decision, OWCP failed to review the March 9, 2022 report from Dr. Goodman. 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 properly submitted to OWCP be considered and addressed.<sup>4</sup> For this reason, the case will be remanded to OWCP to enable it to properly consider and address all the evidence submitted at the time of the August 1, 2022 decision. Following this, and other such further development as OWCP deems necessary, it shall issue a *de novo* decision regarding appellant's schedule award claim. Accordingly,

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

<sup>3</sup> 41 ECAB 548 (1990); *T.F.*, Docket No. 22-0015 (issued May 16, 2022); *F.A.*, Docket No. 20-1324 (issued March 1, 2021); *T.G.*, Docket No. 19-1930 (issued January 8, 2021).

<sup>4</sup> *See T.F., id.: G.A.*, Docket No. 19-1080 (issued January 2, 2020); *T.J.*, Docket No. 14-1854 (issued February 3, 2015); *J.J.*, Docket No. 12-1062 (issued December 12, 2012); *William McKennon*, 51 ECAB 145 (1999); 45 ECAB 439 (1994). *See also C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *William A. Couch, id.*

**IT IS HEREBY ORDERED THAT** the August 1, 2022 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

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

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board