

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

A.G., Appellant

and

**DEPARTMENT OF STATE, U.S. EMBASSY,
La Paz, Bolivia, Employer**

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**Docket No. 07-1209
Issued: October 25, 2007**

Appearances:
Ramiro Guevara, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 3, 2007 appellant filed a timely appeal from the January 4, 2007 decision of the Office of Workers' Compensation Programs denying her request for reconsideration. As the most recent Office merit decision was issued on October 13, 2005, more than one year prior to the filing of this appeal, the Board does not have jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On October 13, 2001 appellant, then a 33-year-old purchasing agent, filed a traumatic injury claim alleging that she sustained fractured vertebrae as a result of a motor vehicle accident that occurred while working for the employing establishment in Bolivia. By letter dated January 14, 2002, the Office accepted her claim for fractured vertebrae. Appellant also has

consequential paraplegia. Appropriate medical and compensation benefits were paid. Appellant is not a United States citizen.

The case record contains a copy of Bolivia's Pension Fund Law submitted by the employing establishment. Article 10 of this law provides, in relevant part:

“PROFESSIONAL RISK BENEFITS. Professional risk benefits will be paid as a consequence of a work[-]related accident or professional illness that causes the death or disability of the [a]ffiliated [e]mployee who can no longer perform his work. Disability can be total or partial, considering it as partial disability when the loss of his/her working capability is higher than a ten (10 percent).

“Professional [r]isk [d]isability benefits for an [a]ffiliated [e]mployee is a pension calculated on a percentage of the employee's [b]asic [s]alary, according to the disability percentage established by means of verification. The benefit will be paid when the disability percentage is higher than twenty-five percent (25 percent).”¹ (Emphasis in the original.)

On August 13, 2003 appellant filed a claim for a schedule award. In a medical report dated January 27, 2004, Dr. Nestor J. Javech indicated that appellant had a 65 percent impairment of the whole person. The Office referred the record to an Office medical adviser, who had been asked to convert the whole person impairments into impairments of the lower extremities pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition 2001). The Office medical adviser indicated that, based on the A.M.A., *Guides*, appellant had a 100 percent impairment to her lower extremities.² He also noted that, although appellant had a 40 percent impairment of her bladder, the bladder was not an organ and could not be converted into a lower extremity impairment.³

By decision dated October 13, 2005, the Office denied appellant's claim for a schedule award as there is no provision for a schedule award under Bolivian law. The Office noted that, pursuant to section 8137 of the Federal Employees' Compensation Act,⁴ the benefits features of local compensation statutes, regulations or customs should be adopted and applied in the cases of employees of the United States who are neither citizens nor residents of the United States. The Office noted that there is no provision in Bolivia's Pension Fund Law granting compensation for permanent partial impairment resulting from a work injury, only benefits for work-related disability. The Office noted that appellant returned to duty and that there was no evidence that she was disabled from work by Bolivian law.

¹ Pension Fund Law No. 1732 of November 1966 Ordered Version, Approved by Supreme Decree No. 255851 of July 21, 2001 (Bol.).

² A.M.A., *Guides* 527, Table 17-5,

³ *Id.* at 397, Table 15-6.

⁴ 5 U.S.C. § 8137.

By letter dated September 8, 2006, appellant, through her Bolivian attorney, requested reconsideration. Counsel contended that Bolivian law provided for the benefit claimed. He argued that section 8137 of the Act provided that, when the spirit of the local law provides similar benefits, appellant should be entitled to benefits. Counsel contended that an appropriate translation of Article 10 of the Bolivian Pension Law would read that benefits are paid when a work accident “causes the death or disability of the [a]ffiliate [e]mployee who can no longer *continue the job he/she previously performed.*” (Emphasis in the original.). He contends that, under the inaccurate version submitted by the employing establishment, compensation can be given only if appellant cannot work but that the correct version defines “disability” as a condition where appellant can no longer perform the job he performed before the accident. Counsel also cites sections of regulations that expand the Pension Fund Law. These new sections, according, counsel, indicate that appellant does not have to be removed from work to receive benefits. Appellant’s prior job required her to constantly travel to the countryside and that her current responsibilities rarely, if ever, require her to travel. She would be unable to do the traveling associated with her former position because the remote areas she would be required to visit did not have facilities for handicapped persons. Accordingly, counsel contended that the spirit of applicable Bolivian law entitles appellant to a schedule award under the Act.

By decision dated January 4, 2007, the Office denied reconsideration without merit review.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act, the Office’s regulations provide that the application for reconsideration, including all supporting documents, 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.⁵

Section 8128(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for review on the merits.⁶ Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.⁷ Likewise, evidence that does not address a particular issue involved does not constitute a basis for reopening a case.⁸

⁵ 20 C.F.R. § 10.606(b)(2)(i-iii).

⁶ 20 C.F.R. § 10.606(b)(2).

⁷ *Helen E. Paglinawan*, 51 ECAB 407, 591 (2000).

⁸ *Kevin M. Fatzner*, 51 ECAB 407 (2000).

ANALYSIS

In the instant case, appellant did not submit and new relevant and pertinent new factual evidence not previously considered by the Office. Furthermore, she does not advance a relevant legal argument not previously considered by the Office as the Office had already considered whether she qualified for a schedule award when one considered the applicable Bolivian law.

The remaining criterion to be addressed is whether appellant showed that the Office erroneously applied or interpreted a specific point of law. Appellant returned to work in a different position after her serious injury. Her attorney contends that the Office misinterpreted Bolivian law due to a faulty translation of Bolivia's Pension Fund Law. He argues that, when the law is properly translated, the fact that appellant returned to work should not disqualify her from a schedule award. This argument is without merit. The fact that appellant continues to work does not appear to disqualify her from benefits under Bolivian law. However, disability compensation and benefits under the schedule award are different entities. Disability is defined under the Act as the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of the injury.⁹ Disability may be partial or total.¹⁰ Accordingly, one could return to work and still be entitled to benefits for partial disability under both the Act and, apparently, under Bolivian law. The fact that appellant could not perform the duties of her original job due to her handicap is also an argument with regard to disability compensation. However, disability compensation is different from compensation for a schedule award. The schedule award provision of the Act,¹¹ and its implementing regulation,¹² set forth the number of weeks' compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. It is based on impairment ratings made under the A.M.A., *Guides*. A schedule award is not dependent on whether appellant is disabled from her current job, or for that matter, from any job. Accordingly, the argument by appellant's attorney that appellant is entitled to benefits under Bolivian law even if she returned to work is immaterial to the current issue of whether she is entitled to a schedule award. Counsel has not set forth any new argument that indicates that Bolivian law, whether by specific statute, regulation or custom, provides for schedule awards for permanent impairment. All of the laws and regulations submitted by him deal exclusively with disability, not any equivalent of a schedule award. Accordingly, appellant has not established that the Office erroneously applied or interpreted a specific point of law.

As appellant has not met any of the requirements for reopening her case for merit review under section 8128(a) of the Act, the Office properly denied reconsideration of appellant's case on the merits.

⁹ 20 C.F.R. § 10.5(f) (2007).

¹⁰ *Id.*

¹¹ 5 U.S.C. § 8107.

¹² 20 C.F.R. §10.404.

CONCLUSION

The Board finds that the Office properly refused to reopen appellants' case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 13, 2005 is affirmed.

Issued: October 25, 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