

medical examiner. The decision also stated a schedule award for permanent impairment was denied.

On June 27, 2006, the Office received a June 6, 2006 report from Dr. James Rutherford, an orthopedic surgeon, who provided results on examination and opined that appellant had a six percent permanent impairment to the right arm. In an accompanying letter to the Office dated June 27, 2006, appellant's representative stated a claim for a schedule award had been filed and requested the Office review Dr. Rutherford's report and forward it to an Office medical adviser.

The Office advised appellant by letter dated February 7, 2007 that the May 2, 2005 decision had terminated compensation and had found appellant was not entitled to a schedule award since the employment-related conditions had resolved. The Office indicated that appellant should review the appeal rights to the May 2, 2005 decision and, if that decision is overturned, the request for a schedule award would be given further consideration. Appellant requested "reconsideration of your previous denial of scheduled award benefit" by letter dated February 26, 2007. Appellant noted Dr. Rutherford had submitted a report.

In a decision dated May 3, 2007, the Office determined that appellant's February 26, 2007 application for reconsideration was untimely with respect to the May 2, 2005 decision. The Office denied the request for reconsideration on the grounds that appellant did not show clear evidence of error.

LEGAL PRECEDENT

As the Board explained in *Linda T. Brown*,¹ a claimant may seek a schedule award if the evidence establishes that she sustained an impairment causally related to the employment injury. Even if the term "reconsideration" is used, when a claimant is not attempting to show error in the prior schedule award decision and submits medical evidence regarding a permanent impairment at a date subsequent to the prior schedule award decision, it should be considered a claim for an increased schedule award. The Office should issue a merit decision on the schedule award claim, rather than adjudicate an application for reconsideration.²

ANALYSIS

In the present case, appellant submitted a June 6, 2006 report from Dr. Rutherford regarding a permanent impairment to the right arm. Appellant requested the Office review the report and develop the issue of whether appellant was entitled to a schedule award pursuant to 5 U.S.C. § 8107. It is evident that appellant was not seeking reconsideration of the May 2, 2005 decision, but was seeking a schedule award based on new and current medical evidence.

¹ 51 ECAB 115 (1999). In *Brown*, the Office issued a 1995 decision denying entitlement to a schedule award as no ratable impairment was established. Appellant requested that the Office reconsider in 1997, submitting a current report with an opinion that appellant had a 25 percent permanent impairment to the arms and legs. The Office determined that appellant submitted an untimely request for reconsideration that did not show clear evidence of error. The Board remanded the case for a merit decision.

² *Id.*; see also *Paul R. Reedy*, 45 ECAB 488 (1994).

The February 7, 2007 letter to appellant indicated that the Office considered the issue of a schedule award to be premature at that time, since compensation benefits had been terminated on May 2, 2005. The May 2, 2005 decision was not, however, a termination for refusal of suitable work under 5 U.S.C. § 8106(c).³ The Office cited no authority for the proposition that a termination of compensation based on medical evidence was a bar to seeking a subsequent schedule award. A claimant may have an employment-related condition that results in a permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, without any disability for work or the need for continuing medical treatment.

Accordingly, in this case, the Office should have issued a merit decision with respect to the claim for a schedule award, rather than issue a decision applying the clear evidence of error standard for an untimely application for reconsideration. The case will be remanded to the Office for a merit decision with respect to a schedule award.

CONCLUSION

Appellant submitted new medical evidence with respect to a permanent impairment and was entitled to a merit decision on the issue.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 3, 2007 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 3, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

³ The termination of compensation pursuant to 5 U.S.C. § 8106(c) is a bar to receipt of a schedule award for an impairment related to the employment injury. See *Stephen R. Lubin*, 43 ECAB 564 (1992).