United States Department of Labor
Employees' Compensation Appeals Board

S.P., Appellant	)	
and	)	**Docket No. 06-1319**
	)	**Issued: May 21, 2007**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Dulles, VA, Employer	)	

Appearances:
Appellant, pro se
No appearance, for the Director

Oral Argument April 5, 2007

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 24, 2006 appellant filed a timely appeal of an October 11, 2005 decision of the Office of Workers' Compensation Programs denying her claim for an augmented schedule award and a May 2, 2006 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501(d)(3), the Board has jurisdiction over the merits of the claim.

ISSUES

The issues are: (1) whether appellant has established that she sustained greater than a 10 percent impairment of each upper extremity, for which she received a schedule award; and (2) whether the Office properly refused to reopen appellant's case for further reconsideration on the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On May 7, 1998 appellant, then a 51-year-old distribution clerk, filed an occupational disease claim alleging that on September 26, 1997 she first realized her bilateral carpal tunnel

syndrome was employment related. The Office accepted the claim for bilateral carpal tunnel syndrome and authorized right wrist exploration with excision biopsy of mass and neurolysis, which was performed on August 17, 1999 and right ring finger trigger release, which was performed on July 31, 2003.[1]

On January 20, 1999 appellant filed a claim for a schedule award.

On September 18, 2000 Dr. Rida N. Azer, a treating Board-certified orthopedic surgeon, stated that appellant had a 35 percent permanent impairment of the right upper extremity and a 35 percent permanent impairment of the left upper extremity. She listed September 28, 2000 as the date of maximum medical improvement.

On January 14, 2001 the Office medical adviser concluded that appellant had a 10 percent permanent impairment of the right upper extremity and a 10 percent permanent impairment of the left upper extremity.

By decision dated February 14, 2002, the Office issued a schedule award for a 10 percent impairment of the right upper extremity and a 10 percent impairment of the left upper extremity.

On June 6, 2002 Dr. Daniel R. Ignacio, a treating Board-certified physiatrist, diagnosed chronic bilateral carpal tunnel syndrome, chronic bilateral median neuritis, chronic wrist tenosynovitis and right upper limb reflex sympathetic dysfunction. He opined that appellant had a 30 percent impairment of the right wrist due to loss of motor function and a 35 percent impairment of the right wrist due to loss of sensation for a total impairment of 65 percent. Dr. Ignacio concluded that appellant had an additional 10 percent impairment of the right upper extremity due to reflex sympathetic disorder resulting in a total right upper extremity impairment of 75 percent. With respect to the left upper extremity, he concluded that appellant had 25 percent impairment due to loss of motor function and 20 percent impairment due to sensory dysfunction resulting in a total impairment of 45 percent for the left upper extremity. Lastly, Dr. Ignacio stated that these impairment ratings were based upon the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed.).

By decision dated August 19, 2002, the Office denied appellant's request for modification of the June 21, 2002 schedule award decision.

In a letter dated September 25, 2002, appellant requested reconsideration.

On September 19, 2003 an evaluation of permanent impairment was performed by Dr. Hampton J. Jackson, a Board-certified orthopedic surgeon, Dr. Talaat F. Maximous, a physician, and Dr. Azer. Using Tables 16-32 and 16-34, they determined that appellant had a 30 percent impairment of her right upper extremity based upon grip strength of 8 kilograms (kg). They used Tables 16-33 and 16-34 to find that appellant had a 20 percent upper extremity impairment based upon grip strength of 2 kg. Using the Combined Values Chart, the physicians determined that appellant had a total right upper extremity impairment of 50 percent. As to the

[1] On October 27, 2003 appellant filed a claim for a recurrence of disability beginning September 5, 2003, which was accepted on February 2, 2004.

left upper extremity, using Tables 16-32, 16-33 and 16-34 they found that appellant had a 20 percent impairment due to "a pinch strength loss index of 56 percent on the left" and "has a pinch loss of 20 percent." Combing these two values, they determined appellant had a 36 percent permanent impairment of the left upper extremity.

On November 3, 2003 appellant filed a claim for a schedule award.

On July 22, 2004 Dr. Ignacio concluded that appellant had a 70 percent permanent impairment of her right upper extremity and a 40 percent impairment of the left upper extremity. In reaching this determination, he found 20 percent impairment due to right median nerve injury dysfunction, 30 percent impairment due to motor deficits and weakness and 20 percent impairment in her right shoulder due to limited movement and strength. As to the left upper extremity, Dr. Ignacio concluded that appellant had 25 percent impairment due to motor dysfunction and weakness and 15 percent impairment due to median nerve injury sensory dysfunction. Lastly, he noted that he used Tables 13-22, 16-10, 16-11, 16-14, 16-14, 16-15, 16-32, 16-34 and 16-35 in determining appellant's permanent impairment.[2]

On October 29, 2004 Dr. Willie E. Thompson, an Office medical adviser, reviewed the medical record and noted that there was "no documentation of any evidence that there is an increase in this individual's impairment." He opined that Dr. Ignacio's report was "equivocal at best" and could not "be considered an accurate reflection" of appellant's condition. Dr. Thompson recommended referral to a second opinion physician to conduct updated electromyography (EMG) and nerve conduction studies to assess appellant's current condition.

