

FACTUAL HISTORY

On June 13, 2000 appellant, then a 24-year-old enumerator, filed a traumatic injury claim alleging that on May 5, 2000 she was sitting on a flower planter in a parking lot, waiting for her crew leader, when she stood up and hit her head, full force, on a metal sign. She claimed that she sustained a sprained neck, pain in her arms, back and jaw, severe headaches, ear and mouth pain and ringing in her ears. Appellant stopped working and did not return. On August 23, 2000 the Office accepted the claim for cervical strain. On September 1, 2000 it placed appellant on the periodic rolls.

On July 22, 2002 appellant filed a claim for a schedule award (Form CA-7).

In a progress note dated May 11, 2000, Dr. Michael D. Merkin, a Board-certified neurologist, stated that he treated appellant in July 1999 with neck and back pain and extremity paresthesias. Appellant had a normal electromyography (EMG) scan of the right arm and leg and her symptoms went away. Dr. Merkin stated that on May 5, 2000 appellant hit the top of her head on a billboard; did not lose consciousness, but was taken to the emergency room, where she obtained a normal computerized tomography (CT) brain scan. He reported appellant's complaints of ringing in the left ear, left facial pain, neck pain, headaches, pain into both arms and numbness in the left thumb and index finger. Appellant did not report lower back pains but stated that sometimes her legs hurt.

By letter dated August 26, 2002, the Office notified appellant that she was not entitled to a schedule award for injury to the spine, but, if she believed she had impairment to her extremities due to the spinal injury, she should provide supporting medical evidence.

In a September 1, 2002 letter, appellant contended that she did not have a spinal injury but that she had horrible, debilitating headaches, abnormal brain activity, jaw pain, mouth pain, facial twitching, blurred vision, trembling of the tips, numbness of the nose, ear pain and problems with chewing. She requested that the Office again review her schedule award request.

In a medical report dated May 4, 2005, Dr. Mohammad Fouladvand, a Board-certified neurologist, stated that appellant complained of daily, severe headaches preventing her from performing her daily activities. The headaches developed two days after she hit her head and was diagnosed with post-traumatic or postconcussion headaches. Dr. Fouladvand also noted appellant's complaints of progressively worsening forgetfulness and decreased hearing in her right ear. Appellant denied any double or blurry vision, unstable gait, weakness, numbness or tingling. Neurological and physical examinations revealed normal muscle tone, bulk and strength, symmetrical deep tendon reflexes, intact pinprick, position, vibration and light touch sensations, normal gait and normal finger-to-nose and heel-to-knee tests. Dr. Fouladvand diagnosed chronic daily headache, cognitive decline related to attention deficit disorder, subjective hearing decline and attention deficit disorder.

In a May 4, 2005 medical report, Dr. Elena Kaznatcheeva, a Board-certified neurologist, reported appellant's complaints of headaches after a mild head injury five years ago for which she was diagnosed with post-traumatic or postconcussion headache. Appellant also relayed increasing forgetfulness and decreased hearing in her right ear. Physical and neurological

examinations revealed normal muscle tone, bulk and strength, symmetrical deep tendon reflexes, intact pinprick, position, vibration and light touch sensations, normal finger-to-nose and heel-to-knee tests and normal gait. Appellant denied any double vision, blurry vision, unstable gait, weakness, numbness or tingling. Dr. Kaznatcheeva diagnosed chronic daily headache, cognitive impairment and subjective hearing decline.

Appellant further submitted progress notes dated January 12 and March 16, 2001, a medical report dated March 16, 2001 related to her complaints of postconcussion headaches and a January 18, 2001 work capacity evaluation signed by Dr. Merkin indicating that appellant could not return to work.

On May 21, 2007 appellant returned to work in a private-sector position.

In a December 31, 2007 medical report, Dr. Michael G. Nosko, a Board-certified neurologist, stated that appellant presented on December 10, 2007 with postconcussive syndrome and complained of headaches, intermittent visual blurriness and intermittent hearing difficulties. He stated that appellant reached maximum medical improvement.

On January 10, 2008 appellant filed another request for a schedule award.

By letter dated January 23, 2008, the Office notified appellant that she was not entitled to a schedule award for her back, but, if she believes she had a resulting impairment to an extremity, she should submit supporting medical evidence.

In an undated note, appellant contended that she hurt her head, neck and arms and requested an appropriate form.

In a March 6, 2008 letter, the Office advised appellant that it had received her note but that she did not provide any evidence to substantiate an injury to her arms. It requested she provide supporting medical evidence in accordance with the A.M.A., *Guides*.¹

On April 9, 2008 the Office notified appellant that it had not received any medical evidence establishing that her strained neck impacted her arms. It provided a letter to present to her physician requesting a permanent impairment rating. Appellant did not submit any additional medical evidence.

