

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

M.O., Appellant)	
)	
and)	Docket No. 23-0608
)	Issued: October 25, 2023
U.S. POSTAL SERVICE, WOODSTOCK POST OFFICE, Woodstock, IL, Employer)	
)	

Appearances: *Case Submitted on the Record*
Alan J. Shapiro, Esq., for the appellant¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

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

On March 21, 2023 appellant, through counsel, filed a timely appeal from a February 8, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned Docket No. 23-0608.

On August 29, 2017 appellant, then a 58-year-old rural letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2017 she sustained a left ankle fracture and left foot sprain when she rolled her ankle while in the performance of duty. She stopped work on August 29, 2017. OWCP accepted the claim for left ankle displaced lateral malleolus fracture and left ankle sprain under OWCP File No. xxxxxx819.

OWCP previously accepted that appellant sustained a sprain of the left ankle and closed fracture of the left fifth metatarsal bone due to a September 26, 2008 employment injury, under

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on a appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

OWCP File No. xxxxxx357. The record reflects that appellant underwent an open reduction and internal fixation of the left fifth metatarsal fracture.

On July 23, 2021 appellant filed a claim for compensation (Form CA-7) for a schedule award under OWCP File No. xxxxxx819.

By decision dated August 31, 2021, OWCP denied appellant's schedule award claim.

On September 3, 2021 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated November 18, 2021, OWCP's hearing representative set aside the August 31, 2021 decision and remanded the case for further medical development.²

OWCP undertook further medical development of the instant claim and, by decision dated March 9, 2022, again denied appellant's schedule award claim.

On March 16, 2022 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. Following a preliminary review, by decision dated May 2, 2022, OWCP's hearing representative set aside the March 9, 2022 decision and remanded the case for further medical development.

On July 15, 2022 OWCP referred appellant, the medical record, including a June 1, 2022 statement of accepted facts (SOAF), to Dr. John J. Koehler, a Board-certified occupational medicine specialist, to provide a second opinion regarding her percentage of permanent impairment. The Board notes that the SOAF indicated that her claim had been administratively combined with OWCP File Nos. xxxxxx357 and xxxxxx185. However, it failed to mention appellant's open reduction and internal fixation of the left fifth metatarsal fracture under OWCP File No. xxxxxx357.

In a report dated July 11, 2022, Dr. Neil Allen, a Board-certified neurologist, found that appellant had a mild loss in dorsiflexion, which he opined was reasonable given her malleolar fracture and subsequent treatment. Applying Table 16-20 and Table 16-22, page 549 of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ he reaffirmed that she had 10 percent permanent impairment of the left lower extremity.

In a report dated August 14, 2022, Dr. Koehler noted his review of the medical record, including the SOAF. He opined that appellant had attained maximum medical improvement (MMI) as of August 12, 2022, the date of his examination. Dr. Koehler referred to the sixth edition of the A.M.A., *Guides*, and utilized the diagnosis-based impairment rating method to find that, under Table 16-2 (Foot and Ankle Regional Grid), page 503, the class of diagnosis for her malleolar fracture resulted in a Class zero impairment with a default value of zero as her fracture

² Appellant previously filed a traumatic injury claim for a January 20, 2016 left knee condition under OWCP File No. xxxxxx185. OWCP has administratively combined OWCP File Nos. xxxxxx185, xxxxxx357, and xxxxxx819, with the latter serving as the master file.

³ A.M.A., *Guides* (6th ed. 2009).

had healed without objective deficits. He noted that grade modifiers do not apply to Class zero impairments, resulting in zero percent permanent impairment of the left lower extremity.

On August 29, 2022 OWCP referred the medical record, including the June 1, 2022 SOAF, to Dr. Herbert White, a Board-certified orthopedic surgeon serving as an OWCP district medical adviser (DMA), to determine appellant's percentage of permanent impairment. In a report dated September 9, 2022, Dr. White noted his review of the medical record, including the SOAF. He opined that appellant had attained MMI as of February 3, 2022, the date of an earlier permanent impairment evaluation which was reinforced by the evaluation of Dr. Koehler. Dr. White referred to the sixth edition of the A.M.A., *Guides*, and concurred with Dr. Koehler's approach and conclusion that there was a zero percent left lower extremity impairment.

By decision dated September 19, 2022, OWCP denied appellant's schedule award claim.

On December 19, 2022 appellant, through counsel, requested reconsideration.

By decision dated January 26, 2023, OWCP granted appellant a schedule award for five percent permanent impairment of her left lower extremity, under OWCP File No. xxxxxx357.

By decision dated February 8, 2023, OWCP denied modification of its September 19, 2022 decision under OWCP File No. xxxxxx819.

The Board finds that this case is not in posture for decision.

On July 15 and August 29, 2022 OWCP provided Dr. Koehler, the second opinion physician, and Dr. White, the DMA, respectively, with a SOAF listing appellant's accepted conditions, including left ankle displaced lateral malleolus fracture and left ankle sprain under OWCP File No. xxxxxx819, as well as sprain of the left ankle and closed fracture of the left fifth metatarsal bone under OWCP File No. xxxxxx357.

It is OWCP's responsibility to provide a complete and proper frame of reference for a physician by preparing a SOAF.⁴ OWCP's procedures dictate that, when a DMA, second opinion specialist, or referee physician renders a medical opinion based on a SOAF, which is incomplete or inaccurate, or does not use the SOAF as the framework in forming his or her opinion, the probative value of the opinion is seriously diminished or negated altogether.⁵ OWCP did not provide the second opinion physician or the DMA with an accurate SOAF as it failed to mention appellant's surgery under OWCP File No. xxxxxx357. Thus, the Board finds that reports from the second opinion physician and the DMA were not based on an accurate factual framework and cannot represent the weight of the medical evidence.⁶

⁴ *C.E.*, Docket No. 19-1923 (issued March 30, 2021); *M.B.*, Docket No. 19-0525 (issued March 20, 2020); *J.N.*, Docket No. 19-0215 (issued July 15, 2019); *Kathryn E. Demarsh*, 56 ECAB 677 (2005).

⁵ *R.W.*, Docket No. 19-1109 (issued January 2, 2020); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Requirements for Medical Reports*, Chapter 3.600.3 (October 1990). *See also id.* at Chapter 2.809 (September 2009).

⁶ *Id.* at Chapter 3.600.3.a(6); *M.B.*, *supra* note 4; *G.C.*, Docket No 18-0842 (issued December 20, 2018).

Once OWCP undertakes to develop the medical evidence, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.⁷ Accordingly, the Board finds that the case must be remanded to OWCP. On remand, OWCP shall prepare a complete and accurate updated SOAF, including the prior surgery and schedule award granted under OWCP File No. xxxxxx357, and request that Dr. Koehler, the second opinion physician, and Dr. White, the DMA, submit clarifying reports regarding appellant's permanent impairment. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision. Accordingly,

IT IS HEREBY ORDERED THAT the February 8, 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: October 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

⁷ *M.B., id.; D.S., Docket No. 19-0292 (issued June 21, 2019); G.C., id.*