

evidence including diagnostic tests and Dr. Baskhron's December 21, 2020 impairment rating. Using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),² he used the diagnosis-based method (DBI) to find that appellant had five percent left lower extremity permanent impairment. The DMA reported that the A.M.A., *Guides* did not indicate that the range of motion (ROM) method could be used to rate this impairment.

In a February 10, 2022 report, Dr. Frank J. Corrigan, a second opinion Board-certified orthopedic surgeon, diagnosed left ankle posterior tibialis tendinosis, which he attributed to appellant's accepted March 20, 2017 employment injury, and nonemployment-related left ankle osteoarthritis. Using the sixth edition of the A.M.A., *Guides*, he determined appellant had four percent left lower extremity permanent impairment using the DBI method and seven percent left lower extremity permanent impairment using the ROM method. Dr. Corrigan found appellant reached MMI as of the date of the examination on February 10, 2022.

Dr. White, in a supplemental April 7, 2022 report, reviewed Dr. Corrigan's February 10, 2022 report. He determined that appellant had four percent left lower extremity permanent impairment using the DBI method. Dr. White explained that the ROM method was not applicable as the A.M.A., *Guides* did not indicate that the ROM method could be used to rate the impairment.

On October 14, 2022 OWCP referred appellant to Dr. Albert Johnson, a Board-certified orthopedic surgeon, for an impartial medical examination to resolve a conflict in the medical opinion regarding appellant's permanent impairment rating and date of MMI.³

In a report dated December 6, 2022, received by OWCP on January 10, 2023, Dr. Johnson diagnosed post-traumatic left ankle sprain and strain, post-traumatic left posterior tibial tendinosis with a healed partial left ankle tear, and post-traumatic left. He agreed with Dr. White that the ROM method could not be used to evaluate appellant's permanent impairment and with his finding that appellant had four percent left lower extremity permanent impairment.

By decision dated February 3, 2023, OWCP granted appellant a schedule award for four percent left lower extremity permanent impairment. In reaching this determination, it only referenced second opinion physician Dr. Corrigan's February 10, 2022 report, and DMA Dr. White's April 12, 2022 report.

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

² A.M.A., *Guides* (6th ed. 2009).

³ The Board notes that OWCP improperly declared a conflict in the medical opinions between its DMA and the second opinion physician, as neither physician was appellant's treating physician. See 5 U.S.C. § 8123(a); 20 C.F.R. § 10.321(b); *S.G.*, 58 ECAB 383, 387 (2007) (a conflict may only exist between an employee's physician and a physician designated or approved by OWCP); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.11a (September 2010).

In the case of *William A. Couch*,⁴ the Board held that when adjudicating a claim, OWCP is obligated to review all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its February 3, 2023 decision, OWCP failed to consider and address the December 6, 2022 report of Dr. Johnson or the December 21, 2020 report of Dr. Baskhron. 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.⁵ For this reason, the case will be remanded to OWCP to enable it to consider and address all of the evidence of record as of the February 3, 2023 decision. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's schedule award claim. Accordingly,

IT IS HEREBY ORDERED THAT the February 3, 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 7, 2023
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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

⁴ 41 ECAB 548 (1990); *see also Order Remanding Case, T.L.*, Docket No. 0708 (issued June 21, 2023); *Order Remanding Case, T.F.*, Docket No. 22-0015 (issued May 16, 2022); *Order Remanding Case, F.A.*, Docket No. 20-1324 (issued March 1, 2021); *T.G.*, Docket No. 19-1930 (issued January 8, 2021).

⁵ *See T.L., id.*; *T.F., id.*; *Order Remanding Case, G.A.*, Docket No. 19-1080 (issued January 2, 2020); *Order Remanding Case, T.J.*, Docket No. 14-1854 (issued February 3, 2015); *Order Remanding Case, J.J.*, Docket No. 12-1062 (issued December 12, 2012); *Willard McKennon*, 51 ECAB 145 (1999); *Linda Johnson*, 45 ECAB 439 (1994).