

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

N.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 11-1813
Issued: February 27, 2012**

Appearances:
Garry Simmons, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

Appellant filed an application for review of the Office of Workers' Compensation Programs' (OWCP) March 30, 2011 merit decision finding that she received an overpayment of compensation due to her receipt of a duplicate schedule award payment. The appeal was docketed as number 11-1813. The Board finds that this case is not in posture for a decision.

Appellant's March 5, 1997 traumatic injury claim in File No. xxxxxx872 was accepted for right wrist sprain, right ganglion and bilateral carpal tunnel syndrome. On February 15, 2001 OWCP granted appellant a schedule award for a 10 percent permanent impairment of her left upper extremity in File No. xxxxxx872.¹

The present appeal involves appellant's December 13, 2002 occupational disease claim that was accepted for cervical radiculopathy and brachial neuritis (File No. xxxxxx374). By decision dated February 28, 2006, OWCP granted appellant a schedule award for a six percent impairment of her left arm and found that she reached maximum medical improvement on

¹ The record does not contain a copy of the February 15, 2001 schedule award or any evidence relating to the development of the schedule award issue in File No. xxxxxx872. The information regarding the February 15, 2001 schedule award was obtained from the hearing representative's March 30, 2011 decision in File No. xxxxxx374.

May 5, 2005.² In satisfaction of the award, appellant received the amount of \$10,464.48 for the period July 25 through December 5, 2005.

On August 10, 2010 OWCP issued a preliminary determination that appellant had received an overpayment of compensation in the amount of \$10,464.48 and that she was not at fault in its creation. The determination was based upon the fact that appellant had previously received a schedule award for a 10 percent permanent impairment of her left upper extremity under File No. xxxxxx872. In a March 30, 2011 decision, an OWCP hearing representative finalized the preliminary overpayment determination, finding that the amount appellant received pursuant to the February 28, 2006 schedule award (6 percent) in File No. xxxxxx374 duplicated the prior schedule award (10 percent) in File No. xxxxxx872.

The Federal Employees' Compensation Act and its implementing regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.³ Benefits payable under section 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.⁴ The record in the instant case, however, does not contain any evidence relating to the development of the March 5, 1997 traumatic injury claim in File No. xxxxxx872. The Board is therefore unable to determine whether the schedule award received in File No. xxxxxx374 was duplicative of that received in File No. xxxxxx872, or was intended to constitute an additional schedule award. The Board finds that the medical evidence contained in File No. xxxxxx872 will necessarily bear directly on appellant's claim for compensation in File No. xxxxxx374.

Because it is essential for the Board to review the medical evidence contained in File No. xxxxxx872 in order to render a full and fair adjudication of the present appeal, this case will be remanded for OWCP to consolidate case File No. xxxxxx374 and File No. xxxxxx872. Reconstruction of the record will be followed by a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.

² In a December 9, 2005 report, the district medical adviser opined that appellant had a six percent permanent impairment of her left upper extremity based solely on her accepted radiculitis and brachial neuritis conditions.

³ 5 U.S.C. § 8108; 20 C.F.R. § 10.404(c).

⁴ 20 C.F.R. § 10.404(c)(1), (2).

IT IS HEREBY ORDERED THAT the March 30, 2011 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further development consistent with this order of the Board.

Issued: February 27, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board