

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

T.C., Appellant)	
)	
and)	Docket No. 24-0418
)	Issued: June 3, 2024
U.S. POSTAL SERVICE, NEW ORLEANS)	
POST OFFICE, New Orleans, LA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 11, 2024 appellant filed a timely appeal from a February 16, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ The Clerk of the Appellate Boards assigned the appeal Docket No. 24-0418.

On April 22, 2015 appellant, then a 50-year-old retired mail processor, filed an occupational disease claim (Form CA-2) alleging that she sustained injury to her neck, back and hands due to factors of her federal employment. OWCP assigned the claim OWCP File No. xxxxxx612 and accepted it for bilateral carpal tunnel syndrome, intervertebral cervical disc degeneration, and intervertebral lumbar disc degeneration.²

¹ The Board notes that, following the February 16, 2024 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² Appellant also has a previously accepted occupational disease claim for left shoulder sprain, disorder of left shoulder bursae and tendons, and right shoulder osteoarthritis, under OWCP File No. xxxxxx907.

On May 16 and August 7, 2019 appellant filed a claim for compensation (Form CA-7) for a schedule award. By decision dated August 14, 2019, OWCP denied appellant's schedule award claim as she failed to establish a permanent impairment of a scheduled member or function of the body.

On October 3, 2023 appellant again filed a Form CA-7 for a schedule award.

By decision dated November 7, 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, warranting a schedule award. While it found that the medical evidence established five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity, it determined that appellant had received a prior schedule award for 26 percent permanent impairment of the left upper extremity and 26 percent permanent impairment of the right upper extremity under OWCP File No. xxxxxx907. Because the new rating did not exceed the percentage already paid, OWCP concluded that appellant was not entitled to an additional schedule award.

On November 15, 2023 appellant requested reconsideration. By decision dated February 16, 2024, OWCP denied modification of its November 7, 2023 decision.

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

The Federal Employees' Compensation Act³ (FECA) and its regulations provide for the reduction of compensation for subsequent injury to the same scheduled member. Specifically, benefits payable under section 8107(c) shall be reduced by the period of compensation paid or payable 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 Board has held that OWCP must adequately explain how the latter impairment duplicated the compensation the claimant previously received under a separate file number.⁵

In this case, OWCP did not detail how appellant's five percent permanent impairment of the left upper extremity and five percent permanent impairment of the right upper extremity under the current claim, OWCP File No. xxxxxx612, duplicated the schedule award previously paid for 26 percent permanent impairment of the left upper extremity and 26 percent permanent impairment of the right upper extremity of the same member under OWCP File No. xxxxxx907. The case record, however, is limited to OWCP File No. xxxxxx612. Pursuant to its procedures, OWCP has determined that cases should be combined when correct adjudication of the issues depends on

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Id.* at § 8108; 20 C.F.R. § 10.404(d). *See also R.B.*, Docket No. 09-1786 (issued July 1, 2010).

⁵ *T.S.*, Docket No. 09-1308 (issued December 22, 2009).

frequent cross-reference between files.⁶ In order to obtain sufficient clarification as to whether appellant's recent rating would duplicate the prior schedule award in whole or in part, her claims must be doubled.⁷

Therefore, for a full and fair adjudication, the case must be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx612, with OWCP File No. xxxxxx907. On remand, OWCP shall review all evidence to determine whether appellant's recent rating would duplicate the prior schedule award in whole or in part. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.⁸ Accordingly,

IT IS HEREBY ORDERED THAT the February 16, 2024 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: June 3, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

⁶ Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

⁷ *Order Remanding Case, R.B.*, Docket No. 13-792 (issued July 25, 2013).

⁸ *Order Remanding Case, J.B.*, Docket No. 22-0127 (issued February 16, 2023).