

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

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**T.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Philadelphia, PA, Employer**

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**Docket No. 11-1989  
Issued: January 12, 2012**

*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 2, 2011 appellant filed a timely appeal from a May 2, 2011 decision of the Office of Workers' Compensation Programs (OWCP) denying her request for reconsideration as untimely filed and failing to demonstrate clear evidence of error. She filed a timely request for an oral argument before the Board, pursuant to section 501.5(b) of the Board's *Rules of Procedure*.<sup>1</sup>

This case has previously been on appeal to the Board. The Board issued a decision on September 15, 2009<sup>2</sup> finding that appellant had no more than 12 percent impairment of each of her upper extremities due her accepted conditions of bilateral carpal tunnel syndrome, bilateral brachial plexus lesions, lesions of the ulnar nerve on the left and lesion of the radial nerve bilaterally and affirmed OWCP's July 10, 2007 merit decision. Appellant requested reconsideration of OWCP's decision on January 24, 2011 and submitted additional medical evidence from her attending physician, Dr. Scott Fried, an osteopath, indicating that her upper extremity conditions had worsened. By decision dated May 2, 2011, OWCP denied her request for reconsideration as untimely filed and failing to establish clear evidence of error.

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<sup>1</sup> 20 C.F.R. § 501.5(b).

<sup>2</sup> Docket No. 08-964 (issued September 15, 2009).

In schedule award cases, a distinction is made between an application for an additional schedule award and a request for reconsideration of the existing schedule award. When a claimant is asserting that the original award was erroneous based on his or her medical condition at that time, this is a request for reconsideration. A claim for an additional schedule award may be based on new exposure to employment factors or on the progression of an employment-related condition, without new exposure, resulting in greater permanent impairment.<sup>3</sup>

The Board finds that appellant has submitted new evidence from Dr. Fried addressing a claim for an additional schedule award based on a progression of her employment-related condition rather than arguing that the original schedule award was in error.<sup>4</sup> The Board has repeatedly held that a claimant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment. The Board finds, therefore, that OWCP erroneously issued a denial of appellant's request for reconsideration under the clear evidence of error standard. On remand, OWCP should review and develop the medical evidence and issue an appropriate decision regarding appellant's request for an increased schedule award.

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<sup>3</sup> *Candace A. Karkoff*, 56 ECAB 622 (2005).

<sup>4</sup> *Rose V. Ford*, 55 ECAB 449 (2004).

**IT IS HEREBY ORDERED THAT** the May 2, 2011 decision of the Office of Workers' Compensation Programs is set aside and remanded for further development consistent with this order of the Board.<sup>5</sup>

Issued: January 12, 2012  
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

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<sup>5</sup> In view of the disposition of the appeal, appellant's request for oral argument is moot.