

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA L. PETERSON and U.S. POSTAL SERVICE,
POST OFFICE, Tucson, AZ

*Docket No. 99-2394; Submitted on the Record;
Issued November 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly construed appellant's letter as a request for reconsideration and, if so, did it properly deny reconsideration due to the fact that the letter was untimely filed and did not demonstrate clear evidence of error.

On March 28, 1991 appellant, then a 51-year-old mailing requirements clerk, filed a notice of occupational disease (Form CA-2) claiming that she had sustained bilateral carpal tunnel syndrome as a result of her employment. The Office accepted her claim for bilateral carpal tunnel syndrome.

On February 19, 1997 appellant filed a claim for an award under the schedule (Form CA-7). By decision dated April 17, 1997, the Office awarded appellant an award under the schedule for a 10 percent impairment in each arm, for a total of 62.40 weeks of compensation.

By letter dated March 26, 1999 and received by the Office on March 31, 1999, appellant contended that her disability had gotten worse and requested that the Office reconsider her claim and award her continuing compensation.

By decision dated June 29, 1999, the Office denied appellant's request, noting that the request for reconsideration was not timely filed and failed to present clear evidence of abuse of discretion or error in argument on the part of the Office.

The Board finds that this case is not in posture for decision.

After a careful review of appellant's letter, the Board has determined that appellant may not be asking for reconsideration of the prior decision. Rather, appellant appears to be requesting an increase in her schedule award because "her disability has gotten worse." Pursuant to the Office procedure manual, a claim for an increased schedule award may be based on an

incorrect calculation of the original award, or on additional exposure.¹ The manual states as follows:

“If ... the claimant sustains increased impairment at a later date which is due to work-related factors, an additional award will be payable if supported by the medical evidence. In this case, the original award is undisturbed and the new award has its own date of maximum medical improvement, percent and period. Instructions for payment of amended and additional awards are provided in the [Federal Procedure Manual] 5.306.3(d) and (e).

“In some instances, particularly in hearing loss cases, a claim for an additional schedule award will be based on an additional period of exposure. This constitutes a new claim and should be handled as such. Where a schedule award is paid before exposure terminates, no additional award will be paid for periods of less than one year from the beginning date of the last award or the date of last exposure, whichever comes first.”

If the claimant requests review of such a case, he or she must be asked to clarify whether the request is for review of the award or for additional compensation subsequent to the prior award.

(a) If the claimant is requesting review of the award, the case will be processed as a request for reconsideration, hearing, or appeal, whichever is applicable.

(b) If the claimant is requesting additional compensation, the claims examiner will inform the claimant that a new claim should be filed one year after the beginning date of the last award or the date of last exposure, whichever occurs first.²

In the case at hand, the Office treated appellant’s request as an untimely request for reconsideration. However, the Office should have followed the above procedure, determined if appellant was asking for review of the award or for additional compensation subsequent to the prior award and, if necessary, inform appellant that a new claim should be filed.³ The Board notes that a schedule award cannot be made on the basis of a possibility that the extent of an impairment will increase in the future. If a medical examination indicates that appellant’s condition has worsened, an amended schedule award can then be made to cover any additional impairment. *Michael C. Norman*, 42 ECAB 768, 779 (1991); *Ted R. Soares*, 38 ECAB 480 (1987).

¹ Federal (FECA) Procedure Manual, Part 2 – Claims, *Payment of Schedule Awards*, Chapter 2.808-7(b).

² Federal (FECA) Procedure Manual, Part 2 – Claims, *Payment of Schedule Awards*, Chapter 2.080-7b(2) – (3).

³ The Board notes that a schedule award cannot be made on the basis of a possibility that the extent of an impairment will increase in the future. If a medical examination indicates that appellant’s condition has worsened, an amended schedule award can then be made to cover any additional impairment. *Michael C. Norman*, 42 ECAB 768, 779 (1991); *Ted R. Soares*, 38 ECAB 480 (1987).

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 29, 1999 is vacated and this case is remanded to the Office of Workers' Compensation Programs for further consideration consistent with this opinion.

Dated, Washington, DC
November 13, 20000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member