U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA T. BROWN and DEPARTMENT OF THE ARMY, FORT GORDON, GA

Docket No. 98-498; Submitted on the Record;
Issued October 1, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had filed an untimely request for reconsideration that did not show clear evidence of error.

In the present case, the Office accepted that appellant sustained sciatica causally related to her federal employment. By decision dated August 2, 1995, the Office denied appellant's claim for a schedule award on the grounds that no ratable permanent impairment had been established by the medical evidence. By letter dated September 2, 1997, appellant requested that the Office reconsider, indicating that she had submitted a March 10, 1997 report from Dr. James D. McGinnis, a family practitioner. Dr. McGinnis indicated that appellant's condition had stabilized and that she had a 25 percent permanent impairment to the arms and legs.

By decision dated September 24, 1997, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error.

The Board finds that the Office improperly refused to reopen appellant's claim for a merit review.

A similar factual background was presented in the case of *Paul R. Reedy*.[1] In *Reedy*, the Office had found that the claimant did not have a ratable hearing loss. The claimant submitted letters stating that his hearing loss had deteriorated; and requesting a "reconsideration hearing." He also submitted new medical evidence regarding his current condition. Although the Office determined that the claimant had submitted an untimely reconsideration request, the Board found that appellant was not seeking reconsideration of the prior decision, but was informing the Office of an increased hearing loss and was seeking a new award. The case was remanded to the Office for a determination as to entitlement to a schedule award.

[1] 45 ECAB 488 (1994).

In this case, appellant used the term "reconsideration," but the evidence submitted clearly concerns appellant's condition in March 1997 and provides an opinion as to a permanent impairment at that time. The evidence does not address appellant's condition in August 1995 or otherwise attempt to show error in the prior decision.

As the Board noted in *Reedy*, a claimant may seek an increased schedule award if the evidence establishes that she sustained an increased impairment at a later date causally related to her employment injury.[2] In this case, appellant has submitted medical evidence regarding a permanent impairment at a date subsequent to the prior schedule award decision. She is entitled to a *de novo* decision on the medical evidence and the case will be remanded to the Office for appropriate action.

The decision of the Office of Workers' Compensation Programs dated September 24, 1997 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
October 1, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[2] *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.7(b) (March 1995). This section states that claims for increased schedule awards may be based on incorrect calculation of the original award or new exposure. To the extent that a claimant is asserting that the original award was erroneous based on his medical condition at that time, this would be a request for reconsideration. A claim for an increased schedule award may be based on new exposure or on the situation presented here: medical evidence indicating the progression of an employment-related condition, without new exposure to employment factors, resulting in a greater permanent impairment than previously calculated.