

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

J.S., Appellant)	
)	
and)	Docket No. 15-655
)	Issued: May 12, 2015
DEPARTMENT OF HOMELAND SECURITY,)	
TRANSPORTATION SECURITY)	
ADMINISTRATION, Philadelphia, PA,)	
Employer)	
)	

Appearances: *Case Submitted on the Record*
Jason S. Lomax, Esq., for the appellant
Office of Solicitor, for the Director

ORDER REMANDING CASE

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

On January 30, 2015 appellant filed a timely appeal from a January 6, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) denying his request for reconsideration as untimely and insufficient to establish clear evidence of error. The appeal was docketed as No. 15-655.

By decision dated March 9, 2011, OWCP granted appellant a schedule award for a 12 percent permanent impairment of the right upper extremity pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition) (A.M.A., *Guides*). In a merit decision dated December 27, 2013, it denied his claim for an additional schedule award.

In a letter dated December 26, 2014, received by OWCP on December 29, 2014, appellant requested reconsideration of the December 27, 2013 decision. In a report dated February 22, 2013, received by OWCP on December 29, 2014, Dr. Arthur Becan, a Board-certified orthopedic surgeon, provided examination findings and thereafter calculated that appellant had a 26 percent right upper extremity impairment pursuant to the A.M.A., *Guides*.

By decision dated January 6, 2015, OWCP denied his request for reconsideration as untimely filed and as it did not demonstrate 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. 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

On December 26, 2014 appellant requested an increased schedule award and submitted Dr. Becan's report indicating that he had a 26 percent right upper extremity impairment. 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 progression of an employment-related condition resulting in permanent impairment or increased impairment.² 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 factual and medical evidence and issue an appropriate decision regarding his request for an increased schedule award.

IT IS HEREBY ORDERED THAT the January 6, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: May 12, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹ See *B.K.*, 59 ECAB 228 (2007); *Candace A. Karkoff*, 56 ECAB 622 (2005).

² See *Linda T. Brown*, 51 ECAB 115 (1999); *Paul R. Reedy*, 45 ECAB 488 (1994).