United States Department of Labor Employees' Compensation Appeals Board

E.P., Appellant)
and) Docket No. 13-805) Issued: January 28, 2014
U.S. POSTAL SERVICE, MINNEAPOLIS PROCESSING & DISTRIBUTION CENTER, Minneapolis MN Employer) issued. January 20, 2014)
Minneapolis, MN, Employer)
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:

COLLEEN DUFFY KIKO, Judge ALEC J. KOROMILAS, Alternate Judge MICHAEL E. GROOM, Alternate Judge

On February 13, 2013¹ appellant filed a timely appeal from a nonmerit August 21, 2012 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration on the grounds that it failed to present new, relevant evidence or argument. The Board docketed the appeal as No. 13-805.

The Board has duly considered this matter and finds that the case is not in posture for decision. This is appellant's second appeal before the Board in this case. By decision and order issued February 16, 2011 under Docket No. 10-1441, the Board set aside OWCP's November 4, 2009 decision denying reconsideration. The Board remanded the case for further consideration of whether OWCP properly commenced payment of a schedule award for two percent impairment of the right arm on February 9, 2009. By decision dated June 17, 2011, OWCP modified the July 29, 2009 decision to begin the payment period on December 30, 2008. In a

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of OWCP's decision. *See* 20 C.F.R. § 501.3(f)(2). An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. One hundred and eighty days from August 21, 2012, the date of OWCP's decision, was February 17, 2013. Since using February 20, 2013, the date the appeal was received by the Clerk of the Board, would result in the loss of appeal rights, the date of the postmark is considered the date of filing. The date of the U.S. Postal Service postmark is February 13, 2012, which renders the appeal timely filed. *See* 20 C.F.R. § 501.3(f)(1).

June 11, 2012 letter, appellant requested reconsideration. She asserted that new medical evidence established a worsening of the accepted condition, entitling her to an augmented schedule award. Appellant enclosed a May 4, 2012 impairment rating by an attending physician finding five percent impairment of the right arm. By decision dated August 21, 2012, OWCP denied reconsideration on the grounds that her request did not raise substantive legal questions or include new, relevant evidence.

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. However, a claim 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.²

The Board finds that appellant alleged that her condition had worsened and submitted new medical evidence regarding her current condition. The Board has repeatedly held that a claimant may request a 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.³ The Board therefore finds that OWCP erroneously issued a denial of appellant's request for reconsideration. 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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² D.C., Docket No. 13-1179 (issued September 6, 2013); T.S. Docket No. 12-1781 (issued February 12, 2013). See B.K., 59 ECAB 228 (2007).

³ *D.C.*, *supra* note 2; *B.K.*, *supra* note 2 (where it was evident that the claimant as seeking a schedule award base on new and current medical evidence, OWCP should have issued a merit decision on the schedule award claim than adjudicate an application for reconsideration).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 21, 2012 is set aside and the case remanded for further development consistent with this order of the Board.

Issued: January 28, 2014 Washington, DC

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Alternate Judge Employees' Compensation Appeals Board

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