

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

D.G., Appellant)	
)	
and)	Docket No. 20-1467
)	Issued: November 17, 2022
U.S. POSTAL SERVICE, NORTHPARK)	
ANNEX, Charlotte, NC, Employer)	
)	

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

Case Submitted on the Record

ORDER REMANDING CASE

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On July 29, 2020 appellant filed a timely appeal from a February 27, 2020 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 20-1467.¹

On April 18, 2007 appellant, then a 45-year-old mail processing clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained head and cervical spine injuries with chronic daily headaches due to factors of her federal employment.² She indicated that she sustained accepted head and neck conditions under OWCP File No. xxxxxx840 related to the same March 9, 2004 employment incident when part of an all-purpose container (APC) fell and struck her head.³ Appellant noted that she first became aware of her head and neck conditions

¹ The Board notes that appellant submitted additional evidence to OWCP following the February 27, 2020 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

² OWCP assigned the present claim File No. xxxxxx522.

³ OWCP File No. xxxxxx840 was accepted for a March 9, 2004 head contusion with blunt trauma, contusion of face and scalp, headache, and cervicalgia.

on March 9, 2004, and related to factors of her federal employment on February 25, 2007. She stopped work on February 28, 2007 and did not return.

OWCP accepted the claim for aggravation of cervical strain. It subsequently expanded its acceptance of the claim to include right lateral disc herniation at C6-7, cervical radiculopathy to the right, and occipital neuralgia.

On February 2, 2016 appellant underwent an OWCP-authorized right C6-7 partial laminectomy, medial facetectomy, and foraminotomy, performed by Dr. Joe D. Bernard, a Board-certified neurosurgeon.

On January 31, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award. She subsequently submitted a February 1, 2018 report by Dr. Bernard noting that appellant had attained maximum medical improvement (MMI) in June 2015. Dr. Bernard found 15 percent permanent impairment to the back based on criteria of a state industrial commission.

On April 6, 2018 OWCP obtained a second opinion report by Dr. Seth Jaffe, an osteopath Board-certified in orthopedic surgery, who opined that appellant had not sustained an impairment of a scheduled member as there was no electrodiagnostic evidence of C6-7 radiculopathy. In an April 13, 2018 report, Dr. Herbert White Jr., a Board-certified occupational medicine specialist serving as the district medical adviser (DMA), concurred with Dr. Jaffe's opinion.

By decision dated April 19, 2018, OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body as a result of her accepted employment injury.

On October 29, 2018 appellant requested reconsideration. In an October 19, 2018 statement, she contended that OWCP had not fully considered bilateral upper extremity radiculopathy and a right shoulder condition. Appellant asserted that reports by Dr. T. Hemanth Rao, Board-certified in psychiatry, neurology, and electrodiagnostic medicine, were sufficient to establish the presence of right C6 radiculopathy.

By decision dated January 24, 2019, OWCP denied modification of its April 19, 2018 decision.

On January 28, 2020 appellant requested reconsideration. She submitted additional medical evidence, including a September 9, 2019 report wherein Dr. Dawn Quashie, a Board-certified family practitioner, opined that repetitive, forceful hand and wrist motions while processing mail directly caused right carpal tunnel syndrome. In an attached impairment rating report, also dated September 9, 2019, Dr. Quashie found that appellant had reached MMI and that she had three percent permanent impairment of the right upper extremity under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

⁴ A.M.A., *Guides* (6th ed. 2009).

By decision dated February 27, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim.

The Board has duly considered the matter and finds that this case is not in posture for decision. As noted, by decisions dated April 19, 2018 and January 24, 2019 OWCP denied appellant's schedule award claim, finding that the medical evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body as a result of her accepted employment injury.

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 permanent impairment.⁵ 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.⁶

In the present case, appellant submitted a September 9, 2019 report from Dr. Quashie following OWCP's January 24, 2019 schedule award decision. Attached was an impairment rating report, also dated September 9, 2019, which found three percent permanent impairment of the right upper extremity under the sixth edition of 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.⁷ The case must therefore be remanded to OWCP to adjudicate this matter as a request for an increased schedule award.⁸ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's schedule award claim. Accordingly,

⁵ See *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).

⁶ See *C.W.*, Docket No. 18-1110 (issued December 28, 2018).

⁷ *Id.*

⁸ See *Order Remanding Case, T.K.*, Docket No. 21-0245 (issued November 30, 2021).

IT IS HEREBY ORDERED THAT the February 27, 2020 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: November 17, 2022
Washington, DC

Patricia H. Fitzgerald, 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