United States Department of Labor
Employees' Compensation Appeals Board

A.D., Appellant	)	
and	)	**Docket No. 20-0553**
	)	**Issued: April 19, 2021**
DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION, Rio Grande City, TX, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On January 13, 2020 appellant, through counsel, filed a timely appeal from a November 7, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[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 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.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish more than two percent permanent impairment of his left lower extremity and two percent permanent impairment of his right lower extremity, for which he previously received schedule award compensation.

FACTUAL HISTORY

This case has previously been before the Board.[3] The facts and circumstances of the case as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 13, 2000 appellant, then a 30-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on June 11, 2000 he injured his back, heels, and buttocks when working the sky watch in the performance of duty. He explained that when he leaned back his chair broke, causing him to fall 25 feet. OWCP accepted appellant's claim for a closed fracture of the lumbar vertebra without spinal cord injury and bilateral ankle sprain.

On December 11, 2000 appellant filed a claim for a schedule award (Form CA-7). By decision dated February 8, 2001, OWCP denied appellant's schedule award claim.

On October 21, 2011 appellant filed a notice of recurrence of the need for medical treatment (Form CA-2a). He related that he still had pain in his left leg which had continued through the years due to herniated disc impingement following his June 11, 2000 injury. By decision dated January 9, 2012, OWCP denied appellant's recurrence claim. Appellant requested reconsideration. By decisions dated February 15 and June 18, 2012, OWCP denied modification of its January 9, 2012 decision.

On July 6, 2012 appellant underwent lumbar laminectomies at L3-L4, L4-L5, and L5-S1 with medial facetomies, discectomies, and foraminotomies.

On October 21, 2014 appellant filed a claim for a schedule award (Form CA-7). By decision dated April 15, 2015, OWCP denied appellant's schedule award claim.

On April 24, 2015 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated February 2, 2016, the hearing representative affirmed OWCP's April 15, 2015 decision.

On March 17, 2016 appellant, through counsel, appealed to the Board. By decision dated February 16, 2017, the Board set aside the February 2, 2016 decision and remanded the case for further development.[4] The Board noted that the report from appellant's treating physician, Dr. Thomas Martens, an osteopathic physician, was deficient as he did not rate appellant's spinal impairment using *The Guides Newsletter,* Rating Spinal Nerve Extremity Impairment Using the

[3] Docket No. 16-0841 (issued February 16, 2017).

[4] *Id.*

Sixth Edition (July/August 2009) (*The Guides Newsletter*). Nevertheless, the Board found that a conflict existed in the medical opinion evidence as there were significant discrepancies between the physical findings of Dr. Martens, and Dr. David Poindexter, a Board-certified physiatrist and OWCP's second opinion examiner, which caused a conflict in medical evidence with regard to the degree of appellant's permanent impairment of his lower extremities from his spinal injury. The Board directed OWCP to refer appellant for an impartial medical examination for resolution of the conflict in the medical opinion evidence, to be followed by a *de novo* decision.

In a June 16, 2017 report, Dr. Maria Arizmendez, a Board-certified physiatrist, acting as the impartial medical examiner (IME), conducted a neurological examination which revealed no pinprick sensation in appellant's left lateral thigh, leg, and foot, decreased pinprick sensation in the L5-S1 distribution, decreased vibratory sensation in the bilateral feet present at the knees, decreased temperature sensation to the mid-calf in the bilateral lower extremities, an absent left ankle reflex, and ambulation with a normal base, stride and cadence. She related that appellant stated that he had difficulties with heel, toe, and tandem gait secondary to balance. Dr. Arizmendez indicated that appellant reached his maximum medical improvement (MMI) on March 6, 2015. She used the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[5] to calculate an impairment rating of 11 percent for a disc herniation resulting in radiculopathy. Dr. Arizmendez concluded that appellant's permanent impairment was related to his employment injury.

In a July 24, 2017 letter, OWCP requested that Dr. Arizmendez recalculate appellant's permanent impairment percentages using the sixth edition of the A.M.A., *Guides.*[6] No response was received.

In an August 27, 2017 report, Dr. Taisha Williams, a Board-certified physiatrist serving as OWCP's DMA, indicated that Dr. Arizmendez incorrectly applied the fifth edition of the A.M.A., *Guides*. She also related that, if motor or sensory abnormalities are present, then *The Guides Newsletter* should be used. Dr. Williams also stated that Dr. Arizmendez did use the correct MMI date of March 6, 2015.

