

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

S.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

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**Docket No. 15-1499
Issued: October 16, 2015**

Appearances:
Brett Blumstein, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

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

On July 1, 2015 appellant, through counsel, filed a timely appeal of a February 3, 2015 adverse letter from the Office of Workers' Compensation Programs (OWCP), which declined to review her claim for a schedule award. The Board docketed the appeal as No. 15-1499.

On October 15, 2004 OWCP accepted a claim for a right knee strain. On June 22, 2007 appellant filed a Form CA-7 claim for a schedule award for the right lower extremity. In decisions dated April 29 and September 30, 2009, December 6, 2011, December 5, 2012, and February 6, 2014, OWCP denied her schedule award claim. Appellant, through counsel, filed another claim for a schedule award. In support of her claim, she submitted additional medical evidence, including an August 19, 2014 report and impairment evaluation from Dr. Jacob E. Tauber, Board-certified in orthopedic surgery, who found that she had a seven percent right lower extremity impairment pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (sixth edition). In its February 3, 2015 letter, OWCP stated that the schedule award was not payable at that time as it was currently in a denied status.

On appeal counsel argues that appellant should be able to apply for a schedule award at any time, relying on the Board's decision in *R.P.*, Docket No. 10-1123 (issued January 25, 2011). In that case, appellant filed a schedule award claim subsequent to OWCP's previous denial of his claim for a schedule award and submitted a new medical report and impairment evaluation

containing an impairment rating. The Board reversed OWCP's decision, which denied the claim on the basis that the claim was untimely and failed to show clear and convincing evidence of error.¹ The Board found that a claimant may seek an increased schedule award at any time, if the evidence established that appellant sustained an increased impairment at a later date, causally related to the accepted injury.

The Board has duly considered the matter and finds that, in accordance with relevant case law and regulations, the case should be remanded for adjudication of appellant's schedule award claim. As previously noted, a claimant may seek an increased schedule award if the evidence establishes that he or she sustained increased impairment at a later date causally related to the accepted employment injury.²

As appellant filed a claim for an additional schedule award and submitted new medical evidence in support of the claim, OWCP was incorrect in failing to adjudicate and process the claim. The Board will therefore remand the case for a *de novo* decision which will address the medical evidence submitted in support of the employee's claim of permanent impairment. Following such further development as OWCP deems necessary, it shall issue an appropriate decision on the merits.

¹ The Board notes that OWCP, as it did in this case, sent appellant a letter which acknowledged receipt of her schedule award claim and referred her to the appeal rights included with the decision denying her schedule award claim.

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7(b) (January 2010).

IT IS HEREBY ORDERED THAT the case record is remanded to the Office of Workers' Compensation Programs for further proceedings consistent with this order of the Board.

Issued: October 16, 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