

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

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S.I., Appellant)	
)	
and)	Docket No. 23-1055
)	Issued: January 22, 2024
U.S. POSTAL SERVICE, CASCADE HEIGHTS STATION, Atlanta, GA, Employer)	
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Appearances:
Misty Wenger, for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

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

On August 4, 2023 appellant filed a timely appeal from a February 8, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards assigned the appeal Docket No. 23-1055.

On April 8, 2014 appellant, then a 46-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed tingling, numbness, and pain in her neck and both

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 a 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.

shoulders due to factors of her federal employment, including casing and delivering mail.² She noted that she first became aware of her condition on October 24, 2012 and realized its relationship to her federal employment on April 1, 2014. Appellant did not stop work.

By decision dated November 13, 2020, OWCP granted appellant a schedule award for 14 percent permanent impairment of the right shoulder, which represented an additional 12 percent permanent impairment of the right upper extremity, and 10 percent permanent impairment of the left shoulder.

On September 29, 2021 appellant filed a claim for compensation (Form CA-7) for an increased schedule award under OWCP File No. xxxxxx876.

In support of her claim, appellant submitted a May 17, 2021 narrative report by Dr. Ralph D'Auria, a Board-certified physiatrist, who noted appellant's subjective complaints and documented physical examination findings. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)³ and *The Guides Newsletter, Rating Spinal Nerve Extremity Impairment Using the Sixth Edition* (July/August 2009) (*The Guides Newsletter*), he found 26 percent right upper extremity impairment and 18 percent left upper extremity impairment related to the cervical spine.

On November 1, 2021 OWCP routed a statement of accepted facts and the case record to Dr. Arthur Harris, a Board-certified orthopedic surgeon serving as OWCP's district medical adviser (DMA), for review and evaluation of appellant's permanent impairment pursuant to the A.M.A., *Guides*. In reports dated November 4 and December 29, 2021, Dr. Harris found no increase in impairment in the right or left upper extremity since the prior November 30, 2020 award.

By decision dated January 18, 2022, OWCP denied appellant's claim for an increased schedule award.

OWCP continued to receive evidence, including a March 28, 2022 narrative report by Dr. D'Auria, who disagreed with Dr. Harris' impairment ratings as set forth in his November 4, 2021 report. Dr. D'Auria reviewed his May 17, 2021 examination findings and permanent impairment rating calculations and amended his prior ratings to 32 percent permanent impairment of the right upper extremity and 25 percent permanent impairment of the left upper extremity due to impairment of the shoulders and cervical spine.

² OWCP assigned the present claim OWCP File No. xxxxxx876. Appellant has prior November 17, 2003 and March 12, 2008 traumatic injury claims, which OWCP accepted under OWCP File Nos. xxxxxx514 for right wrist tenosynovitis and OWCP File No. xxxxxx414 for resolved cervical and right shoulder sprains, respectively. She also has a subsequent March 8, 2017 occupational disease claim, which OWCP accepted for bilateral carpal tunnel syndrome (CTS) under OWCP File No. xxxxxx977. On February 20, 2020 OWCP awarded appellant schedule award compensation for two percent permanent impairment of the right upper extremity under OWCP File No. xxxxxx514. On December 2, 2022 OWCP administratively combined File Nos. xxxxxx876, xxxxxx414, xxxxxx977, and xxxxxx514, with the latter serving as the master file.

³ A.M.A., *Guides* (6th ed. 2009).

On February 2, 2023 appellant requested reconsideration of its January 18, 2022 decision.

By decision dated February 8, 2023, OWCP denied appellant's request for reconsideration of the January 18, 2022 decision, finding that it was untimely filed and failed to demonstrate clear evidence of error.

The Board has duly considered this matter and finds that this case is not in posture for decision.

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.⁴

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.⁵

In the present case, appellant submitted the March 28, 2022 report of Dr. D'Auria after OWCP's November 13, 2020 schedule award decision. This report addressed the pertinent issue of this case, *i.e.*, whether she was entitled to additional schedule award compensation for lower extremity impairment, as they contained impairment ratings that referenced the A.M.A., *Guides*. As noted above, where a claimant has requested reconsideration, and has submitted new and relevant evidence not previously considered by OWCP with respect to a claim 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 for OWCP to adjudicate this matter as a request for an increased schedule award. Following any development as deemed necessary, OWCP shall issue a *de novo* decision regarding appellant's claim for an increased schedule award.

⁴ *Order Remanding Case E.S.*, Docket No. 20-0656 (issued February 5, 2021); *R.D.*, Docket No. 18-0579 (issued September 14, 2018); *D.S.*, Docket No. 17-0407 (issued May 24, 2017).

⁵ *E.S.*, *id.*; *see C.W.*, Docket No. 18-1110 (issued December 28, 2018); *B.K.*, 59 ECAB 228 (2007).

⁶ *Id.*

IT IS HEREBY ORDERED THAT the February 8, 2023 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: January 22, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board