On October 19, 2017 OWCP referred appellant to Dr. Charles Kennedy, a Board certified orthopedic surgeon, for another impartial medical examination to resolve the conflict in the medical opinion evidence. It advised appellant by letter dated October 26, 2017 that a new impartial medical examination was required as Dr. Arizmendez had rated appellant's permanent impairment using the 5th edition of the A.M.A., *Guides.*

OWCP prepared a statement of accepted facts (SOAF) dated September 1, 2017. The SOAF noted appellant's history of injury on June 11, 2000, the accepted conditions of closed fracture of lumbar vertebra without spinal cord injury, and bilateral ankle sprain. It also noted that appellant had undergone July 6, 2012 lumbar laminectomy at L3-S1 with medial facetomies, discectomies, and foraminotomies.

[5] A.M.A., *Guides* (5th ed. 2001).

[6] A.M.A., *Guides* (6th ed. 2009).

In a December 5, 2017 report, Dr. Kennedy, serving as an IME, reviewed appellant's history of injury and medical records. He related that appellant presented with pain in his back, left leg, and both ankles. Dr. Kennedy indicated that these symptoms originated from an injury appellant sustained in 2011 and were unrelated to appellant's accepted employment injury. He conducted a physical examination which revealed poor extension of appellant's back, the ability to walk on heels and toes with some difficulty, an absent left Achilles reflex, and an area of decreased sensation on the L5 distribution without weakness. Dr. Kennedy opined that appellant's physical findings of decreased sensation at the L5-S1 nerve root and the lack of an ankle reflex were unrelated to appellant's accepted work injury. He related that appellant's medical records showed that he was able to continue working as a border patrol agent after his accepted injury without difficulty and then work for the U.S. Marshals Service without difficulty, and he opined that appellant therefore reached MMI six months after his accepted employment injury. Dr. Kennedy stated that appellant sustained an additional injury at home and at work; however, in another part of his report he stated that appellant had no other work-related injuries. He also stated that in 2012 appellant was working out when he experienced increased pain in his back that radiated into his left lower extremities. Dr. Kennedy related that appellant's symptoms subsequently increased after these events. Utilizing *The Guides Newsletter*, he calculated a one percent left lower extremity impairment. Using the sixth edition of the A.M.A., *Guides*, Dr. Kennedy referred to Table 16-2, page 501 (foot and ankle regional grid -- lower extremity impairments) and indicated that the default position for a sprain and tendinitis was grade 1. He stated that as appellant had mild-to-moderate symptoms, grade 1 was appropriate. Dr. Kennedy calculated one percent permanent impairment of both ankles and calculated a total of three percent permanent impairment of the lower extremities. He indicated that he based his impairment rating on physical findings from a November 29, 2000 medical report, which was the closest report to appellant's MMI.

In a January 13, 2018 report, Dr. Williams, again serving as OWCP's DMA, reviewed the medical record including Dr. Kennedy's December 5, 2017 medical report. Utilizing the A.M.A., *Guides*, she referred to Table 16-2, page 501 (foot and ankle regional grid -- lower extremity impairments) and found that appellant's diagnosis of ankle sprain was class 0 bilaterally because there were no objective abnormal findings of muscle or tendon injury at his MMI. Additionally, she stated that appellant's accepted condition of a closed fracture of the lumbar vertebra specifically states "no spinal cord injury," and therefore using *The Guides Newsletter* was inappropriate. Dr. Williams calculated a total of 0 percent permanent impairment of the lower extremities and indicated that appellant reached MMI on March 6, 2015, as this was the date when no further intervention was expected to improve his symptoms.

