

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

B.L., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 13-1068
Issued: September 19, 2013**

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 March 27, 2013 appellant filed a timely application for review of a February 22, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error. The decision denied reconsideration of OWCP's October 14, 2011 decision which found that appellant did not establish that he has more than six percent permanent impairment of his right leg or six percent permanent impairment of his left leg, for which he received a schedule award.¹

The Board has duly considered the matter and notes that the case is not in posture for a decision. In its October 14, 2011 decision, OWCP found that appellant submitted insufficient evidence to establish that he was entitled to additional schedule award compensation. Subsequently, appellant submitted an October 23, 2012 report in which Dr. John W. Ellis, an attending Board-certified family practitioner, determined that he had 64 percent permanent impairment of his right leg and 70 percent permanent impairment of his left leg under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009). He requested reconsideration of his schedule award claim in a form received by OWCP on February 11, 2013. In a February 22, 2013 decision, OWCP

¹ On December 8, 1993 appellant, then a 40-year-old janitor, sustained an employment-related lumbosacral strain and herniated nucleus pulposus at L4-5. By award of compensation dated June 3, 1996, OWCP granted him a schedule award for six percent permanent impairment of his right leg and six percent permanent impairment of his left leg.

denied appellant's reconsideration request finding that it was untimely and did not present clear evidence of error. It did not review Dr. Ellis' October 23, 2012 report.

The Board has held that where a claimant submits medical evidence regarding a permanent impairment at a date subsequent to a prior schedule award decision, he is entitled to a merit decision on the medical evidence.² In the present appeal, appellant submitted Dr. Ellis' October 23, 2012 report after OWCP's October 14, 2011 schedule award decision. Moreover, this report addressed the pertinent issue of this case, *i.e.*, whether appellant was entitled to additional schedule award compensation for leg impairment, as it contained an impairment rating that referenced the A.M.A., *Guides*. Although appellant submitted a form in which he requested reconsideration, it is evident that he was not seeking reconsideration of the October 14, 2011 decision, but was seeking a schedule award based on new medical evidence.

The case will be remanded for further development on the issue of whether appellant has more than six percent permanent impairment of his right leg or six percent permanent impairment of his left leg, for which he received a schedule award. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

IT IS HEREBY ORDERED THAT the February 22, 2013 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: September 19, 2013
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

² See *Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994); see also *B.K.*, 59 ECAB 228 (2007) (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).