

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

G.D., Appellant)	
)	
and)	Docket No. 25-0085
)	Issued: November 18, 2024
U.S. POSTAL SERVICE, CHICAGO LOOP)	
STATION, Chicago, IL, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

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

On November 2, 2024 appellant filed a timely appeal from a May 14, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 25-0085.

On August 29, 2018 appellant, then a 51-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 28, 2018 she injured her right shoulder and arm when reaching to case mail while in the performance of duty. She stopped work on the date of injury. OWCP accepted the claim, assigned OWCP File No. xxxxxx234, for a sprain of the right rotator cuff capsule and a strain of the muscles and tendons of the right rotator cuff. Appellant underwent an open rotator cuff repair of the right shoulder on October 22, 2018. She returned to limited-duty work on February 15, 2020.

OWCP previously accepted that appellant sustained a sprain of the right rotator cuff on June 6, 2002, assigned OWCP File No. xxxxxx926. Relevant to the right upper extremity, she also filed a claim for a right elbow condition on October 3, 2011, assigned OWCP File No. xxxxxx193 and processed as a short form closure. OWCP also accepted that appellant sustained a right rotator cuff tear on May 24, 2014, assigned OWCP File No. xxxxxx919.

On December 19, 2021, appellant filed a claim for compensation (Form CA-7) for a schedule award.

By decision dated January 25, 2022, OWCP denied appellant's schedule award claim, finding that medical evidence establishing a permanent impairment to a scheduled member or function of the body.

On January 23, 2023 appellant requested reconsideration. By decision dated January 30, 2023, OWCP denied modification of its January 25, 2022 decision.

On February 1, 2024 appellant again requested reconsideration.

OWCP, on March 5, 2024, referred appellant, the case record, and a statement of accepted facts to Dr. Joshua Alpert, a Board-certified orthopedic surgeon, for a second opinion examination. In a report dated April 5, 2024, Dr. Alpert found that appellant had seven percent permanent impairment of the right upper extremity due to her rotator cuff tear using Table 15-5 of page 403 of the A.M.A., *Guides*.

On May 8, 2024 Dr. Nathan Hammel, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), found that appellant had six percent permanent impairment of the right upper extremity. He noted, however, that she had previously received a schedule award for 14 percent permanent impairment of the right upper extremity and related that the current award "would replace the prior award and since it is less provides no additional impairment."

By decision dated May 14, 2024, OWCP denied modification of its January 30, 2023 decision. It noted that appellant had received a prior award for 14 percent permanent impairment of the right upper extremity under OWCP File No. xxxxxx926. As the new rating did not exceed the percentage already paid, OWCP concluded that appellant was not entitled to an additional schedule award.

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

The Federal Employees' Compensation Act¹ (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.² 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.³

In this case it remains unclear whether appellant's permanent impairment of the right upper extremity found under the current claim, OWCP File No. xxxxxx234, duplicated the schedule

¹ 5 U.S.C. § 8101 *et seq.*

² *Id.* at § 8108; 20 C.F.R. § 10.404(d); *see also R.B.*, Docket No. 09-1786 (issued July 1, 2010).

³ *J.V.*, Docket No. 17-1766 (issued April 3, 2018); *T.S.*, Docket No. 09-1308 (issued December 22, 2009).

award previously paid for 14 percent permanent impairment of the right upper extremity under OWCP File No. xxxxxx926. The case record before the Board is limited to OWCP File No. xxxxxx234. Pursuant to its procedures, OWCP has determined that cases should be combined when correct adjudication of the issues depends on frequent cross-reference between files.⁴ 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 combined.⁵

Therefore, for a full and fair adjudication, the case shall be remanded to OWCP to administratively combine the current case record, OWCP File No. xxxxxx234, with OWCP File Nos. xxxxxx926 and xxxxxx919. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision which explains whether appellant's impairment rating duplicates the prior schedule award in whole or in part. Accordingly,

IT IS HEREBY ORDERED THAT the May 14, 2024 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: November 18, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

⁵ *Order Remanding Case, T.C.*, Docket No. 24-0418 (issued June 3, 2024); *Order Remanding Case, R.B.*, Docket No. 13-792 (issued July 25, 2013).