



advised by OWCP that he could not file another schedule award once it had been denied; but would have to follow the appeal rights in the previous April 13, 2011 denial.

Appellant, by letter received on September 26, 2012, filed a request for reconsideration of the April 13, 2011 decision. By decision dated December 13, 2012, the request for reconsideration was denied without consideration of the merits, finding that appellant's request raised no substantive legal questions nor included new or relevant evidence. Appellant was advised that an appeal to the Board was the only recourse.

Appellant filed a request for reconsideration of the December 13, 2012 decision and again submitted a copy of Dr. Paul's September 13, 2011 impairment rating. By decision dated April 17, 2013 OWCP denied appellant's request for reconsideration as untimely filed and insufficient to establish clear evidence of error.

In a letter dated April 21, 2013, appellant requested reconsideration and again resubmitted the September 13, 2011 impairment rating. He argued that this medical report showed upper extremity impairment as a result of his spinal condition. Thus, appellant argued that this evidence was pertinent new evidence warranting a merit review of his schedule award claim.

By decision dated June 5, 2013, appellant was informed that his only right of appeal was to this Board and that he had no right of reconsideration with OWCP.

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.<sup>1</sup> Appellant presented new evidence from Dr. Paul in support of his schedule award claim. Moreover, this evidence addressed the pertinent issue regarding whether appellant has permanent impairment pursuant to the A.M.A., *Guides*. Although appellant stated that he sought reconsideration, it is evident that he was not seeking reconsideration, but was seeking a schedule award based on new medical evidence.

---

<sup>1</sup> 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).

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated June 5 and April 17, 2013 are set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: February 3, 2014  
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