In a January 22, 2018 letter, appellant indicated that Dr. Kennedy incorrectly determined his date of MMI since other physicians who previously served as second opinion evaluators and DMAs found that his MMI was reached on March 6, 2015. He noted that Dr. Kennedy, despite indicating otherwise later in his report, did find that appellant's sensory deficit at L5-S1 was causally related to his accepted employment injury and was ratable. Appellant indicated that he experienced back and left leg symptoms from his injury prior to 2011, and he referred to a November 22, 2000 medical report by Dr. Jose M. Marina, an osteopath Board-certified in orthopedic surgery, which stated that appellant reported that he has had back and left leg pain since the time of his injury. He also referred to a January 5, 2012 medical report by Dr. Melanie Kinchen, a Board-certified orthopedic surgeon, that related appellant had lumbar radiculopathy

from his L5-S1 disc herniation since 2000. Appellant stated that his pain has been ongoing but he initially treated it conservatively and delayed surgery because of his young age at the time of the injury. He related that he had significant difficulties working as a border patrol agent and left a year after his accepted injury due to those difficulties and joined the federal air marshal service, where his position was seated and entailed minimal walking. Appellant additionally noted that he never stated that he sustained an injury at home or while working out in 2012.

On January 24, 2018 OWCP provided Dr. Kennedy with Dr. Williams' January 13, 2018 DMA report and requested an addendum report clarifying issues raised in the DMA report.

In a supplemental report dated January 30, 2018, Dr. Kennedy indicated that he reviewed DMA Dr. Williams' January 13, 2018 report and he agreed with her impairment rating of zero percent for appellant's bilateral lower extremities. He related that appellant had reached MMI on March 6, 2015 and had zero percent whole person impairment for the bilateral lower extremities using the diagnosis-based impairment (DBI) method.

By decision dated February 2, 2018, OWCP denied appellant's schedule award claim.

On February 12, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, held on July 26, 2018.

In a July 25, 2018 report, Dr. Lubor Jarolimek, an orthopedic surgeon, indicated that appellant presented with low back pain, numbness and tingling in his legs, throbbing and twitching in his left foot, pain, instability, and weakness in both ankles, and swelling in his left ankle. He reviewed appellant's history of injury, his medical history, and noted appellant's accepted conditions as a closed fracture of the lumbar vertebrae and bilateral ankle sprains. Dr. Jarolimek conducted a physical examination and noted findings on physical examination. He indicated that appellant reached MMI on July 25, 2018. Utilizing *The Guides Newsletter* to calculate appellant's lumbar spinal nerve root impairment, he calculated an 11 percent S1 nerve root impairment and a 7 percent L5 nerve root impairment. Utilizing the DBI method of the sixth edition of A.M.A., *Guides,* he referred to Table 16-2, page 501 (foot and ankle regional grid -- lower extremity impairments) and indicated that appellant's diagnosis for his bilateral ankles was ankle strain and calculated a total two percent permanent impairment of the right ankle. Using the ROM impairment method of the sixth edition of the A.M.A., *Guides* for appellant's left ankle, Dr. Jarolimek calculated an impairment rating of four percent. He opined that appellant's accepted employment injury caused his permanent impairment.

By decision dated September 28, 2018, the hearing representative set aside OWCP's February 2, 2018 decision and remanded the case to OWCP for further development. The hearing representative directed OWCP to prepare an updated SOAF to send along with appellant's medical records to a DMA to advise if appellant has any permanent impairment of his lower extremities as a result of the accepted employment injury.

OWCP prepared a SOAF dated October 3, 2018 which essentially reiterated the facts noted in the prior SOAFs of record.

In a November 14, 2018 report, Dr. Williams, again serving as OWCP's DMA, indicated that she reviewed OWCP's SOAF and appellant's medical records. She also reviewed appellant's

history of injury and medical history and noted appellant's accepted conditions as a closed fracture of the lumbar vertebra without spinal cord injury and bilateral ankle sprains. Dr. Williams stated that while Dr. Jaromilek used the DBI and ROM methods to calculate appellant's ankle impairments, the 6th edition of the A.M.A., *Guides* only allowed for the DBI method to calculate his bilateral ankle impairments. Utilizing the 6th edition of the A.M.A., *Guides* to calculate appellant's impairment with the DBI method, Dr. Williams referred to Table 16-2, page 501 (foot and ankle regional grid -- lower extremity impairments) and found that appellant's diagnosis of bilateral ankle sprains with mild range of motion deficits corresponded to a grade of 1. She assigned a grade modifier for functional history (GMFH) of 1 due to appellant's antalgic gait. Dr. Williams assigned a grade modifier for physical examination (GMPE) of 1 due to minimal palpatory findings and minimal range of motion deficits. She assigned a grade modifier for clinical studies (GMCS) of 1 for the right ankle since a magnetic resonance imaging (MRI) scan from 2000 displayed a grade 1 sprain. Dr. Williams assigned a GMCS of 0 for the left ankle since an MRI scan from 2000 displayed normal results. She calculated a total of two percent impairment of the right ankle and a total of two percent impairment of the left ankle. Dr. Williams stated that it was incorrect to use *The Guides Newsletter* to evaluate appellant's lumbar spine impairment because his accepted lumbar diagnosis specifically stated that there was no spinal cord injury. She opined that appellant reached MMI on March 6, 2015, as that was the date when no further intervention was expected to improve his symptoms.