By decision dated June 3, 2008, the Office denied appellant's claim for a schedule award. It stated that her claim was accepted for strain of neck but that she did not provide any medical evidence supporting a permanent impairment to a scheduled member that would entitle her to a schedule award.

On September 22, 2008 appellant filed a request for reconsideration.

In an April 2, 2002 medical report, Dr. Smita Modi, a Board-certified neurologist, stated that she saw appellant for a neurological consultation and that her history of present trouble

¹ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001).

started after she hit the top of her head on a metal sign in 2000. Since the accident, appellant experienced frequent, devastating pounding headaches with light and sound sensitivity, nausea and occasional vomiting and pains in her face lasting for weeks. Dr. Modi diagnosed post-traumatic and postconcussion syndrome with intractable devastating chronic frequent cephalgia of migraine type.

In a July 22, 2008 medical report, Dr. Farooq Rehman, a Board-certified neurologist, reported appellant's complaints that after hitting her head in 2000 she experienced various symptoms, including persistent headaches and accompanying dizziness. Appellant also complained of intermittent numbness in her hands and feet. She stated that she had these symptoms since 1999 and was previously treated. Dr. Rehman diagnosed cerebral concussion, post-traumatic headaches, post-traumatic dizziness and anxiety. He also diagnosed paresthesias in the extremities, which he stated was chronic for several years and previously treated with various medications.

Appellant also submitted illegible chart notes dated July 22, 2008 and a duplicate copy of Dr. Nosko's December 31, 2007 medical report.

By decision dated October 22, 2008, the Office denied merit review on the grounds that appellant did not present any relevant evidence or legal contentions not previously considered. It stated that the medical reports submitted were not relevant because they did not address how appellant's neck strain resulted in an impairment of her extremities.

LEGAL PRECEDENT -- ISSUE 1

Under section 8107 of the Federal Employees' Compensation Act² and section 10.404 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for 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 Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁴

Although the A.M.A., *Guides* includes guidelines for estimating impairment due to disorders of the spine, a schedule award is not payable under the Act for injury to the spine.⁵ In 1960, however, amendments to the Act modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the case of the impairment originated in a scheduled or nonscheduled member.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ See *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002); *James Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁵ *Pamela J. Darling*, 49 ECAB 286 (1998).

Therefore, a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of the impairment originates in the spine.⁶

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained a cervical strain as a result of hitting her head on a sign during work. The issue is whether appellant sustained a ratable impairment due to her employment injury. As stated above, the Act precludes payment of a schedule award for a spinal impairment. Appellant may be entitled to a schedule award if she establishes that she sustained a permanent impairment to her extremities as a result of her cervical strain.⁷ The Board further notes that the brain is not a scheduled member and appellant is not entitled to a schedule award for headaches, loss of memory or cognitive dysfunction as a result of her employment injury.⁸

Prior to the application of the A.M.A., *Guides*, appellant must establish entitlement to a schedule award by showing a permanent impairment to a scheduled member causally related to her accepted injury.⁹ The Board finds that appellant did not submit sufficient medical evidence to establish a permanent impairment to her extremities due to the accepted cervical strain.

In a progress note dated May 11, 2000, Dr. Merkin relayed appellant's history of paresthesias in the extremities and neck and back pain in July 1999. He also reported appellant's complaints of pain in her legs and arms and numbness in the left thumb and index finger after hitting her head on a billboard on May 5, 2000. Although Dr. Merkin noted that appellant sustained pain and numbness in her extremities, he did not assert that these conditions resulted in a permanent, functional impairment.¹⁰ Further, he did not opine as to the cause of the pain and numbness in appellant's extremities. Dr. Merkin did not explain whether the condition was related to the preexisting extremity paresthesias in 1999 or caused by the accepted cervical strain. The fact that he noted that the condition started after the May 5, 2000 injury is not dispositive on the issue of causation.¹¹ Dr. Merkin did not provide a rationalized medical opinion explaining that appellant sustained a permanent impairment to her extremities as a result

⁶ *Thomas J. Engelhart*, 50 ECAB 322 (1999).

⁷ *See id.*

⁸ There is no provision under the Act for adding organs to the compensation schedule on a case-by-case basis. The terms of the Act are specific as to the method and amount of payment of compensation; neither the Office nor the Board has the authority to enlarge the terms of the Act or to award benefits under any terms other than those specified in the statute. *See Gary M. Goul*, 54 ECAB 702 (2003).

⁹ *See Michael S. Mina*, 57 ECAB 379 (2006).

¹⁰ Schedule awards are only payable for permanent impairment to scheduled members. *J.P.*, 60 ECAB ____ (Docket No. 08-832, issued November 13, 2008).

