

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

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**R.R., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Trenton, NJ, Employer**

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**Docket No. 13-1690  
Issued: March 5, 2014**

*Appearances:*

*Thomas R. Uliase, Esq., for the appellant  
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 July 8, 2013 appellant, through counsel, filed a timely appeal of a March 28, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration of a schedule award. The Board docketed the appeal as No. 13-1690.

The Board has duly considered this matter and finds that the case is not in posture for a decision.<sup>1</sup> This case has previously been before the Board. By decision dated November 1, 2002, the Board affirmed a February 7, 2002 OWCP hearing representative's decision, which affirmed in part, a March 23, 2001 OWCP decision, finding that appellant did not establish an employment-related recurrence of disability beginning December 2, 1999 causally related to the accepted April 2, 1998 employment injury.<sup>2</sup> By decision dated October 26, 2011, the Board issued an order remanding the case to OWCP to consider the November 24, 2009 report from Dr. David Weiss, an attending osteopath, in which he updated his prior impairment rating by

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<sup>1</sup> On April 7, 1998 appellant, then a 42-year-old custodian/laborer, filed a traumatic injury claim alleging that he injured his lower back on April 2, 1998 while lifting garbage bags. OWCP's hearing representative accepted a lumbosacral strain.

<sup>2</sup> In this decision, OWCP also denied appellant's claim that he sustained an injury on April 2, 1998 in the performance of duty. OWCP's hearing representative reversed this determination in his February 7, 2002 decision.

utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

By decision dated February 15, 2012, OWCP found the evidence insufficient to establish that appellant was entitled to a schedule award. This decision was affirmed by an OWCP hearing representative on August 20, 2012. On December 17, 2012 appellant's attorney requested reconsideration. He submitted a May 21, 2012 electromyography test and a November 6, 2012 report by Dr. Weiss. Counsel noted that Dr. Weiss reexamined appellant on November 6, 2012 and provided his new findings on examination. Dr. Weiss provided an impairment rating based on the November 6, 2012 physical examination findings using the sixth edition of the A.M.A., *Guides*. By decision dated March 28, 2013, OWCP denied appellant's request for reconsideration on the grounds that his current condition was not relevant to whether modification of the August 20, 2012 decision was warranted.

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.<sup>3</sup> The Board finds, therefore, that OWCP applied the wrong standard of review as appellant was requesting an increased schedule award and OWCP should not have applied the standard for timely reconsideration requests. On remand, OWCP should review and develop the medical evidence and issue a *de novo* decision regarding his request for an increased schedule award.

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<sup>3</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).

**IT IS HEREBY ORDERED THAT** the March 28, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further development consistent with this order of the Board.

Issued: March 5, 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