

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

D.K., Appellant

and

**DEPARTMENT OF THE NAVY, NAVAL
FACILITIES ENGINEERING COMMAND-
CENTERS, Dahlgren, VA, Employer**

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**Docket No. 15-1769
Issued: April 4, 2016**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On August 24, 2015 appellant filed a timely application for review from a March 12, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration. The Clerk of the Board docketed the appeal as No. 15-1769.

OWCP accepted that on June 17, 2008 appellant, then a 46-year-old cross connection control systems inspector, sustained a left knee strain. It authorized a left knee partial meniscectomy performed on August 15, 2008. Appellant returned to full-time limited-duty work on September 2, 2008. On May 27, 2009 OWCP expanded the acceptance of appellant's claim to include an adverse effect of a drug, medicinal, and biological substance. On October 19, 2010 it granted appellant a schedule award for eight percent permanent impairment of the left leg based on an August 24, 2010 medical opinion of Dr. Wylie D. Lowery, Jr., a Board-certified orthopedic surgeon and an impartial medical specialist. In a June 22, 2011 decision, OWCP found that appellant was entitled to a schedule award for an additional 18 percent impairment of the left leg, for a total of 26 percent, based on a May 26, 2011 medical opinion of its medical adviser. On August 23, 2012 it expanded the acceptance of appellant's claim to include localized secondary osteoarthritis of the lower left leg based on the October 1, 2012 reports of Dr. Kurt R. Larson, a Board-certified orthopedic surgeon. On December 18, 2013 appellant filed a claim for an additional schedule award. He contended that Dr. Larson's November 14, 2013

report, which found that he had 40 percent impairment of the left leg under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*), supported additional impairment to his left leg. In an April 1, 2014 decision, OWCP denied appellant's claim for an increased schedule award finding that the medical evidence was insufficient.

On November 29, 2014 appellant requested reconsideration of the April 1, 2014 decision. He contended that he was entitled to an increased schedule award because Dr. Larson had supported an additional 14 percent impairment to his left lower extremity, for a total of 40 percent. Appellant maintained that the physician's statements regarding his range of motion were overlooked by OWCP. In a November 22, 2013 report, Dr. Larson related that appellant was previously given an intra-articular injection in the right hip. He gave him a repeat ultrasound-guided injection in the right hip. In a September 8, 2014 report, Dr. Bhavin S. Suthar, a Board-certified physiatrist, provided appellant's history and findings on examination. He assessed low back pain, lumbar spondylosis with myelopathy, and lumbar facet syndrome.

By decision dated March 12, 2015, OWCP denied further merit review of appellant's claim. It found that the evidence submitted did not support that it had erroneously applied or interpreted a point of law.

The Board has duly considered the matter and finds that this case is not in posture for decision. Section 8124(a) of the Federal Employees' Compensation Act provides that OWCP shall determine and make a finding of fact and make an award for or against payment of compensation.¹ Its regulations also state that the decision shall contain findings of fact and a statement of reasons.² The reasoning behind OWCP's evaluation should be clear enough for the reader to understand the precise defect of the claim and the kind of evidence which would overcome it.³

In its March 12, 2015 decision, OWCP did not discharge its responsibility to provide appellant a statement explaining the disposition so that appellant could understand the basis for the decision as well as the precise defect and the evidence needed to overcome the denial of his claim. The Board notes that OWCP denied appellant's November 29, 2014 request for reconsideration because it did not establish that OWCP had erroneously applied or interpreted a point of law, but failed to provide any discussion of the evidence he submitted in support of his reconsideration request and to explain how the evidence was insufficient to warrant a merit review of his claim.

Accordingly, the case must be returned to OWCP for a proper decision which includes findings of fact and a clear and precise statement regarding appellant's request for reconsideration on the denial of his claim for an increased schedule award or why he is not

¹ 5 U.S.C. § 8124(a); see *Hubert Jones, Jr.*, 57 ECAB 467 (2006); *Paul M. Colosi*, 56 ECAB 294 (2005).

² 20 C.F.R. § 10.126; see also *O.R.*, 59 ECAB 432 (2008); *Teresa A. Ripley*, 56 ECAB 528 (2005); *M.L.*, Docket No. 09-956 (issued April 15, 2010).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (c) (February 2013).

entitled to further reconsideration. Following this and such further development as OWCP deems necessary, it shall issue an appropriate decision.

IT IS HEREBY ORDERED THAT the March 12, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this order of the Board.

Issued: April 4, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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