

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

_____)	
J.P., Appellant)	
)	
and)	Docket No. 14-1478
)	Issued: October 21, 2014
U.S. POSTAL SERVICE, POST OFFICE, Liberal, KS, Employer)	
_____)	

Appearances:
Appellant, pro se
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

JURISDICTION

On June 17, 2014 appellant filed a timely appeal from the May 9, 2014 Office of Workers' Compensation Programs' (OWCP) nonmerit decision, which denied his request for reconsideration on the grounds that it failed to present new, relevant evidence or argument with respect to a May 31, 2013 schedule award decision.

The Board has duly considered the matter and notes that the case is not in posture for a decision. The record reflects that OWCP issued a schedule award on May 31, 2013 for an additional 10 percent permanent impairment to the left arm and no additional impairment to the right arm for a total permanent impairment to the left arm of 22 percent and 11 percent to the right arm. On February 9, 2014 appellant's representative requested reconsideration and noted that he was presenting new medical evidence of an additional 18 percent impairment of the left arm from Dr. John W. Ellis, Board-certified in family medicine. A January 14, 2014 report from Dr. Ellis accompanied the request in which Dr. Ellis addressed permanent impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (6th ed. 2009). Dr. Ellis conducted a new examination and opined that appellant had 40 percent impairment of the left upper extremity. In a decision dated May 9, 2014, OWCP denied appellant's request for reconsideration, finding that he failed to submit new relevant evidence or

argument. It noted that the new report from Dr. Ellis was cumulative of his October 23, 2012 report which offered the same impairment rating.

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.¹ The Board finds that appellant has submitted new evidence addressing a claim for an additional schedule award based on a progression of his employment-related condition rather than arguing that the original schedule award was in error.² The Board notes that Dr. Ellis provided a new examination and opined that appellant had 40 percent impairment of the left arm.³

As noted, 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 refused to address appellant's request for an increased schedule award. On remand, OWCP should review and develop the medical evidence and issue an appropriate merit decision regarding appellant's request for an increased schedule award.

¹ *D.C.*, Docket No. 13-1179 (issued September 6, 2013); *T.S.* Docket No. 12-1781 (issued February 12, 2013). See *B.K.*, 59 ECAB 228 (2007).

² *D.C.*, *id.*; *B.K.*, *id.* (where it was evident that the claimant as seeking a schedule award base on new and current medical evidence, OWCP should have issued a merit decision on the schedule award claim than adjudicate an application for reconsideration).

³ The Board notes that, while Dr. Ellis' October 23, 2012 report also finds 40 percent impairment of the left arm, his January 14, 2014 report and its calculation are based on new examination findings.

IT IS HEREBY ORDERED THAT the May 9, 2014 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: October 21, 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