In a December 9, 2004 report, Dr. Ignacio, based upon an EMG study, diagnosed abnormal EMG findings, normal ulnar and radial nerve conduction studies, "prolonged distal sensory latency of bilateral medial sensory nerves" and a normal medial motor nerve proximal conduction velocity.

On March 30, 2005 Dr. Taghi Kimyai-Asadi, a second opinion Board-certified neurologist, based upon a review of the medical evidence, statement of accepted facts and physical examination, diagnosed "evidence of right old carpal tunnel syndrome with residual atrophy" clinically. He opined that the "sensory loss is not typical of carpal tunnel syndrome" and appellant denied "any recent worsening of her condition." Dr. Kimyai-Asadi conducted EMG and nerve conduction studies on April 4, 2005. He found no evidence of carpal tunnel syndrome bilaterally based on the nerve conduction study. In an April 4, 2005 addendum, Dr. Kimyai-Asadi found no residuals of appellant bilateral carpal tunnel based upon the objective evidence. With respect to appellant's hand numbness, he concluded that it might be related to her nonwork-related cervical radiculopathy. Dr. Kimyai-Asadi opined that the objective evidence did not "warrant an increase in the percentage of permanent partial impairment of the right or left upper extremities."

On May 4, 2005 Dr. Thompson an Office medical adviser, found the evidence insufficient to warrant an increase in appellant's schedule award. He noted that the April 4, 2005 EMG and nerve conduction studies showed no evidence of carpal tunnel syndrome bilaterally.

[2] A.M.A., *Guides* 343, 482, 484, 490, 492, 509, 509 and 510 respectively.

By decision dated October 11, 2005, the Office denied appellant's request for modification of her schedule award.

Subsequently, the Office received additional medical evidence including reports regarding appellant's treatment from Drs. Azer and Ignacio and physical therapy reports.

Appellant requested reconsideration on April 13, 2006 and submitted October 19, 2004 magnetic resonance imaging (MRI) scans of both wrists by Dr. Krista L. McFarren in support of her request The Office subsequently received additional evidence including an April 20, 2005 physical therapy report.

On May 2, 2006 the Office denied appellant's request for reconsideration.[3]

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6] Effective February 1, 2001, the fifth edition of the A.M.A., *Guide*s was used to calculate schedule awards.[7]

Office procedures[8] provide that upper extremity impairment secondary to carpal tunnel syndrome and other entrapment neuropathies should be calculated using section 16.5d and Tables 16-10, 16-11 and 16-15.[9]

ANALYSIS -- ISSUE 1

Appellant previously received schedule awards for a 10 percent impairment to each upper extremity. She subsequently filed a claim for an increased schedule award. The Office denied

[3] The Board notes that, following the May 2, 2006 nonmerit decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. *See* 20 C.F.R. § 501.2(c); *Donald R. Gervasi*, 57 ECAB ___ (Docket No. 05-1622, issued December 21, 2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

[4] 5 U.S.C. §§ 8101-8193.

[5] 5 U.S.C. § 8107.

[6] 20 C.F.R. § 10.404.

[7] *See Jesse Mendoza*, 54 ECAB 802 (2003).

[8] *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, exhibit 4 (June 2003). *See also Cristeen Falls*, 55 ECAB 420 (2004).

[9] A.M.A., *Guides* 491, 482, 484, 492, respectively; *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

an additional schedule award on the basis that the medical evidence did not support an increase in impairment in both arms. To establish entitlement to an additional award, the medical evidence must show that impairment due to the accepted employment injuries has increased.

In support of her request, appellant submitted a September 19, 2003 report by Drs. Azer, Jackson and Maximous. The physicians rated appellant according to grip strength, sensory deficit of the median nerve and pain. The Board notes, however, that the A.M.A., *Guides* provide that in compression neuropathies, additional impairment values are not to be given for decreased grip strength.[10] As these physicians misapplied the A.M.A., *Guides*, the Board finds that the impairment rating by Drs. Azer, Jackson and Maximous is of diminished probative value.

