

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

N.D., Appellant)

and)

DEPARTMENT OF HOMELAND SECURITY,)
U.S. CUSTOMS AND BORDER PROTECTION,)
U.S. BORDER PATROL, San Ysidro, CA,)
Employer)

Docket No. 23-0491
Issued: November 15, 2023

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On February 22, 2023 appellant filed a timely appeal from a February 1, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-0491.

On May 3, 2021 appellant, then a 38-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left ankle when he lost his balance and fell from a boulder while in the performance of duty.¹ He stopped work on the date of injury. On May 7, 2021 OWCP accepted the claim for spontaneous rupture of other tendons of the left ankle and foot.

On April 27, 2022 appellant filed a claim for compensation (Form CA-7) for a schedule award.

¹ OWCP assigned the present claim OWCP File No. xxxxxx533. Appellant has a previously accepted April 21, 2019 traumatic injury claim for sprains of the deltoid and calcaneofibular ligaments of the left ankle under OWCP File No. xxxxxx177. On January 6, 2020 OWCP granted appellant a schedule award for 10 percent left lower extremity permanent impairment under the latter claim. Appellant's claims have not been administratively combined by OWCP.

By decision dated February 1, 2023, OWCP granted appellant a schedule award for an additional five percent permanent impairment of his left lower extremity based on a July 29, 2022 report and November 4, 2022 addendum report of Dr. Michael Katz, a Board-certified orthopedic surgeon serving as the district medical adviser (DMA).²

The Board, having duly considered the matter, finds 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 depends on frequent cross-referencing between files.³ 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.⁴ Appellant previously received 10 percent permanent impairment of the left lower extremity under OWCP File No. xxxxxx177 and this prior schedule award was referenced by Dr. Katz in his July 29 and November 4, 2022 reports in the present file. OWCP then based its schedule award in the present claim for an additional five percent left lower extremity permanent impairment on Dr. Katz' reports. Due to frequent cross-referencing of the claims, for a full and fair adjudication, the case must be returned to OWCP to administratively combine the current case record with OWCP File No. xxxxxx177. This will allow OWCP to consider all relevant claim files in developing appellant's schedule award claim.⁵

Following this and other such further development as deemed necessary, it shall issue a *de novo* decision.

² In his report, Dr. Katz referenced the schedule award for 10 percent permanent impairment of appellant's left lower extremity under OWCP File No. xxxxxx177.

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).

⁴ *Id.*; *M.L.*, Docket No. 20-1176 (issued April 29, 2021); *L.M.*, Docket No. 19-1490 (issued January 29, 2020); *L.H.*, Docket No 18-1777 (issued July 2, 2019).

⁵ *Id.* at Chapter 2.400.8(c)(1); *see Order Remanding Case, M.S.*, Docket No. 21-0671 (issued December 14, 2021); *Order Remanding Case, R.S.*, Docket No. 20-1232 (issued April 28, 2021).

IT IS HEREBY ORDERED THAT the February 1, 2023 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: November 15, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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