

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALDEN B. HOPKINS and U.S. POSTAL SERVICE,
POST OFFICE, Jackson, MS

*Docket No. 02-913; Submitted on the Record;
Issued November 12, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant had filed an untimely request for reconsideration that did not show clear evidence of error.

In the present case, the Office accepted that appellant sustained a lumbar strain and a herniated nucleus pulposus at L4-5 and L5-S1 causally related to his federal employment. By decision dated September 12, 2000, the Office denied appellant's claim for a schedule award on the grounds that no ratable permanent impairment had been established by the medical evidence. By letter dated January 9, 2002, appellant requested that the Office reconsider, indicating that he had submitted a recent medical report from his primary care physician, Dr. L.C. Tennin, Jr. In a report dated December 14, 2001, Dr. Tennin, a Board-certified internist, indicated that, based on his December 8, 2001 examination, appellant had a nine percent permanent impairment to the left lower extremity.

By decision dated February 12, 2002, the Office denied appellant's request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error.

The Board finds that the Office improperly refused to reopen appellant's claim for a merit review.

A similar factual background was presented in the case of *Linda T. Brown*.¹ In *Brown*, the Office had found that the claimant did not have a ratable impairment due to her accepted sciatica. The claimant submitted a medical report indicating that she had a 25 percent permanent impairment to the arms and legs and requested reconsideration. Although the Office determined that the claimant had submitted an untimely reconsideration request, the Board found that appellant was not seeking reconsideration of the prior decision, but was informing the Office of a

¹ *Linda T. Brown*, 51 ECAB 115 (1999).

change in her condition. The case was remanded to the Office for a determination as to entitlement to a schedule award.

In this case, appellant requested reconsideration, but the evidence submitted clearly concerns appellant's condition in December 2001 and provides an opinion as to a permanent impairment at that time. The evidence does not address appellant's condition in September 2000 or otherwise attempt to show error in the prior decision.

As the Board noted in *Brown*, a claimant may seek an increased schedule award if the evidence establishes that he sustained an increased impairment at a later date causally related to his employment injury.² In this case, appellant has submitted medical evidence regarding a permanent impairment at a date subsequent to the prior schedule award decision. He is entitled to a *de novo* decision on the medical evidence and the case will be remanded to the Office for appropriate action.

The decision of the Office of Workers' Compensation Programs dated February 12, 2002 is set aside and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, DC
November 12, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

² See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.7(b) (March 1995). This section states that claims for increased schedule awards may be based on incorrect calculation of the original award or new exposure. To the extent that a claimant is asserting that the original award was erroneous based on his medical condition at that time, this would be a request for reconsideration. A claim for an increased schedule award may be based on new exposure or on the situation presented here: medical evidence indicating the progression of an employment-related condition, without new exposure to employment factors, resulting in a greater permanent impairment than previously calculated.