

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

R.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 09-1948
Issued: June 29, 2010**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

On July 27, 2009 appellant, through her representative, filed a timely appeal from a June 29, 2009 decision of the Office of Workers' Compensation Programs denying her request for reconsideration on the grounds that it was untimely filed and failed to present clear evidence of error.

The Office accepted that on September 14, 1999 appellant, then a 31-year-old mail carrier, sustained a cervical and thoracic strain, as well as a right shoulder sprain while carrying an unusually heavy mailbag. It subsequently expanded the claim to include a labral tear or slap lesion of the right shoulder. The Office placed appellant on the periodic rolls on September 10, 2000. By decision dated December 6, 2005, it terminated her wage-loss and medical benefits on the grounds that she did not have any residuals or disability due to her employment-related condition as found by an impartial medical examiner.¹ This decision was affirmed on June 14, 2006 by an Office hearing representative.²

¹ The Office initially terminated appellant's benefits effective August 8, 2004. However, this decision was set aside by a June 10, 2005 Office hearing representative decision on the grounds that a conflict of medical opinion existed requiring resolution by an impartial medical examiner.

² The Office hearing representative also modified the decision to provide wage-loss compensation until October 14, 2005, the day of the impartial medical examination.

On July 14, 2006 appellant, through her representative, filed a claim for a schedule award and submitted medical evidence relevant to her claim. On July 31, 2006 she requested an oral hearing, noting that there was a distinction between disability and impairment.

In an August 18, 2006 decision, the Branch of Hearings and Review found that the case was not in posture for a hearing as no final decision had been issued. No further action was taken until, at the request of appellant, the Office provided a September 26, 2007 letter describing the posture of the case and advising that she could appeal the June 14, 2006 decision terminating benefits.

On September 23, 2007 appellant's representative requested that the Office correct any confusion in the case and as no decision had been issued on the schedule award claim. On October 17, 2007 appellant's representative noted that a request for a schedule award was distinct from the issue of termination of benefits and requested that a final decision be issued. By letter dated October 26, 2007, the Office advised that the issue of a schedule award would not be developed because benefits were previously terminated. It referred appellant to the July 21, 2006 letter.

On June 25, 2009 appellant requested reconsideration on the grounds that the Office's previous decisions were erroneous and submitted additional evidence.

By decision dated June 29, 2009, the Office denied appellant's request for reconsideration on the grounds that it was untimely filed and did not establish clear evidence of error.

The Board has duly considered the matter and finds that the case is not in posture for decision. After the Office's termination of benefits, appellant filed a claim for schedule award. On July 21, 2006 the Office notified her that it would not develop the schedule award claim as her benefits had been terminated. It inappropriately treated appellant's claim for a schedule award as an untimely request for reconsideration of the termination decision. The Board finds that the Office failed to develop appellant's schedule award claim.

As noted by counsel, there is a distinction between the concept of disability and that of permanent impairment. Schedule awards are included under the Federal Employees' Compensation Act to indemnify for the loss of or loss of use of specific members or functions of the body without regard to loss of wage-earning capacity.³ Awards under the schedule for permanent impairment are mandatory forms of compensation and represent the maximum payable under the Act for impairment; regardless of whether the claimant has a loss of wage-earning capacity after payment of a schedule award.⁴ The Board has held that the Office must not summarily deny a claim for a schedule award on the grounds that there was an earlier finding that an employee had no residuals of an employment-related injury, sufficient to terminate wage-loss compensation and medical benefits.⁵

³ *Lorraine B. Ford*, 10 ECAB 232 (1958).

⁴ *Murrell Ritter*, 11 ECAB 504 (1960).

⁵ *B.S.*, 61 ECAB ____ (Docket No. 09-195, issued October 9, 2009).

The case will be remanded for adjudication of appellant's claim for a schedule award. Following further development, the Office shall issue a *de novo* decision including findings of fact and a statement of reasons, accompanied by appeal rights.⁶

IT IS HEREBY ORDERED THAT the June 29, 2009 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further proceedings consistent with this order.

Issued: June 29, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

⁶ See 20 C.F.R. § 10.126.