

April 21, 1997 decision, the Office found appellant entitled to a schedule award for a 15 percent permanent impairment to her right upper extremity. Appellant requested reconsideration and, in a December 5, 1997 decision, the Office denied modification finding the medical evidence insufficient.

In a November 4, 2002 letter, appellant requested review of the schedule award and submitted three medical reports, along with several statements from coworkers and other documents. Appellant alleged that her condition had progressively worsened over time. A September 9, 2002 report from Dr. Rolando Chin, an orthopedist, stated that appellant had 90 percent loss of function in her upper extremity and provided some range of motion values. Appellant also submitted the results of a March 4, 2002 magnetic resonance imaging scan that showed herniations at C3-4 and C5-6. A June 29, 1999 report from a neurologist, who found mild denervation at the biceps and abductor digit quinti muscles. Appellant also submitted an August 3, 1994 report from a Safety Board investigating the accident, an October 3, 2002 report from a retired lockmaster that explained problems associated with operating locomotives, appellant's statement at the time of the accident, an injury report and statements from coworkers who witnessed the accident.

In a May 1, 2003 decision, the Office denied reconsideration finding appellant's request untimely. The Office considered appellant's request under the clear evidence of error standard and determined appellant had not met that standard as the witness statements were found to be irrelevant and the medical reports were insufficient to establish error in the Office's 1997 merit decision.

LEGAL PRECEDENT

If after payment of a schedule award 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.¹ 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.² It is improper for the Office to deny a request for an increased schedule award on the grounds that it is an untimely request for reconsideration.³

ANALYSIS

The only decision before the Board on this appeal is the Office's May 1, 2003 decision, which denied appellant's request for a review of its December 5, 1997 decision, on the grounds that the request for reconsideration was untimely filed and did not establish clear evidence of error. Because more than one year has elapsed between the issuance of the Office's December 5,

¹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Payment of Schedule Awards*, Chapter 2.808.7(b).

² *Id.*

³ *Paul R. Reedy*, 45 ECAB 488 (1994).

1997 decision and September 11, 2003, the date appellant filed her appeal with the Board, the Board lacks jurisdiction to review the December 5, 1997 decision.⁴

In its May 1, 2003 decision, the Office improperly determined that appellant failed to file a timely application for review. In her November 4, 2002 letter, appellant clearly stated that she was requesting a higher rating for the degree and nature of her impairment because her condition had progressively worsened over time. In his report dated November 4, 2002, Dr. Neira Bazan noted that appellant had sustained further injuries after falling down stairs in August 1998. He attributed appellant's fall to her inability to grip the stair railing with her right hand. Dr. Bazan reported appellant's physical examination findings and thereafter concluded that appellant's permanent impairment was worsening over time and that she now had a 90 percent impairment of the right upper extremity. After a careful review of appellant's letter and the supporting medical evidence, the Board has determined that appellant was not asking for reconsideration of the prior award, but rather she was requesting an increase in her schedule award because her impairment had worsened. Pursuant to the Office procedure manual:

“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 of payment of amended and additional awards are provided in the [Federal Procedure Manual] 5.306.3(d) and (e).”

In the case at hand, the Office treated appellant's request as an untimely request for reconsideration. However, the Office should have determined if appellant was requesting additional compensation subsequent to the prior award. The Office failed to follow the proper procedures and by reviewing the claim under the clear evidence of error standard precluded appellant from requesting an increased schedule award.

CONCLUSION

The Board finds that this case is not in posture for decision. The Office shall determine whether appellant is entitled to an increased schedule award for a worsening of her work-related right upper extremity impairment.

⁴ See 20 C.F.R. § 501.3(d)(2).

ORDER

IT IS HEREBY ORDERED THAT the May 1, 2003 decision of the Office of Workers' Compensation Programs is vacated and this case is remanded to the Office for further consideration consistent with this opinion.

Issued: April 16, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member