

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

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E.S., Appellant )  
and ) Docket No. 13-1322  
U.S. POSTAL SERVICE, LARGO POST ) Issued: January 8, 2014  
OFFICE, Largo, FL, Employer )  
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)

*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 May 15, 2013 appellant filed a timely appeal from an April 30, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration as untimely filed and failing to demonstrate clear evidence of error. The decision denied reconsideration of a November 8, 2011 Board decision finding that appellant had failed to establish more than 32 percent permanent impairment to each of his upper extremities.<sup>1</sup>

The Board has duly considered the matter and notes that the case is not in posture for a decision. Appellant submitted an October 10, 2012 report from Dr. Samy F. Bishai, a Board-certified orthopedic surgeon, determining that he had 63 percent impairment of each of his upper extremities under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6<sup>th</sup> ed. 2009). He requested reconsideration of his schedule award claim in a form received by OWCP on March 1, 2013. In an April 30, 2013 decision, OWCP denied appellant's reconsideration request finding that it was untimely filed and did not present clear evidence of error.

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<sup>1</sup> On August 12, 1996 appellant, then a 48-year-old city carrier, filed a notice of occupational disease alleging that he developed a left shoulder and arm condition due to the continuous movement of casing and delivering mail. OWCP accepted this claim for aggravation of osteoarthritis of both shoulders on November 25, 1996. By decision dated February 3, 2011, it found that appellant had not established more than 32 percent impairment to his upper extremities. The Board affirmed this decision on November 8, 2011. Docket No. 11-864 (issued November 8, 2011).

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 or she is entitled to a merit decision on the medical evidence.<sup>2</sup> In the present appeal, appellant submitted Dr. Bishai's January 4, 2013 report after OWCP's February 3, 2011 schedule award decision. Moreover, this report addressed the pertinent issue of this case, *i.e.*, whether appellant was entitled to additional schedule award compensation for upper extremity impairment, as it contained an impairment rating that referenced the A.M.A., *Guides*. Although appellant submitted a form in which he requested reconsideration, it is evident that he was not seeking reconsideration of the February 3, 2011 decision, but was seeking an increased schedule award based on new medical evidence.

The case will be remanded for further development on the issue of whether appellant has more than 32 percent permanent impairment of bilateral upper extremities. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim.

**IT IS HEREBY ORDERED THAT** the April 30, 2013 decision of the Office of Workers' Compensation Programs be set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: January 8, 2014  
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

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<sup>2</sup> 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, OWCP should have issued a merit decision on the schedule award claim rather than adjudicate an application for reconsideration).