

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

H.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Redding, CA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 14-1985
Issued: June 26, 2015**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge

On September 15, 2014 appellant filed a timely application for review of a June 24, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP) reducing appellant's compensation on the basis that he had the capacity to earn wages as an information clerk, according to the Department of Labor, *Dictionary of Occupational Titles* (DOT) No. 237.367-022, at the rate of \$320.00 per week. The Board docketed the appeal as No. 14-1985. On appeal appellant contends, *inter alia*, that OWCP completely ignored the reports of his treating physician.

Having reviewed the case record submitted by OWCP, the Board finds that this case is not in posture for decision.

On February 3, 2011 OWCP accepted that appellant sustained patellar tendinitis, left after kneeling in the performance of duty as a mail processing clerk on October 7, 2010.¹ It paid compensation benefits. By decision dated June 24, 2014, OWCP reduced appellant's

¹ OWCP accepted appellant's prior claim for left knee internal derangement, localized primary arthritis in the left leg, and left knee medial meniscus tear resulting from slipping in a puddle of water on December 25, 2003 while in the performance of duty as a mail processing clerk. OWCP File No. xxxxxx623.

compensation to reflect that he had the capacity to earn wages as an information clerk at the rate of \$320.00 per week.

The Board finds that, in reducing appellant's compensation, OWCP did not consider all of the relevant medical evidence. OWCP indicated that it based its decision on the April 1, 2013 report of the second opinion physician, Dr. Charles F. Xeller, a Board-certified orthopedic surgeon, who opined that appellant could return to work in a strictly sedentary position. However, OWCP never considered the reports of Dr. Paul Schwartz, appellant's treating Board-certified orthopedic surgeon.

The Board notes that in a May 14, 2013 progress report, Dr. Schwartz listed appellant's diagnoses as knee joint replacement, left knee joint arthrofibrosis and generalized left anterior knee pain. Dr. Schwartz noted that while he would agree with Dr. Xeller's assessment regarding history and current ambulatory status and knee function, he would dispute his contention that appellant could return to a strictly sedentary job. He noted that, while walking and moving is painful for appellant, prolonged sitting, such as would be required by a sedentary job, would also cause him significant discomfort. Dr. Schwartz opined that, at present, he did not feel that appellant would be able to return to a regular line of work, including sedentary work, even with vocational rehabilitation. He explained that appellant had a primary knee replacement on the right, but that the majority of problems seem to be related to his left knee, which has had a primary arthroplasty and three revision surgeries, and that this would be the primary cause of appellant's lasting disability. He also was concerned that returning appellant to a work environment would expose him to a risk of reinjury of his knees, even from the most innocuous of events.

Because Board decisions are final with regard to the subject matter appealed,² it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.³ As OWCP did not review Dr. Schwartz's report, accordingly, the Board finds that this case is not in posture for decision as OWCP did not review all the relevant evidence before issuing its decision. On remand, OWCP shall review all evidence of record and, following any further development of the medical evidence deemed necessary, it shall issue a *de novo* decision on appellant's claim.⁴

² 20 C.F.R. § 501.6(d).

³ See *William A. Couch*, 41 ECAB 548, 553 (1990).

⁴ Appellant submitted new evidence on appeal. However, the Board lacks jurisdiction to review evidence for the first time on appeal. See 20 C.F.R. § 501.2(c). Appellant may submit this evidence to OWCP on remand.

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 24, 2014 is set aside, and the case is remanded for further consideration consistent with this order.

Issued: June 26, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board