

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

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**J.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Baltimore, MD, Employer**

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**Docket No. 12-1341  
Issued: December 12, 2012**

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

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

RICHARD J. DASCHBACH, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

On June 6, 2012 appellant filed a timely appeal from a January 19, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as untimely and insufficient to establish clear evidence of error. The Board docketed the appeal as No. 12-1341.

The Board has duly considered this matter and finds that the case is not in posture for decision. This case has previously been before the Board. In a decision dated June 14, 2006, the Board set aside an August 10, 2005 decision granting appellant a schedule award for a four percent permanent impairment of each upper extremity.<sup>1</sup> It found that neither appellant's physician nor an OWCP medical adviser properly applied the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5<sup>th</sup> ed. 2001) in determining the extent of the permanent impairment. By decision dated February 19, 2010, the

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<sup>1</sup> Docket No. 05-1920 (issued June 14, 2006). OWCP accepted that appellant sustained bilateral tendinitis of the wrists due to factors of her federal employment. On November 28, 2001 it found that her actual earnings as a modified flat sorting machine operator effective July 6, 1999 fairly and reasonably represented her wage-earning capacity.

Board affirmed a March 20, 2009 decision finding that appellant had no more than a 27 percent permanent impairment of each upper extremity.<sup>2</sup>

On November 8, 2011 appellant requested reconsideration of her case because her “condition has not gotten any better, but worse.” She submitted an October 3, 2011 report from Dr. Weerasak W. Lima, a Board-certified orthopedic surgeon, who provided findings on examination, including range of motion measurements for both wrists. Dr. Lima diagnosed a history of bilateral wrist strain and advanced arthritis of the wrists. By decision dated January 19, 2012, OWCP denied appellant’s request for reconsideration as untimely filed and insufficient to establish clear evidence of error.

In schedule award cases, a distinction is made between an application for an additional schedule award and a request for reconsideration of the existing schedule award. When a claimant is asserting that the original award was erroneous based on his or her medical condition at that time, this is a request for reconsideration. A claimant for an additional schedule award may be based on new exposure to employment factors or on the progression of an employment-related condition, without new exposure, resulting in greater permanent impairment.<sup>3</sup>

The Board finds that appellant alleged that her condition had worsened and submitted new medical evidence regarding her current condition. The Board had repeatedly held that a claimant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing the possible progression of an employment-related condition resulting in permanent impairment or increased impairment.<sup>4</sup> The Board finds, therefore, that OWCP erroneously issued a denial of appellant’s request for reconsideration under the clear evidence of error standard. On remand, OWCP should review and develop the medical evidence and issue an appropriate decision regarding her request for an increased schedule award.

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<sup>2</sup> Docket No. 09-1167 (issued February 19, 2010). In a decision dated October 3, 2006, OWCP granting appellant schedule awards for a 27 percent permanent impairment of each upper extremity. By decision dated March 20, 2009, it denied her claim for an increased schedule award.

<sup>3</sup> See *B.K.*, 59 ECAB 228 (2007); *Candace A. Karkoff*, 56 ECAB 622 (2005).

<sup>4</sup> See *Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994); see also *B.K.* *supra* note 3. (where it was evident that the claimant was seeking a schedule award based on new and current medical evidence, OWCP should have issued a merit decision on the schedule award claim rather than adjudicate an application for reconsideration).

**IT IS HEREBY ORDERED THAT** the January 19, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this order of the Board.

Issued: December 12, 2012  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board