

**United States Department of Labor
Employees' Compensation Appeals Board**

A.J., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Desoto, TX, Employer**

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**Docket No. 11-1466
Issued: January 9, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 8, 2011 appellant filed a timely appeal of a January 19, 2011 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), finding that her request for reconsideration was untimely and failed to show clear evidence of error. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the nonmerit decision. Because more than 180 days elapsed between the last merit decision of OWCP dated July 9, 2009 to the filing of this appeal, the Board lacks jurisdiction to review the merits of this claim.

ISSUE

The issue is whether OWCP properly determined that appellant was requesting reconsideration of a July 9, 2009 decision, and that such request was untimely and failed to show clear evidence of error with respect to a schedule award.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that appellant sustained cervical, thoracic, lumbar, upper arm, shoulder and rotator cuff sprains causally related to her federal employment as a rural mail carrier. By decision dated March 17, 2009, it denied her claim for a schedule award. In a July 9, 2009 decision, OWCP denied modification of its March 17, 2009 decision.

On November 22, 2010 OWCP received a November 4, 2010 report from Dr. James F. Hood, a Board-certified orthopedic surgeon, who provided results on examination and opined that appellant had a 19 percent permanent impairment of her right upper extremity. Appellant also submitted a CA-7 form dated November 22, 2010 again requesting a schedule award.

OWCP advised appellant by letter dated November 30, 2010 that it would be unable to process her claim for a schedule award because the March 17 and July 9, 2009 decisions had found that she was not entitled to a schedule award. It indicated that she should review the appeal rights attached to the July 9, 2009 decision.

On December 23, 2010 OWCP received an undated request for reconsideration in which appellant asked it to review her schedule award claim in light of new medical evidence she was submitting. Appellant also submitted a November 19, 2010 report from Dr. Juan C. Yabraian, an orthopedic surgeon, who opined that she had a 19 percent right upper extremity impairment.

In a decision dated January 19, 2011, OWCP determined that appellant's December 23, 2010 application for reconsideration was untimely with respect to the July 9, 2009 decision.² It denied the request for reconsideration on the grounds that she failed to show clear evidence of error.

LEGAL PRECEDENT

As the Board explained in *Linda T. Brown*,³ a claimant may seek a schedule award if the evidence establishes that she sustained an impairment causally related to the employment injury. 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. OWCP should issue a merit decision on the schedule award claim, rather than adjudicate an application for reconsideration.⁴

² OWCP noted that there was no final decision of record dated November 30, 2010.

³ 51 ECAB 115 (1999). In *Brown*, OWCP issued a 1995 decision denying entitlement to a schedule award as no ratable impairment was established. Appellant requested that it reconsider in 1997, submitting a current report with an opinion that she had a 25 percent permanent impairment to the arms and legs. OWCP determined that she submitted an untimely request for reconsideration that did not show clear evidence of error. The Board remanded the case for a merit decision.

⁴ *Id.*; see also *Paul R. Reedy*, 45 ECAB 488 (1994).

ANALYSIS

The Board finds that OWCP improperly denied appellant's claim for a schedule award as being untimely filed.

On November 22, 2010 appellant submitted a November 4, 2010 report from Dr. Hood regarding a permanent impairment to the right arm. Simultaneously, she submitted a CA-7 form requesting a schedule award. In its November 30, 2010 letter, OWCP indicated that it would not process appellant's schedule award claim because her previous request had been denied on July 9, 2009. The Board notes that its November 30, 2010 letter did not constitute a formal decision with appeal rights. Accordingly, OWCP improperly treated appellant's request for reconsideration of a November 30, 2010 decision as a request for a review of its most recent merit decision, namely the July 9, 2009 decision denying her schedule award request.

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, appellant is entitled to a merit decision on the medical evidence.⁵ It is evident in this case that she was not seeking reconsideration of the July 9, 2009 decision, but was requesting a new schedule award.

Accordingly, in this case, OWCP should have issued a merit decision with respect to the claim for a schedule award, rather than a decision applying the clear evidence of error standard for an untimely application for reconsideration. The case will be remanded to it for a merit decision with respect to a schedule award.

CONCLUSION

OWCP improperly adjudicated appellant's schedule award claim as an untimely request for reconsideration.

⁵ See *Linda T. Brown, supra* note 3. 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. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b) (January 2010).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 19, 2011 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: January 9, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board