

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

R.P., Appellant)	
)	
and)	Docket No. 24-0266
)	Issued: April 15, 2024
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. CUSTOMS AND BORDER PROTECTION,)	
U.S. BORDER PATROL, Imperial, CA, Employer)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On January 22, 2024 appellant filed a timely appeal from an October 24, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0266.

On February 20, 2014 appellant, then a 37-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on February 13, 2014, he sustained an injury to his left thumb when conducting a takedown training scenario while in the performance of duty. On April 17, 2014 OWCP accepted the claim for sprain of hand, metacarpophalangeal (MCP) left, and closed dislocation of finger MCP left.¹

Appellant subsequently submitted a September 12, 2014 report, wherein Dr. David M. Kupfer, an orthopedic hand surgeon Board-certified in plastic surgery, found that appellant had reached maximum medical improvement (MMI), but had no permanent impairment of the thumb,

¹ The record reflects that appellant has several prior claims. Under OWCP File No. xxxxxx073, OWCP accepted an October 14, 2010 left shoulder sprain, left shoulder impingement, and left lateral epicondylitis. On November 6, 2012 it granted appellant a schedule award for 11 percent permanent impairment of the left upper extremity. Appellant's claims have not been administratively combined by OWCP.

based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A. *Guides*).²

On February 17, 2023, appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support thereof, appellant submitted a March 14, 2023 report, wherein Dr. Kupfer noted that he had reevaluated appellant and found that appellant had discomfort in active motion of the thumb. Dr. Kupfer referred to the A.M.A., *Guides* Table 15-2, at page 392 and opined that appellant had three percent whole person impairment.

On April 6, 2023, OWCP referred the claim to Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for a review of the medical record and an opinion regarding permanent impairment.

In an April 18, 2023 report, Dr. Hammel opined that appellant had no permanent impairment, and that MMI was reached on March 14, 2023. He noted that OWCP had previously granted appellant a schedule award for 11 percent permanent impairment of the left shoulder.

By letters dated April 20 and May 31, 2023, OWCP requested that Dr. Kupfer review the DMA's report and provide his opinion. No response was received.

On July 19, 2023 OWCP referred appellant to Dr. Qing-Men Chen, a Board-certified orthopedic surgeon, for a second opinion examination.

In a report dated October 17, 2023, Dr. Chen found that appellant reached MMI on the date of his examination, and noted objective findings including some loss of motion, which correlated with subjective complaints of stiffness. Dr. Chen opined that appellant had 2 percent hand impairment and 1 percent left upper extremity permanent impairment, which was less than the 11 percent permanent impairment of the left upper extremity previously awarded.

By decision dated October 24, 2023, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to his accepted employment injury.³

The Board, having duly considered this matter, finds that the case is not in posture for decision.

Appellant has several prior claims, including a previously-accepted claim for left upper extremity conditions under OWCP File No. xxxxxx073, for which OWCP granted appellant a schedule award for 11 percent permanent impairment of the left upper extremity. The present claim, OWCP File No. xxxxxx106, also pertains to left upper extremity conditions. However,

² A.M.A., *Guides* (6th ed. 2009).

³ It referenced the prior schedule award for 11 percent left upper extremity permanent impairment under OWCP File No. xxxxxx073.

OWCP had not administratively combined the claims at the time it obtained the second opinion from Dr. Chen.

OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between files.⁴ For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.⁵

Therefore, for a full and fair adjudication, this case shall be remanded for OWCP to administratively combine appellant's claims under OWCP File Nos. xxxxxx106 and xxxxxx073, as they both concern permanent impairment of the same region of the body. This will allow OWCP to consider all relevant claim files in adjudicating appellant's schedule award claim.⁶ It shall then prepare an updated SOAF, and refer appellant to a new specialist in the appropriate field of medicine for a second opinion examination. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁵ *Id.*; *Order Remanding Case, A.J.*, Docket No. 21-1410 (issued May 10, 2022); *R.H.*, Docket No. 21-0575 (issued December 21, 2021); *D.C.*, Docket No. 19-0100 (issued June 3, 2019); *N.M.*, Docket No. 18-0833 (issued April 18, 2019); *K.T.*, Docket No. 17-0432 (issued August 17, 2018).

⁶ *Id.*; see also *Order Remanding Case*, Docket No. 22-0531 (issued November 18, 2022); *Order Remanding Case, M.E.*, Docket No. 21-0094 (issued May 27, 2021); *Order Remanding Case, L.M.*, Docket No. 19-1490 (issued January 29, 2020); *Order Remanding Case, L.H.*, Docket No. 18-1777 (issued July 2, 2019).

IT IS HEREBY ORDERED THAT the October 24, 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: April 15, 2024
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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