

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

R.K., Appellant)
and) Docket No. 14-1227
DEPARTMENT OF JUSTICE, BUREAU OF) Issued: October 24, 2014
PRISONS, Tallahassee, FL, Employer)
)

Appearances:

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

On May 6, 2014 appellant filed a timely application for review of an April 7, 2014 decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration on the grounds that it was untimely filed and failed to establish clear evidence of error. The Board assigned Docket No. 14-1227.

The Board has duly considered the matter and notes that the case is not in posture for a decision. OWCP's April 7, 2014 decision denied reconsideration of its August 18, 2011 decision. In its August 18, 2011 decision, it found that appellant submitted insufficient evidence to establish that he was entitled to schedule award compensation for a permanent impairment of his penis.¹ Subsequently, appellant submitted a November 14, 2013 report of Dr. Fritzhand who determined that he had an 11 percent whole person impairment due to the injury to his penis under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009).² OWCP received this report on

¹ OWCP found that the medical evidence of record, including April 16, 2010 and May 16, 2011 reports of Dr. Martin Fritzhand, an attending Board-certified urologist, did not show that appellant was entitled to schedule award compensation for permanent impairment of his penis.

² OWCP procedure contains a formula for converting a whole person impairment to an impairment for certain organs such as the penis. Federal Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.4(d)(2) (January 2010).

December 16, 2013 as an attachment to a December 12, 2013 letter requesting a schedule award. It received another copy of this report on March 28, 2014 as an attachment to a March 28, 2014 letter requesting reconsideration of the claim. In an April 7, 2014 decision, OWCP denied appellant's reconsideration request finding that it was untimely and did not present clear evidence of error. It did not review Dr. Fritzhand's November 14, 2013 report.

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 is entitled to a merit decision on the medical evidence.³ In the present appeal, appellant submitted a November 14, 2013 report of Dr. Fritzhand after OWCP's August 18, 2011 schedule award decision. Moreover, this report addressed the pertinent issue of this case, *i.e.*, whether appellant was entitled to schedule award compensation for penis impairment, as it contained an impairment rating that referenced the A.M.A., *Guides*. It is evident from the record that appellant was not seeking reconsideration of the August 18, 2011 OWCP decision, but was seeking a schedule award based on new medical evidence.

The case will be remanded for further development on the issue of whether appellant has a permanent impairment of his penis entitling him to schedule award compensation. After this development is carried out, OWCP shall issue an appropriate merit decision on appellant's claim.

³ 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 April 7, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: October 24, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board