



This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On November 14, 1985 appellant, then a 28-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging bilateral wrist injuries. OWCP accepted the claim for de Quervain's tenosynovitis of the right wrist and right radial tenosynovitis. It subsequently expanded its acceptance of the claim to include bilateral carpal tunnel syndrome. Dr. Samuel J. Chmell, an attending Board-certified orthopedic surgeon, performed a left median nerve release on April 20, 2006 and a right median nerve release on December 15, 2006.

On June 20, 2008 appellant filed a schedule award claim (Form CA-7). She provided a July 14, 2008 impairment evaluation by Dr. Chmell utilizing the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>4</sup> then in effect. Following development of the medical evidence, OWCP denied the claim, by decisions dated August 14, 2014 and April 17, 2015, based on the opinion of Dr. Jaroslaw Dzwinyk, a Board-certified orthopedic surgeon and impartial medical examiner, who found no permanent impairment of either upper extremity. Appellant then appealed to the Board. By decision dated December 14, 2015,<sup>5</sup> OWCP affirmed OWCP's April 17, 2015 decision.

On December 6, 2016 appellant requested reconsideration, contending that OWCP did not consider neurologic impairment to her upper extremities originating in the spine. By decision dated February 27, 2017, OWCP denied modification of its April 17, 2015 decision. Appellant again appealed to the Board.

During the pendency of the prior appeal, appellant submitted additional medical reports from Dr. Chmell dated March 11, 2017 through March 22, 2018, opining that the accepted bilateral carpal tunnel syndrome and right radial tenosynovitis, as well as other accepted conditions affecting the lower extremities, remained active and disabling. In his March 22, 2018 report, Dr. Chmell noted that she complained of cervical radiculopathy with radiation into both upper extremities.

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<sup>3</sup> Docket No. 17-1800 (issued May 25, 2018); Docket No. 15-1286 (issued December 14, 2015); Docket No. 10-2126 (issued July 5, 2011). OWCP assigned the present claim OWCP File No. xxxxxx055. This claim is a master file and has been doubled with two other accepted claims. Under OWCP File No. xxxxxx273, on September 11, 1978 appellant filed a notice of traumatic injury (Form CA-1) alleging that she had sustained a right shoulder injury on September 8, 1978 when she fell out of a chair while she was performing her federal employment duties. OWCP accepted that claim for contusion of the right shoulder and upper arm, contusion of the face, scalp, neck, and headache. Under OWCP File No. xxxxxx862, appellant filed a notice of occupational disease (Form CA-1) on August 23, 2005 alleging that she sustained a right rotator cuff tear, herniated cervical disc with degenerative disc disease, and degenerative lumbar disease. OWCP accepted this claim for herniated cervical disc at C5-6, right rotator cuff tear, and lumbar strain. It subsequently expanded acceptance of the claim to include bilateral aggravation of osteoarthritis of the hips.

<sup>4</sup> A.M.A., *Guides* (5<sup>th</sup> ed. 2001).

<sup>5</sup> Docket No. 15-1286 (issued December 14, 2015).

By decision dated May 25, 2018,<sup>6</sup> the Board affirmed OWCP's February 27, 2017 decision, denying appellant's claim for a schedule award for permanent impairment of the bilateral upper extremities, as Dr. Chmell had not provided an updated impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.<sup>7</sup>

On May 17, 2019 appellant requested reconsideration, contending that OWCP had not fully developed the medical evidence regarding cervical radiculopathy affecting her upper extremities.

In reports dated March 21, 2019, Dr. Chmell noted continued pain, paresthesias, and weakness in both hands. In a letter dated April 4, 2019, he contended that OWCP had not authorized him to perform an impairment rating.<sup>8</sup>

By decision dated September 4, 2019, OWCP denied appellant's request for reconsideration as Dr. Chmell's March 21 and April 4, 2019 reports were insufficient to warrant a review of the merits of the claim.<sup>9</sup>

The Board has duly considered the matter and finds that the case is not in posture for a decision. In the case of *William A. Couch*,<sup>10</sup> the Board held that, when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued.

In its September 4, 2019 decision, OWCP indicated that the only new medical evidence received were reports dated March 21 and April 4, 2019 by Dr. Chmell. However, during the pendency of the prior the Board appeal under Docket No. 17-1800, appellant had submitted reports from him dated March 11, 2017 through March 22, 2018. OWCP did not reference receipt nor provide any discussion of these reports, several of which addressed the accepted upper extremity conditions.

It is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision, as the Board's decisions are final with regard to the subject matter appealed. The Board finds, therefore, that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its September 4, 2019 decision.<sup>11</sup> On remand OWCP shall review all

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<sup>6</sup> Docket No. 17-1800 (issued May 25, 2018).

<sup>7</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>8</sup> Appellant also submitted documents previously of record regarding grievances and a class action against the employing establishment.

<sup>9</sup> OWCP actually referred to the Board's May 25, 2018 decision. However, OWCP has no jurisdiction to review a Board decision. The decisions and orders of the Board are final as to the subject matter appealed and such decisions and orders are not subject to review, except by the Board. *See* 20 C.F.R. § 501.6(d). Appellant had 30 days from the date of the Board's June 14, 2018 decision to file a petition for reconsideration with this Board of its decision. *Id.* at § 501.7. *See also* *C.M.*, Docket No. 19-1211 (issued August 5, 2020); *B.B.*, Docket No. 14-0464 (issued June 4, 2014).

<sup>10</sup> 41 ECAB 548 (1990); *see also* *R.D.*, Docket No. 17-1818 (issued April 3, 2018).

<sup>11</sup> *O.O.*, Docket No. 20-0142 (issued September 29, 2020); *see also* *V.C.*, Docket No. 16-0694 (issued August 19, 2016).

evidence of record and, following any further development as it deems necessary, it shall issue a *de novo* decision.

**IT IS HEREBY ORDERED THAT** the September 4, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: February 24, 2021  
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