By decision dated November 29, 2018, OWCP granted appellant a schedule award for two percent permanent impairment of the right lower extremity and two percent permanent impairment of the left lower extremity, based upon his bilateral ankle permanent impairments. The period of the award ran for 11.52 weeks of compensation from March 6 through May 25, 2015. It additionally found that appellant's MMI date was March 6, 2015.

On December 4, 2018 appellant, through counsel, requested a hearing before a representative of OWCP's Branch of Hearings and Review, held on April 10, 2019. By decision dated June 19, 2019, OWCP's hearing representative affirmed the November 29, 2018 schedule award decision.

On August 19, 2019 appellant, through counsel, requested reconsideration.

In an undated letter, Dr. Jarolimek disagreed with the DMA's review of his July 25, 2018 impairment rating of appellant's lumbar spine injury. He reviewed appellant's history of injury and indicated that in his medical opinion and based on reasonable medical probability, the force of appellant's 25-foot fall was enough trauma to fracture the anterior lip of L1 and L2 and enough force to injure the soft tissues of the spine. Dr. Jarolimek related that disc herniation/protrusion of appellant's lumbar spine was present at L5-S1, L4-L5, and L3-L4 with contact on the existing nerve roots, producing symptoms and positive physical examination findings in appellant's lower extremities. He stated that based upon appellant's complaints of pain and weakness and his inability to heel walk or toe walk, the use of *The Guides Newsletter* was appropriate to rate appellant's lower extremity impairment based on his spinal injuries.

By decision dated November 7, 2019, OWCP denied modification of the June 19, 2019 decision.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] and its implementing regulations[8] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[9] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[10]

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[11] Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment of the class of diagnosis (CDX), which is then adjusted by grade modifiers of GMFH, GMPE, and GMCS.[12] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[13] The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.[14]

Neither FECA nor its implementing regulations provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.[15] However, a schedule award is permissible where the employment-related spinal condition affects the upper and/or lower extremities.[16] The sixth edition of the A.M.A., *Guides* provides a specific methodology for rating spinal nerve extremity impairment in *The Guides Newsletter*. It was designed for situations where a particular jurisdiction, such as FECA, mandated ratings for

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id. See also T.T.*, Docket No. 18-1622 (issued May 14, 2019).

[10] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[11] A.M.A., *Guides*, page 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[12] *Id.* at 493-556.

[13] *Id*. at 521.

[14] *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

[15] 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see A.G.*, Docket No. 18-0815 (issued January 24, 2019); *Jay K. Tomokiyo*, 51 ECAB 361, 367 (2000).

[16] *See supra* note 10 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5c(3) (March 2017).

extremities and precluded ratings for the spine. The FECA-approved methodology is premised on evidence of radiculopathy affecting the upper and/or lower extremities. The appropriate tables for rating spinal nerve extremity impairment are incorporated in the Federal (FECA) Procedure Manual.[17]

In addressing upper or lower extremity impairment due to peripheral or spinal nerve root involvement, the sixth edition of the A.M.A., *Guides* and *The Guides Newsletter* require identifying the impairment CDX, which is then adjusted by the GMFH and the GMCS. The effective net adjustment formula is (GMFH-CDX) + (GMCS-CDX).[18]

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."[19] In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an IME for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well-rationalized and based upon a proper factual background, must be given special weight.[20]

ANALYSIS

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

Preliminarily, the Board notes that it is unnecessary for the Board to consider the evidence appellant submitted prior to the issuance of the February 2, 2016 decision because the Board considered that evidence in its February 16, 2017 decision. Findings made in prior Board decisions are *res judicata* absent any further review by OWCP under section 8128 of FECA.[21]

