United States Department of Labor
Employees' Compensation Appeals Board

T.C., Appellant	)	
and	)	**Docket No. 10-2307**
	)	**Issued: July 14, 2011**
DEPARTMENT OF THE NAVY, COMMANDER FLEET FORCES CMD SHIPYARD, Portsmouth, VA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On September 15, 2010 appellant filed a timely appeal from the June 4, 2010 decision of the Office of Workers' Compensation Programs (OWCP), which denied reconsideration of his case finding that his request was untimely and did not present clear evidence of error. The appeal was docketed as number 10-2307.

The Board has duly considered the matter and notes that the case is not in posture for a decision. OWCP accepted appellant's claim for various conditions of the arms. In a decision dated October 11, 2007, it found that appellant did not establish entitlement to a schedule award as he did not submit an impairment rating in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*). In a letter dated April 17, 2010, appellant requested reconsideration and noted that his physician had submitted additional evidence regarding his claim for a schedule award which supported 12 percent permanent impairment to each of his shoulders. The record contains an August 28, 2009 report, from Dr. Arthur Wardell, a Board-certified orthopedic surgeon, who noted that appellant was having pain in both shoulders. He noted range of motion measurements and asserted that appellant had 12 percent permanent impairment of each arm under provisions of the sixth edition of the A.M.A., *Guides* (6th ed. 2008).

The Board has held that where a claimant submits medical evidence regarding a permanent impairment at a date subsequent to a prior schedule award decision, he is entitled to a merit decision on the medical evidence.[1] Appellant presented new evidence from Dr. Wardell in support of his schedule award claim. Moreover, this evidence addressed the pertinent issue regarding whether appellant has permanent impairment pursuant to the A.M.A., *Guides*. Although appellant stated that he sought reconsideration, it is evident that he was not seeking reconsideration of the October 11, 2007 decision, but was seeking a schedule award based on new medical evidence.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 4, 2010 decision be set aside and the case remanded for further development consistent with this order of the Board.

Issued: July 14, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

[1] *See Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994); *see also B.K.*, 59 ECAB 228 (2007) (where it was evident that the claimant was seeking a schedule award based on new and current medical evidence, the Office should have issued a merit decision on the schedule award claim rather than adjudicate an application for reconsideration).