

FACTUAL HISTORY

On January 20, 2006 appellant, then a 43-year-old mail handler, filed an occupational disease claim alleging that she sustained injury to her arms and hands due to the repetitive duties of her job. The Office accepted that she sustained bilateral radial styloid tenosynovitis and enthesopathy of the left wrist and carpus. Appellant first stopped work on December 30, 2005 and received compensation from the Office for periods of disability.²

The findings of February 9, 2006 nerve conduction studies of both arms revealed normal results. The findings of May 20, 2006 magnetic resonance imaging scan testing of the left wrist showed no occult osseous injury, intact ligamentous structures and normal tendinous structures. Beginning in early 2006, appellant complained of pain in her wrists, including pain in the first dorsal compartments, left greater than right. Her attending physicians indicated that they did not see any significant swelling and that carpal tunnel tests were normal.

On July 25, 2006 Dr. Jeffrey Beane, an attending Board-certified orthopedic surgeon, stated that on examination appellant had symptoms in the volar and radial aspects of the right wrist, including tenderness over the dorsal compartment of the right wrist and in the palmar aspect of the right hand. He diagnosed bilateral wrist pain and tenosynovitis and indicated that appellant had reached maximum medical improvement. Dr. Beane noted that surgery would not be beneficial. He stated, "I would recommend an impairment rating of three percent for each hand, left and right given the persistence of her symptoms."

Appellant filed a claim for schedule award compensation due to her accepted employment injuries. On September 21, 2006 an Office medical adviser stated that Dr. Beane did not explain his permanent impairment rating. His review of the medical evidence did not otherwise show that appellant had any permanent impairment of her arms which would entitle her to schedule award compensation.

In a September 27, 2006 decision, the Office denied appellant's claim that she had permanent impairment of her arms. The Office noted that Dr. Beane's report was of limited probative value because he did not explain how his impairment rating that appellant had a three percent permanent impairment in each arm was supported by the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

In an undated letter received by the Office on October 24, 2006, appellant requested reconsideration of her claim and contended that her physician properly used the A.M.A., *Guides*. She indicated that she did not understand how a physician who did not examine her could rate her impairment.

In a November 22, 2006 decision, the Office denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

² In May 2006, appellant returned to work as a modified mail handler for the employing establishment. In a September 1, 2006 decision, the Office determined that her wages as a modified mail handler fairly and reasonably represented her wage-earning capacity.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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.⁵

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained bilateral radial styloid tenosynovitis and enthesopathy of the left wrist and carpus. She claimed entitlement to schedule award compensation for permanent impairment of her arms.

On July 25, 2006 Dr. Beane, an attending Board-certified orthopedic surgeon, stated that on examination appellant had symptoms in the volar and radial aspects of the right wrist, including tenderness over the dorsal compartment of the right wrist and in the palmar aspect of the right hand. He diagnosed bilateral wrist pain and tenosynovitis, indicated that appellant had reached maximum medical improvement and stated, "I would recommend an impairment rating of three percent for each hand, left and right given the persistence of appellant's symptoms."

This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain adequate medical rationale in support of Dr. Beane's opinion on appellant's permanent impairment.⁶ He failed to provide any explanation of how his assessment of permanent impairment was derived in accordance with the standards of the A.M.A., *Guides*.⁷ Dr. Beane posited that appellant had an impairment rating of three percent for each hand but did not cite any portion of the A.M.A., *Guides* to support his opinion. He generally indicated that this rating was supported by appellant's symptoms but provided a very limited description of her symptoms and did not explain how they showed the existence of permanent impairment of the hands or arms.

Appellant exhibited limited findings on examination and diagnostic testing. The Board is not otherwise able to determine from the medical evidence that she has any permanent

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404 (1999).

⁵ *Id.*

⁶ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

⁷ See *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989) (finding that an opinion which is not based upon the standards adopted by the Office and approved by the Board as appropriate for evaluating schedule losses is of little probative value in determining the extent of a claimant's permanent impairment).

impairment of the upper extremities which would entitle her to a schedule award. Moreover, the Office medical adviser stated on September 21, 2006 that the medical evidence, including the report of Dr. Beane, did not show that appellant had permanent impairment of her arms which would entitle her to schedule award compensation.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,⁸ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.⁹ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file her application for review within one year of the date of that decision.¹⁰ When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.¹¹ The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹²

ANALYSIS -- ISSUE 2

In support of her October 24, 2006 reconsideration request, appellant argued that she believed that her physician properly used the A.M.A., *Guides*. The advancement of this argument would not require reopening of her claim for further review of the merits because her argument would not be relevant to the main issue of the present case, *i.e.*, whether the medical evidence showed that appellant had permanent impairment entitling her to schedule award compensation. Appellant's mere opinion regarding the sufficiency of the medical evidence is not relevant as the main issue of this case can only be resolved by medical evidence. She did not submit any new medical evidence in connection with her reconsideration request.

In the present case, appellant has not established that the Office improperly denied her request for further review of the merits of its September 27, 2006 decision under section 8128(a) of the Act, because the argument she submitted did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by the Office or constitute relevant and pertinent new evidence not previously considered by the Office.

⁸ Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on her own motion or on application." 5 U.S.C. § 8128(a).

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ 20 C.F.R. § 10.607(a).

¹¹ 20 C.F.R. § 10.608(b).

¹² *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

CONCLUSION

The Board finds that the Office properly determined that appellant did not have any permanent impairment of her arms which would entitle her to schedule award compensation. The Board further finds that the Office properly denied appellant's request for further review of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' November 22 and September 27, 2006 decisions are affirmed.

Issued: May 31, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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