In the prior appeal, the Board noted that appellant's peripheral nerve impairments resulting from spinal injury should be rated utilizing *The Guides Newsletter*. The Board further found a conflict in medical opinion between appellant's treating physician, Dr. Martens, and OWCP's physician, Dr. Poindexter, regarding appellant's physical examination findings, which created a conflict as to the degree of appellant's lower extremity permanent impairment under *The Guides Newsletter*. The Board remanded the case for OWCP to resolve the conflict in the medical opinion evidence. On remand OWCP referred appellant to Dr. Arizmendez for an impartial medical examination, however Dr. Arizmendez used the wrong edition of the A.M.A., *Guides* to rate appellant's impairments, OWCP thereafter referred appellant to Dr. Kennedy for another impartial medical examination.

[17] *Id.* at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (January 2010).

[18] *The Guides Newsletter*; A.M.A., *Guides* 430.

[19] 5 U.S.C. § 8123(a).

[20] *L.L.*, Docket No. 19-0214 (issued May 23, 2019); *D.M.*, Docket No. 18-0476 (issued November 26, 2018); *R.H.*, 59 ECAB 382 (2008); *Raymond A. Fondots*, 53 ECAB 637, 641 (2002).

[21] *M.D.*, Docket No. 19-0510 (issued August 6, 2019).

The Board finds that Dr. Kennedy's reports are insufficient to resolve the conflict as to whether appellant had a peripheral nerve injury causally related to his accepted June 11, 2000 employment injury which resulted in permanent impairment of the lower extremities under *The Guides Newsletter.*

In rating appellant's permanent impairment arising from his spinal injury, Dr. Kennedy referenced appellant's sensory deficit at the L5-S1 nerve root and absent ankle jerk, but he found that these findings were unrelated to appellant's accepted 2000 employment injury. He related that appellant's back and lower extremity symptoms developed after a 2011 injury. Dr. Kennedy vaguely referred to injuries appellant sustained while working for the U.S. Marshall and another injury at home. Appellant has disputed that he sustained any injury following the accepted 2000 employment injury. The Board further notes that none of the SOAFs of record document any other spinal injury. OWCP's procedures provide that the findings of an OWCP referral physician or IME must be based on the factual underpinnings of the claim, as set forth in the SOAF.[22] OWCP's procedures and Board precedent dictate that when OWCP's referral physician or IME 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.[23]

The Board finds that Dr. Kennedy did not use the SOAF as his framework as he found that appellant's lower extremity deficits from his spinal injury were related to other injuries, not documented by the SOAF.

Furthermore, by concluding in his supplemental report that appellant had zero percent whole body impairment for his bilateral lower extremities under the DBI method, Dr. Kennedy did not follow the Board's prior instructions that appellant's spinal injury was to be rated under *The Guides Newsletter*. Neither FECA, nor its implementing regulations, provide for the payment of a schedule award for the permanent loss of use of the back/spine or the body as a whole.[24] The Board therefore finds that the probative value of Dr. Kennedy's reports was diminished. As Dr. Kennedy did not resolve the conflict in the medical evidence regarding appellant's lower extremity permanent impairments resulting from his accepted employment-related June 11, 2000 spinal injury the case must be remanded to OWCP for further development.

On remand OWCP shall review the record and determine whether the current SOAF accurately reflects appellant's history of injury. If necessary, it shall update the SOAF. OWCP shall thereafter refer appellant and the case record to another IME to resolve the conflict in medical opinion regarding whether appellant had physical examination findings of an employment-related spinal condition affecting the lower extremities. If so, the IME should rate appellant's spinal nerve

[22] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Statement of Accepted Facts*, Chapter 2.810.11a (September 2019).

[23] *Id*. at Chapter 3.600.3(10) (October 1990); *J.R.*, Docket No. 19-1321 (issued February 7, 2020); *M.D.*, Docket No. 18-0468 (issued September 4, 2018); *Paul King*, 54 ECAB 356 (2003).

[24] 5 U.S.C. § 8107(c); 20 C.F.R. § 10.404(a) and (b); *see C.S.*, Docket No. 19-0851 (issued November 18, 2019).

impairment utilizing *The Guides Newsletter*.[25] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's schedule award claim.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the November 7, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 19, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

[25] *See T.W.*, Docket No. 20-0119 (issued January 12, 2021).