

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES ROBINSON, JR. and DEPARTMENT OF THE NAVY,
NAVAL SUPPLY CENTER, Oakland, CA

*Docket No. 03-1304; Submitted on the Record;
Issued July 7, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's May 20, 2002 request for reconsideration.

On January 11, 1980 appellant, then a 32-year-old warehouseman, was driving a truck and changing gears when the stick shift jumped out of gear and struck him on the palm of his right hand and thumb. The Office accepted his claim for right carpal tunnel syndrome and authorized a surgical release on May 27, 1980. On November 26, 1982 the Office issued a schedule award for a 10 percent permanent impairment of the right upper extremity resulting from the employment injury of January 11, 1980. After the schedule award expired, compensation for wage loss resumed. In a decision dated March 4, 1987, the Office terminated appellant's compensation benefits, effective March 15, 1987, on the grounds that the medical evidence established that he had no residuals or disability causally related to the January 11, 1980 injury.

On April 21, 1998 the Office denied appellant's claim for an additional schedule award. On August 10, 2000 the Office reviewed the merits of appellant's claim for an additional schedule award and found that the medical evidence did not reflect any error in the original award and did not establish a compensable impairment of the right arm due to the accepted work injury greater than was previously awarded. On March 6, 2002 the Board found that appellant had submitted no impairment rating from a qualified physician showing that he had greater than a 10 percent permanent impairment of his right upper extremity, according to the protocols of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, as a result of his January 11, 1980 employment injury or authorized surgery. The Board affirmed the Office's August 10, 2000 decision denying appellant's claim for an additional schedule award.¹

¹ Docket No. 00-2708 (issued March 6, 2002).

In a letter dated May 20, 2002, appellant advised: "I would like to reopen my claim using the District medical consultant's report dated January 17, 2000 and the U.S. Department of Labor, Employees' Compensation Appeals Board's decision, dated March 6, 2002." He did not argue, however, that he had greater than a 10 percent permanent impairment of his right arm. Rather, he argued that the Office should not have terminated his compensation, effective March 15, 1987, because he was issued a schedule award for permanent impairment.

On May 29, 2002 the Office responded as follows:

"By letter dated May 20, 2002, you requested the Office [to] reopen your claim regarding this injury and carpal tunnel condition.

"This claim has been in a denied status since 1987. A decision was issued finding that carpal tunnel syndrome had resolved and you had no residuals.

"You received a 10 percent permanent impairment have [sic] reached maximum medical improvement by July 16, 1982. As claim for an additional schedule award was denied. This decision was upheld by the Employees' Compensation Appeals Board[']s decision issued March 6, 2002.

"No further action is indicated."

On May 25, 2002 appellant argued that he developed causalgia from carpal tunnel surgery of the motor branch of the median nerve on May 27, 1980. He referenced a January 1, 1996 report from a Dr. Alix Magoire to support this point. Appellant repeated his contention that the physician who performed the surgery "evidently" scarred a great deal of the median nerve during exploration, although the motor branch of the median nerve function was found to be normal prior to closing the wound. He pointed to the use of the word "dissected" in the operative report and suggested that the use of this word indicated that the physician had actually dissected his median nerve or divided it into parts or cut deeply into it or cut it out.

The Office responded on September 20, 2002 that it had not received a request for reconsideration of the Board's March 6, 2002 decision. The Office advised: "If you have more than 10 percent impairment related to your January 11, 1980 injury, file a new claim for it. File Claim Form, Ca-7, for an additional schedule award. The Office may then determine if you have suffered an additional impairment since the last impairment rating."

On September 23, 2002 appellant requested that a qualified physician document the correct procedure that was performed during his surgery. He reiterated his belief that he developed causalgia, when the surgeon "dissected the motor branch of the median nerve out of my muscle in my thumb." Appellant argued that the medical evidence supporting no residuals of the January 11, 1980 injury had no medical value because he never had carpal tunnel syndrome. He argued that if he was evaluated with the correct nature of his injury in mind, the Office would not have terminated his compensation benefits.

On September 30, 2002 appellant asked the Office whether it had received his reconsideration letters. He submitted general information on carpal tunnel syndrome, a copy of the May 27, 1980 operative report and a copy of the memorandum that accompanied the notice

of proposed termination of compensation in November 1986. Appellant argued that he never had carpal tunnel syndrome and that the loss of his right thumb function was directly related to his industrial injury and surgery. “A calculation of a higher than 10 percent is not required,” he explained. “The Office owes me residual for my industrial injuries I sustained on January 11, 1980. The residual should start from the date I was wrongly terminated from/by the Office.”

In a decision dated November 14, 2002, the Office denied appellant’s request for reconsideration. The Office noted that, in order to establish entitlement to a schedule award for permanent impairment of the right arm greater than the 10 percent previously awarded, he must submit medical evidence of probative value that bears on the medical issue. As appellant submitted no new medical evidence on an issue that is based upon medical evidence, the Office denied a merit review.

The Board finds that this case is not in posture for a decision.

During the preliminary processing of a request for reconsideration, the file should be reviewed to determine whether a final decision has been rendered on the issue for which reconsideration is requested. If not, the claimant should be notified by letter that the case is not in posture for reconsideration. If the contested decision or issue cannot be reasonably determined from the claimant’s request, a copy of the application should be returned to the claimant for clarification and no further action taken on the request.²

In this case, the Office misidentified “the issue for which reconsideration is requested.” The Office erroneously assumed that appellant was seeking a merit review of the decision denying his claim for an additional schedule award. In his May 20, 2002 request for reconsideration and subsequent letters, appellant made no argument that he had greater than a 10 percent impairment of his right upper extremity. In fact, on September 30, 2002 he advised the Office: “A calculation of a higher [impairment] than 10 percent is not required.” Appellant took issue instead, with the termination of his compensation benefits effective March 15, 1987, stating that the Office terminated his compensation “wrongly.” He offered several arguments and submitted documents to support that he continued to have residuals of his January 11, 1980 injury and authorized surgery. Appellant argued that the Office would not have terminated his compensation benefits if he had been evaluated with the correct nature of his injury in mind, which was not carpal tunnel syndrome, but causalgia and loss of right thumb function resulting from his surgery. His letters make clear enough that he was not seeking an additional schedule award; he was seeking a merit review of the Office’s March 4, 1987 decision terminating his compensation benefits, effective March 15, 1987, on the grounds that the medical evidence established that he had no residuals or disability causally related to the January 11, 1980 injury. Appellant had residuals, he argued and his compensation should be continued from the date it was wrongly terminated.

Because the Office’s November 14, 2002 decision was not responsive to the issue for which reconsideration was requested, the Board will set aside that decision and remand the case

² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3 (May 1991).

for a proper determination of whether appellant is entitled to a merit review of the Office's March 4, 1987 decision.

The November 14, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
July 7, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member