Appellant also submitted reports dated June 6, 2002 and July 22, 2004 by Dr. Ignacio. In a June 6, 2002 report, Dr. Ignacio concluded that appellant had a total right upper extremity impairment of 75 percent and a total impairment of 45 percent for the left upper extremity. However, he did not provide an impairment rating based on the A.M.A., *Guides*. Dr. Ignacio failed to identify the pages, tables and grading schemes of the A.M.A., *Guides* used in making appellant's impairment rating. Therefore, the Board finds that his June 6, 2002 report is of diminished probative value and insufficient to establish appellant's entitlement to an additional schedule award for her upper extremities.

The record also contains a July 22, 2004 report by Dr. Ignacio. In this report he opined that appellant had a 70 percent permanent impairment of her right upper extremity and a 40 percent impairment of the left upper extremity. In reaching this determination, Dr. Ignacio found 20 percent impairment due to right median nerve injury dysfunction, 30 percent impairment due to motor deficits and weakness and 20 percent impairment in her right shoulder due to limited movement and strength. As to the left upper extremity, he concluded that appellant had 25 percent impairment due to motor dysfunction and weakness and 15 percent impairment due to median nerve injury sensory dysfunction. While noting the tables used in calculating appellant's permanent impairment, Dr. Ignacio failed to identify how he applied the tables beyond referencing them. As he failed to provide any rationale explaining how he used the tables and grading schemes, the Board finds that his July 22, 2004 report is of diminished probative value and insufficient to establish appellant's entitlement to an additional schedule award for her upper extremities.

The Office referred appellant to Dr. Kimyai-Asadi for a second opinion medical evaluation. He submitted a March 30, 2005 report, in which he provided an accurate factual medical background. Dr. Kimyai-Asadi recommended diagnostic testing to determine appellant's permanent impairment. In an April 4, 2005 report, he found no evidence of carpal tunnel syndrome bilaterally based on the nerve conduction study. In an April 4, 2005 addendum to his March 30, 2005 report, Dr. Kimyai-Asadi found no residuals of appellant's bilateral carpal tunnel based upon the objective evidence. He opined that the objective evidence did not "warrant an increase in the percentage of permanent partial impairment of the right or left upper extremities."

[10] *Id*. at 494.

On May 4, 2005 Dr. Thompson, an Office medical adviser, reviewed the evidence of record and found that there was no evidence to warrant an increase in appellant's schedule award. He noted that the April 4, 2005 EMG and nerve conduction studies showed no evidence of carpal tunnel syndrome bilaterally.

The Board finds that the weight of the medical opinion evidence is represented by the reports of Dr. Kimyai-Asadi, a second opinion physician, and Dr. Thompson, the Office medical adviser, who concluded that there was no evidence warranting an additional schedule award. In support of this conclusion, both physicians noted that the April 4, 2005 EMG and nerve conduction studies showed no evidence of bilateral carpal tunnel syndrome.

The Board finds that appellant submitted no rationalized medical evidence which establishes entitlement to an additional schedule award for her upper extremities causally related to her accepted bilateral carpal tunnel syndrome.

LEGAL PRECEDENT -- ISSUE 2

The Act[11] provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.[12] The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.[13]

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[14]

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.[15] A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[16]

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[11] 5 U.S.C. § 8101 *et seq.*

[12] *Id*. at § 8128(a). *See Tina M. Parrelli-Ball*, 57 ECAB ___ (Docket No. 06-121, issued June 6, 2006).

[13] 20 C.F.R. § 10.605.

[14] *Id*. at § 10.606. *See Susan A. Filkins*, 57 ECAB ___ (Docket No. 06-868, issued June 16, 2006).

[15] *Id*. at § 10.607(a). *See Joseph R. Santos*, 57 ECAB ___ (Docket No. 06-452, issued May 3, 2006).

[16] *Id*. at §10.608(b). *See Candace A. Karkoff*, 56 ECAB ___ (Docket No. 05-677, issued July 13, 2005).

ANALYSIS -- ISSUE 2

On April 13, 2006 appellant requested reconsideration. She has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not constituted relevant and pertinent evidence not previously considered by the Office. The evidence that appellant submitted is not pertinent to the issue on appeal. She submitted MRI scan reports, physical therapy reports and reports by Drs. Azer and Ignacio updating her medical condition. None of the reports provided an updated impairment rating. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.[17] The reports by Drs. Azer and Ignacio did not present any additional evidence pertaining to the relevant issue of whether appellant sustained an additional permanent impairment causally related to her accepted bilateral carpal tunnel syndrome. Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office properly refused to reopen appellant's claim for a review on the merits.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish entitlement to an additional schedule award for her upper extremities. The Board further finds that the Office properly denied merit review of the October 11, 2005 decision.

[17] *See David J. McDonald*, 50 ECAB 185 (1998).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 2, 2006 and October 11, 2005 are affirmed.

Issued: May 21, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board