¹¹ The fact that a condition arises after an employment injury and was not present prior to the injury is not sufficient to support causal relationship. *See id.*

of her accepted cervical strain. Thus, this report is not sufficient to establish entitlement to a schedule award.¹²

The Board notes that both Dr. Fouladvand and Dr. Kaznatcheeva, in May 4, 2005 medical reports, described the results of normal physical and neurological examinations. Drs. Fouladvand and Dr. Kaznatcheeva found normal muscle tone, bulk and strength, symmetrical deep tendon reflexes, normal gait and intact pinprick, positional, vibrational and light touch sensations. Further, they relayed appellant's denial of any unstable gait, weakness, numbness or tingling. This report suggests that appellant did not sustain any permanent impairment to her extremities as a result of the May 5, 2000 work injury.

None of the other medical evidence addressed any permanent impairment to a scheduled member from the May 5, 2000 injury or the resulting permanent effects of her cervical strain. Therefore, the Board finds that appellant did not submit sufficient medical evidence to establish that she sustained a permanent impairment to her extremities as a result of her accepted cervical strain. Without the necessary rationalized medical opinion evidence showing a causal relationship between the accepted cervical strain and a resulting impairment to a scheduled member, she has failed to establish entitlement to a schedule award.¹³

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act¹⁴ does not entitle a claimant to a review of an Office decision as a matter of right. This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.¹⁵ The Office, through regulations, has imposed limitations on the exercise of its discretionary authority under section 8128(a).¹⁶ To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹⁷ 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.¹⁸ To be entitled to a merit review of an Office decision denying or terminating a benefit, a claimant also must file his or her application for review within one year of the date of that decision.¹⁹ When a claimant fails to

¹² Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship. See *Michael E. Smith*, 50 ECAB 313 (1999).

¹³ See *Veronica Williams*, 56 ECAB 397 (2005).

¹⁴ 5 U.S.C. §§ 8101-8193.

¹⁵ *Id.* at § 8128(a).

¹⁶ *Annette Louise*, 54 ECAB 783, 789-90 (2003).

¹⁷ 5 U.S.C. §§ 8101-8193. 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).

¹⁸ 20 C.F.R. § 10.606(b)(2).

¹⁹ *Id.* at § 10.607(a).

meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.²⁰

ANALYSIS -- ISSUE 2

Appellant did not advance a relevant legal argument or argue that the Office erroneously applied or interpreted a specific point of law. Thus, the issue is whether she submitted pertinent new evidence, relevant to the issue of whether she sustained a permanent impairment to her extremities as a result of her accepted cervical strain.

In support of her claim for reconsideration, appellant submitted a medical report from Dr. Modi dated April 2, 2002. There, Dr. Modi stated that appellant hit her head on a metal sign in 2000 and was presenting for a neurological consultation. She reported appellant's complaints of headaches, nausea with occasional vomiting and facial pains and diagnosed post-traumatic and postconcussion syndrome. The Board finds this report is irrelevant to the instant issue. Dr. Modi did not mention the accepted cervical strain or opine that appellant sustained any permanent impairment to her extremities as a result of the injury. The submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.²¹ Thus, this report is not sufficient to require further merit review.

Appellant also provided a July 22, 2008 medical report from Dr. Rehman, who stated that appellant complained of headaches and dizziness after hitting her head in 2000. Appellant also relayed that she had intermittent numbness in her hands and feet since 1999, for which she was previously treated. Dr. Rehman diagnosed paresthesias in the extremities, which he stated was chronic for several years and previously treated with various medications. The Board finds this report is also an insufficient basis for further merit review. Although Dr. Rehman asserted that appellant had paresthesias in the extremities, he attributed the symptoms to a preexisting and chronic condition. He did not address any permanent impairment as a result of the accepted cervical strain or the May 5, 2000 work injury. Thus, this report is not relevant to the issue of whether appellant's cervical strain caused a permanent impairment entitling her to a schedule award.²²

Finally, appellant submitted a chart note dated July 22, 2008 and a duplicate copy of Dr. Nosko's December 31, 2007 medical report. As the record already contained a copy of Dr. Nosko's medical report, this evidence is repetitive and does not constitute a basis for merit review.²³ Further, the July 22, 2008 chart note is largely illegible. It is not clear whether it

²⁰ *Id.* at § 10.608(b).

²¹ *See Arlesa Gibbs*, 53 ECAB 204 (2001).

²² *See id.*

²³ The Board has held that evidence which repeats or duplicates evidence already in the case record and considered by the Office has no evidentiary value and does not constitute a basis for reopening a claim for merit review. *James E. Norris*, 52 ECAB 93 (2000).

addressed the relevant issue, nor is it obvious whether the note was signed by a physician.²⁴ Therefore, this evidence is not sufficient to require the Office to conduct a further merit review.

CONCLUSION

The Board finds that appellant did not establish that she sustained a permanent impairment to a scheduled member due to her employment injury. The Board also finds that the Office properly denied merit review pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the October 22 and June 3, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 17, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

²⁴ Medical evidence not signed by a physician is generally not probative evidence. *See Joseph N. Fassi*, 42 ECAB 231 (1991). *See also* 5 U.S.C. § 8101(2) (which defines physician as including surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).