

Appellant requested a schedule award on August 8, 2001. By decision dated April 23, 2002, the Office granted appellant a schedule award for 30 percent impairment of his upper extremities bilaterally.

In a letter dated May 20, 2002, appellant requested that the additional condition of basilar joint arthritis of his left thumb be accepted as employment related. The Office accepted the additional conditions of basilar joint arthritis and subluxation of the left thumb as due to appellant's employment duties. By decision dated October 23, 2002, the Office issued appellant a schedule award for an additional 7 percent impairment of his left upper extremity for a total of 37 percent impairment of his upper extremities bilaterally.

In a letter dated August 13, 2003, appellant stated that his 37 percent impairment rating was permanent and noted that he was retiring in November 2003. Appellant stated, "I believe since this is a life time disability and no one would hire someone with a 37 percent disability that my schedule award should be extended." In a reconsideration request dated October 10, 2003, appellant stated that, as he was 37 percent disabled for life, he no longer had the capacity to obtain employment.

In a letter dated October 16, 2003, the Office informed appellant that, after the expiration of his schedule award, he was entitled to compensation for disability only if he was totally disabled from limited-duty employment.

By decision dated January 15, 2004, the Office declined to reopen appellant's claim for review of the merits on the grounds that his reconsideration request did not contain relevant argument and was not accompanied by relevant new evidence.

LEGAL PRECEDENT

The Office's regulations provide that a timely request for reconsideration in writing may be reviewed on its merits if the employee has submitted evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office.¹

ANALYSIS

The Office granted appellant schedule awards totaling 37 percent impairment of his upper extremities. Appellant informed the Office that he planned to retire and that he felt that he could no longer be gainfully employed due to a 37 percent disability for work in letters dated August 13 and October 10, 2003. The Office declined to reopen appellant's claim for review of the merits of his entitlement to any further schedule award for impairment of his upper extremities.

In support of his request for reconsideration, appellant alleged that a 37 percent permanent impairment of his upper extremities was equivalent to a 37 percent disability for

¹ 5 U.S.C. §§ 10.609(a) and 10.606(b).

work. The Office's regulations define disability as "the incapacity because of an employment injury, to earn the wages the employee was receiving at the time of injury."² Impairment, on the other hand, is "any anatomic or functional abnormality or loss."³ Due to the definition of these terms as determined the Office and the Board, a permanent impairment of 37 percent is not automatically equivalent to permanent disability of that extent. Therefore, appellant's argument that he is entitled to additional compensation benefits merely because the Office determined his permanent impairment of his upper extremities to be 37 percent, lacks a reasonable color of validity and is not sufficient to require the Office to reopen appellant's claim for further consideration of the merits of his claim. As appellant did not submit any evidence or argument which shows that the Office erroneously applied or interpreted a specific point of law; advances a relevant legal argument not previously considered by the Office, or constitutes relevant and pertinent new evidence not previously considered by the Office, the Office was not required to reopen appellant's claim for consideration of the merits.

CONCLUSION

The Board finds that the Office properly declined to reopen appellant's claim for review of the merits as he did not submit the necessary evidence or legal argument to require merit review.

ORDER

IT IS HEREBY ORDERED THAT the January 15, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 17, 2004
Washington, DC

Alec J. Koromilas
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

² 20 C.F.R. § 10.5(f).

³ 20 C.F.R. § 10.5(m).