

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

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<b>J.F., Appellant</b> )		
)		
<b>and</b> )		<b>Docket No. 23-0280</b>
)		<b>Issued: July 6, 2023</b>
<b>DEPARTMENT OF DEFENSE, DEFENSE</b> )		
<b>AGENCIES, U.S. ARMY RESERVE</b> )		
<b>COMMAND, COMMISSARY, Millington, TN,</b> )		
<b>Employer</b> )		
_____ )		

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:  
ALEC J. KOROMILAS, Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

On December 16, 2022 appellant filed a timely appeal from a September 1, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0280.<sup>1</sup>

On February 15, 2006 appellant, then a 52-year-old store worker, filed a traumatic injury claim (Form CA-1) alleging that on February 4, 2006 she injured her right knee and hand when she was walking and tripped on uneven pavement while in the performance of duty. She did not stop work. OWCP accepted the claim for right knee contusion. It expanded accepted of the claim to include right knee osteoarthritis. On February 5, 2008 appellant underwent OWCP-approved right total knee replacement surgery. She returned to light-duty work on April 22, 2008.

On September 25, 2008 appellant filed a claim for compensation (Form CA-7) for a schedule award. By decision dated October 7, 2008, OWCP granted appellant a schedule award

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<sup>1</sup> The Board notes that following the September 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.*

for 50 percent permanent impairment of her right lower extremity in accordance with the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>2</sup> The award ran for 144 weeks for the period September 4, 2008 through 27, 2008.

On January 25, 2013 appellant underwent an OWCP-authorized revision of total knee arthroplasty.

On January 14, 2014 appellant filed a Form CA-7 for an increased schedule award. By decision dated February 21, 2014, OWCP denied the claim for an increased schedule award as in accordance of the sixth edition of the A.M.A., *Guides*,<sup>3</sup> appellant's current permanent impairment was no greater than the prior percentage of permanent impairment previously awarded. It accorded the weight of the medical evidence to the January 9, 2014 report of Dr. Marc J. Mihalko, an orthopedic surgeon, and the February 13, 2014 report, of the district medical adviser (DMA), Dr. James W. Dyer, an orthopedic surgeon.

On July 9, 2018 OWCP expanded its acceptance of appellant's claim to include the additional conditions of pain due to internal orthopedic prosthetic devices, implants, and grafts, and long-term use of anticoagulants.

On November 1, 2019 appellant filed a Form CA-7 for an additional schedule award. By decision dated April 15, 2020, OWCP denied the claim for an increased schedule award as in accordance with the sixth edition of the A.M.A., *Guides*,<sup>4</sup> appellant's current condition had not reached a fixed and permanent state.

On February 24, 2022 appellant filed a Form CA-7 for an additional schedule award. By decision dated September 1, 2022, OWCP granted appellant an additional schedule award of her right lower extremity, but failed to provide the extent of the additional impairment. It merely informed her of the number of weeks of the additional compensation, 25.92, and the period covered from January 20 through July 20, 2022. OWCP based its conclusions on the February 1 and March 31, 2022 reports of Dr. Gregory D. Dabov, an orthopedic surgeon, and the reports of Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and DMA, dated March 22, July 19, and August 16, 2022, which it provided.

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

Section 8124(a) of FECA provides that OWCP shall determine and make findings of fact and make an award for or against payment of compensation.<sup>5</sup> OWCP's regulations at 20 C.F.R. § 10.126 further provide that the decision of the Director of OWCP shall contain findings of fact

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<sup>2</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>4</sup> *Id.*

<sup>5</sup> 5 U.S.C. § 8124(a).

and a statement of reasons.<sup>6</sup> As well, its procedures provide that the reasoning behind OWCP's decision should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence, which would overcome it.<sup>7</sup> In its September 1, 2022 decision, OWCP did not provide an explanation of the extent of appellant's permanent impairment.<sup>8</sup> This lack of explanation would prevent appellant from understanding the extent of his schedule award claim and the evidence necessary to increase the schedule award compensation.<sup>9</sup> Accordingly, the case must be remanded for OWCP to make findings of fact and provide reasons for its decision regarding appellant's schedule award claim pursuant to the standards set forth in 20 C.F.R. §§ 10.500(a) and 10.126. Accordingly,

**IT IS HEREBY ORDERED THAT** the September 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: July 6, 2023  
Washington, DC

Alec J. Koromilas, 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

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<sup>6</sup> 20 C.F.R. § 10.126.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

<sup>8</sup> See *Order Remanding Case, C.V.*, Docket No. 22-0626 (issued October 17, 2022); *Order Remanding Case, E.M.* Docket No. 20-1045 (issued September 14, 2022); *Order Remanding Case, M.C.*, Docket No. 21-1153 (issued February 14, 2022); *Order Remanding Case, C.W.*, Docket Nos. 18-1764 & 19-0709 (issued August 27, 2020).

<sup>9</sup> See *Order Remanding Case, M.B.*, Docket No. 22-1026 (issued January 25, 2023); *Order Remanding Case, P.G.*, Docket No. 17-1461 (issued February 7, 2019).