

reconsideration was not correct as he was making a new application for a schedule award. The Office's June 16, 2010 decision treated appellant's request as an untimely request for reconsideration.

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, she is entitled to a merit decision on the medical evidence.² The Board has also held that, where the Office, in its own discretion, further develops a claim by soliciting additional medical evidence, it must conduct an appropriate merit review under 5 U.S.C. § 8128(a).³ Consequently, the Office erroneously treated appellant's request for a schedule award based on new medical evidence as an untimely request for reconsideration. The Board notes that there is no one year time limitation on requesting an increased schedule award. A claimant may seek an increased schedule award if the evidence establishes that he sustained increased impairment at a later date causally related to the accepted employment injury.⁴ Even if the term reconsideration is used, when a claimant is not attempting to show error in the prior schedule award decision and submits medical evidence regarding a permanent impairment at a date subsequent to the prior schedule award decision, it should be considered a claim for an increased schedule award which is not subject to time limitations.⁵ Appellant submitted new medical evidence and was seeking a schedule award and the Office improperly reviewed the evidence under section 8128 and the clear evidence of error standard.

The case will be remanded for further development on the issue of whether appellant has a permanent impairment entitling her to a schedule award. Following this and such other development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's claim.

² 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).

³ *C.S.*, Docket No. 07-669 (issued November 7, 2007); see also *Joyce A. Fasanello*, 49 ECAB 490 (1998); *David F. Garner*, 43 ECAB 459 (1992); *V.W.*, Docket No. 09-2234 (issued August 31, 2010).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b) (January 2010).

⁵ See *supra* note 2.

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' June 16, 2010 decision be set aside and the case remanded for further development consistent with this order of the Board.

Issued: June 28, 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