

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

D.C., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Albany, NY, Employer**

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**Docket No. 13-1179
Issued: September 6, 2013**

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On April 17, 2013 appellant filed a timely appeal from an October 25, 2012 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration as untimely filed and failing to establish clear evidence of error. The Board docketed the appeal as No. 13-1179.

The Board has duly considered this matter and finds that the case is not in posture for decision.¹ This case has previously been before the Board. In a decision dated August 14, 1997, the Board affirmed in part and modified in part an April 26, 1995 schedule award determination.² It affirmed OWCP's determination that appellant was not entitled to a greater than 39 percent impairment of the left lower extremity, but found OWCP incorrectly determined the pay rate as it had made a mathematical error. Thus, the Board modified OWCP's decision to reflect

¹ OWCP accepted that appellant, then a 42-year-old mail handler, sustained a lumbosacral strain and left shoulder adhesive capsulitis due to an October 24, 1990 traumatic injury. It assigned claim number xxxxxx563. Under claim number xxxxxx436 OWCP accepted that appellant sustained a back and left knee injury on August 13, 1974. Under claim number xxxxxx161 it accepted that appellant sustained *genu recurvatum* with an injury date of November 17, 1977. OWCP combined claim numbers xxxxxx563, xxxxxx436 and xxxxxx161 with xxxxxx563 as the master file number.

² Docket No. 95-2546 (issued August 14, 1997).

appellant's correct pay rate. The Board, in a decision dated October 2, 1997, affirmed as modified appellant's weekly pay rate which OWCP calculated for a February 7, 1995 schedule award decision.³

On November 21, 2008 appellant filed a claim for an additional schedule award. By decision dated July 14, 2010, OWCP denied appellant's request for an additional schedule award, which an OWCP hearing representative affirmed by decision dated July 21, 2011. On August 7, 2012 appellant requested reconsideration of the July 14, 2010 denial of his request for an additional schedule award. He submitted medical evidence including a January 20, 2011 report from Dr. Bryan S. Bilfield, a Board-certified orthopedic surgeon, who provided findings on examination. Dr. Bilfield provided an impairment rating using the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. By decision dated October 25, 2012, OWCP denied appellant's request for reconsideration as untimely filed and failing to establish clear evidence of error.

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. However, 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.⁴

The Board finds that appellant alleged that his condition had worsened and submitted new medical evidence regarding his current condition. 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 the possible progression of an employment-related condition resulting in permanent impairment or increased impairment.⁵ 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 his request for an increased schedule award.

³ Docket No. 95-2034 (issued October 7, 1997).

⁴ See *B.K.*, 59 ECAB 228 (2007); *Candace A. Karkoff*, 56 ECAB 622 (2005).

⁵ See *Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994); see also *B.K.* *supra* note 4 (where it was evident that the claimant was seeking a schedule award based on new and current medical evidence, OWCP should have issued a merit decision on the schedule award claim rather than adjudicate an application for reconsideration).

IT IS HEREBY ORDERED THAT the October 25, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further development consistent with this order of the Board.

Issued: September 6, 2013
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board