

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

M.S., Appellant)	
)	
and)	Docket No. 19-0733
)	Issued: June 8, 2020
DEPARTMENT OF THE NAVY, PUGET)	
SOUND NAVAL SHIPYARD, Bremerton, WA,)	
Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On February 13, 2019 appellant filed a timely appeal from a November 28, 2018 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 19-0733.

On August 1, 2013 appellant, then a 56-year-old package router, filed an occupational disease claim (Form CA-2) alleging a loss of hearing causally related to factors of his federal employment, including making deliveries to ships. By decision dated January 17, 2014, OWCP accepted that appellant sustained employment-related bilateral sensorineural hearing loss.

The Board has duly considered the matter and notes that the case is not in posture for a decision. By decision dated February 20, 2014, OWCP found that appellant had 18 percent binaural hearing loss. On August 27, 2018 appellant requested reconsideration of OWCP's February 20, 2014 schedule award decision. He indicated that he still worked at the employing establishment and had increased hearing loss. Appellant submitted a November 10, 2017 report of Dr. Julie Gustafson, a Board-certified otolaryngologist, who determined based on a November 1, 2017 audiometric evaluation that he had an increased binaural hearing loss under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of*

*Permanent Impairment.*¹ By decision dated November 28, 2018, OWCP denied appellant's reconsideration request, finding that the request was untimely filed and failed to demonstrate clear evidence of error.

The Board has held that a claimant may request a schedule award or increased schedule award at any time 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 When a claimant has requested reconsideration, and has submitted new and relevant evidence with respect to a permanent impairment or an increased permanent impairment, then he or she will be entitled to a merit decision on the issue.³

In the present case, appellant submitted a November 10, 2017 report of Dr. Gustafson after OWCP's February 20, 2014 schedule award decision. This report addressed the pertinent issue of this case, *i.e.*, whether appellant was entitled to additional schedule award compensation for hearing loss, as it contained an impairment rating that referenced the A.M.A., *Guides*. Although appellant submitted a letter and form in which he requested reconsideration, it is evident that he was not seeking reconsideration of the February 20, 2014 decision, but was seeking a schedule award based on new medical evidence. As noted above, where a claimant has requested reconsideration, and has submitted new and relevant evidence with respect to a permanent impairment or an increased permanent impairment, then he or she will be entitled to a merit decision on the issue.⁴

The case will be remanded for OWCP to adjudicate this matter as a request for an increased schedule award. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

¹ A.M.A., *Guides* (6th ed. 2009).

² *R.D.*, Docket No. 18-0579 (September 14, 2018); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

³ *See C.W.*, Docket No. 18-1110 (issued December 28, 2018); *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).

⁴ *Id.*

IT IS HEREBY ORDERED THAT the November 28, 2018 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: June 8, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board