

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ISRAEL YBARRA and DEPARTMENT OF THE NAVY,  
NAVAL AIR STATION, Kingsville, TX

*Docket No. 02-1512; Submitted on the Record;  
Issued May 5, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

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

Appellant's claim filed on August 2, 1993 was accepted for a hearing loss due to work-related noise exposure on July 21, 1994. At that time the Office found appellant was not entitled to a schedule award for compensation because his hearing loss was not severe enough to be considered ratable.

On March 14, 2002 appellant requested reconsideration of his claim and enclosed additional medical evidence. Appellant submitted a new claim form dated January 4, 2002, medical reports dated December 12 and November 26, 2001 from Dr. Claude A. McLelland, a Board-certified otolaryngologist; a medical report dated July 27, 1999; October 11, 2001 and August 24, 1999 magnetic resonance imaging scans of the brain; and January 19, September 6 and 28, 2001 audiograms.

By decision dated March 25, 2002, the Office denied appellant's request for reconsideration as untimely filed and lacking clear evidence of error. The Office noted that none of the new medical evidence showed that he sustained a work-related ratable hearing loss.

The Board finds that the Office improperly determined that appellant had filed an untimely request for reconsideration which did not show clear evidence of error.

A similar factual background was presented in the case of *Paul R. Reedy*.<sup>1</sup> In *Reedy*, the Office had found that the claimant did not have a ratable hearing loss. The claimant submitted letters stating that his hearing loss had deteriorated; and requesting a "reconsideration hearing."

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<sup>1</sup> 45 ECAB 488 (1994).

He also submitted new medical evidence regarding his current condition. 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 an increased hearing loss and was seeking a new award. The case was remanded to the Office for a determination as to entitlement to a schedule award.

In this case, appellant used the term “reconsideration,” but the evidence submitted clearly concerns appellant’s condition after the original Office determination of his hearing impairment in 1994 and provides an opinion as to his impairment at a later time. The evidence does not attempt to show error in the prior decision.

As the Board noted in *Reedy*, 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.<sup>2</sup> 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.<sup>3</sup>

The March 25, 2002 decision of the Office of Workers’ Compensation Programs is set aside and the case remanded to the Office for further development with this decision of the Board.

Dated, Washington, DC  
May 5, 2003

Alec J. Koromilas  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>2</sup> See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.7(b) (August 2002). 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.

<sup>3</sup> See *Linda T. Brown*, Docket No. 98-498 (issued October 1, 1999).