

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

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T.K., Appellant)	
)	
and)	Docket No. 21-0245
)	Issued: November 30, 2021
U.S. POSTAL SERVICE, JUANITA CRAFT)	
POST OFFICE, DALLAS, TX, Employer)	
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Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On December 14, 2020 appellant, through counsel, filed a timely appeal from a November 16, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² The Clerk of the Appellate Boards assigned Docket No. 21 -0245.

On July 2, 2016 appellant, then a 47-year-old city carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured the ball of his foot when he stepped on a rock or crack walking while in the performance of duty. On December 6, 2017 OWCP accepted this claim for bilateral hallux valgus, bilateral foot sprains, and plantar fascial fibromatosis.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The case record also contains an August 4, 2020 merit decision of OWCP. As counsel did not appeal from that decision, it is not presently before the Board. *See* 20 C.F.R. § 501.3.

On May 4, 2018 appellant filed a schedule award claim (Form CA-7). By decision dated March 26, 2020, OWCP granted him a schedule award for two percent permanent impairment of each of his lower extremities. On March 31, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. By decision dated August 4, 2020, OWCP's hearing representative affirmed the March 26, 2020 schedule award decision.

On September 15, 2020 appellant, through counsel, requested reconsideration of the August 4, 2020 decision. Appellant submitted a September 4, 2020 report from Dr. Neil Allen, a Board-certified in internal medicine and neurology, finding that appellant had 11 percent permanent impairment of each of his lower extremities based on loss of range of motion³ under the standards of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).

By decision dated November 16, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim under 5 U.S.C. § 8128(a).

The Board has duly considered the matter and finds that this case is not in posture for decision. As noted, by decision dated March 26, 2020, OWCP granted appellant a schedule award for two percent permanent impairment of each lower extremity. Subsequently, appellant submitted a September 4, 2020 report from Dr. Allen who determined that appellant had 11 percent permanent impairment of each lower extremity under the standards of the sixth edition of the A.M.A., *Guides*. By decision dated November 16, 2020, OWCP denied appellant's claim without reviewing the merits, finding that he failed to provide relevant and pertinent new evidence.

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 conditions resulting in permanent impairment or increased impairment.⁴

When a claimant has requested reconsideration and has submitted evidence of permanent impairment or increased permanent impairment, then he or she will be entitled to a merit decision on the issue.⁵

In the present case, appellant submitted a September 4, 2020 report from Dr. Allen following OWCP's March 26, 2020 schedule award decision. This report contained an impairment rating that referenced the A.M.A., *Guides*. As noted above, where a claimant has requested reconsideration, and has submitted evidence of increased permanent impairment, then he or she will be entitled to a merit decision on the issue.⁶ The case will therefore be remanded to OWCP

³ A.M.A., *Guides*, 6th ed. (2009).

⁴ *E.S.*, Docket No. 20-0656 (issued February 5, 2021); *J.D.*, Docket No. 19-0019 (July 26, 2019); *R.D.*, Docket No. 18-0579 (issued September 14, 2018); *E.G.*, Docket No. 17-1710 (issued January 4, 2018); *G.E.*, Docket No. 17-0594 (issued September 14, 2017); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

⁵ *C.W.*, Docket No. 18-1110 (issued December 28, 2018).

⁶ *Id.*

to adjudicate this matter as a request for an increased schedule award. Following this and such other development as deemed necessary, OWCP shall issue a *de novo* decision on appellant's claim for an increased schedule award.

IT IS HEREBY ORDERED THAT the November 16, 2020 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: November 30, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board