U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOY F. BECK and U.S. POSTAL SERVICE,
POST OFFICE, San Diego, Calif.

Docket No. 96-537; Submitted on the Record;
Issued January 7, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has more than an eight percent permanent impairment of her right upper extremity for which she received a schedule award.

On October 8, 1985 appellant, then a 45-year-old postal clerk, filed a claim for occupational disease alleging that the operation of the optical character reader machine in connection with her employment duties had caused pain, swelling and bruising in both her hands, thumbs and wrists. On May 23, 1986 the Office of Workers' Compensation Programs accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral de Quervain's tenosynovitis.

Subsequently, appellant filed a claim for a schedule award.[1]

By letter dated November 11, 1993, the Office requested that Dr. Roy A. Kaplan, a Board-certified internist and appellant's attending physician, examine appellant in order to determine the extent of permanent partial impairment of her hands and wrists, utilizing the American Medical Association, *Guides to the Evaluation of Permanent Impairment.* The Office provided Dr. Kaplan with the appropriate forms for evaluating appellant's condition.

On June 15, 1994 Dr. Kaplan completed and returned the Office's impairment evaluation form. Dr. Kaplan indicated that appellant reached maximum medical improvement on August 12, 1993 and had been mildly symptomatic since. He also indicated that appellant had pain on her right side with pinching and gripping maneuvers caused by de Quervain's tenosynovitis and supplied ratings for dorsiflexion, palmar flexion, radial deviation and ulnar deviation. Dr. Kaplan further indicated that appellant had no ankylosis or atrophy and no loss of sensation or strength. In a report dated August 12, 1993, Dr. Kaplan indicated that appellant had ongoing de Quervain's tenosynovitis of a low grade chronic nature and entered a diagnosis

[1] Appellant's Form CA-7 is signed but not dated.

of bilateral de Quervain's tenosynovitis, history of carpal tunnel syndrome, history of malar erythema, Raynaud's phenomenon without systemic lupus erythematosus and Reiter's disease.

By report dated November 3, 1994, Dr. Arthur S. Harris, a Board-certified orthopedic surgeon and Office medical adviser, reviewed the relevant medical evidence of record and the impairment figures provided by Dr. Kaplan. Dr. Harris noted that the medical records provided by Dr. Kaplan indicated that a diagnosis of "symptomatic right de Quervain's tenosynovitis, resolved left de Quervain's tenosynovitis and bilateral carpal tunnel syndrome" had been established and concurred that appellant had reached maximum medical improvement on August 12, 1993. He concluded that for the purpose of a schedule award, appellant had mild de Quervain's tenosynovitis of the right thumb. Dr. Harris explained that utilizing Table 29, page 63 and Table 18, page 58, this resulted in a 20 percent impairment of the right thumb, which corresponded with an 8 percent impairment of the right upper extremity, which was appellant's sole impairment resulting from her employment-related injury.[2]

In a decision dated December 20, 1994, the Office granted appellant a schedule award for an 8 percent permanent impairment of the right upper extremity for the period August 12, 1993 to February 2, 1994, for a total of 24.96 weeks of compensation.

In a letter dated January 6, 1995, appellant requested an examination of the written record by an Office hearing representative to determine why she only received a schedule award for her right hand, when her left hand was also affected.

By letter dated March 2, 1995, the Office denied appellant's request for a review of the written record on the issue of her left hand impairment, as a formal decision concerning appellant's left hand had not yet been issued by the Office.

On January 27, 1995 based on the recommendation of the Office medical adviser that appellant's left wrist be further evaluated, the Office referred appellant to Dr. Richard M. Braun, a Board-certified orthopedic surgeon, for a second opinion.

[2] Dr. Harris did not indicate which edition of the A.M.A., *Guides* he utilized, but the page and table numbers given correspond to the fourth edition of the A.M.A., *Guides*, which became effective on November 1, 1993 and is applicable to this case; *see* FECA Bulletin No. 94-4 (issued November 1, 1993).

In a report dated September 18, 1995, Dr. Braun provided his findings on examination.

In a letter dated September 18, 1995, appellant stated that she "would appreciate a reconsideration of the award granted for her right hand/wrist" and inquired as to whether Dr. Braun's findings may be used in this regard, or whether she should take other steps to facilitate a review of the record.

In a decision dated November 22, 1995, the Office denied appellant's request for reconsideration on the grounds that as she failed to submit new and material evidence or raise a new legal argument of error in regard to the prior decision, her application for review was *prima facie* insufficient to warrant merit review of the Office's December 20, 1994 decision.

The Board finds that appellant has no more than an eight percent permanent impairment of her right upper extremity.

Under section 8107 of the Federal Employees' Compensation Act[3] and section 10.304 of the implementing federal regulations,[4] schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice for all claimants, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimant's seeking schedule awards. The A.M.A., *Guides* have been adopted by the Office for evaluating schedule losses and the Board has concurred in such adoption.[5]

In the present case, the Office medical adviser determined, based on the A.M.A., *Guides*, as applied to the medical findings of Dr. Kaplan, appellant's attending physician, that appellant's loss of range of motion equated to an eight percent permanent impairment of the right upper extremity. There are no medical reports of record indicating that appellant has a greater permanent impairment. Dr. Kaplan, in his reports dated August 12, 1993 and June 15, 1994, noted that appellant had low grade chronic de Quervain's tenosynovitis of a chronic nature, which was mild and stable. Dr. Kaplan did not, however, assign a permanent impairment rating to appellant's condition, in accordance with the A.M.A., *Guides*.

The Board has held that when an attending physician's report is not based on the application of the A.M.A., *Guides*, the Office may follow the advice of its medical adviser if he or she has properly used the A.M.A., *Guides*.[6] The Board concludes that in the present case the Office medical adviser properly applied the A.M.A., *Guides* to the description of the impairment provided by Dr. Kaplan. There is no other evidence of record that appellant has greater than an

[3] 5 U.S.C. § 8107.

[4] 20 C.F.R. § 10.304.

[5] *See James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287, 1290 (1989); *Francis John Kilcoyne*, 38 ECAB 168, 170 (1986).

[6] *Paul R. Evans, Jr.*, 44 ECAB 646 (1993).

eight percent permanent loss of use of her right upper extremity for which she has received a schedule award.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for merit review on November 22, 1995.

Under section 8128(a) of the Act,[7] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.138(b)(1) of the implementing federal regulations,[8] which provides that a claimant may obtain review of the merits of the claim by:

"(i) Showing that the Office erroneously applied or interpreted a point of law; or

"(ii) Advancing a point of law or a fact not previously considered by the Office; or

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."

Section 10.138(b)(2) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim.[9]

In support of her reconsideration request, appellant submitted the September 18, 1995 report of Dr. Braun, to whom the Office had referred appellant for the purpose of determining whether appellant had any permanent impairment of her left hand which would entitle her to a schedule award. In his report, Dr. Braun found that with respect to both her right and left hands and wrists, appellant had full range of motion, good sensation and good grip strength, but that she had some tenderness of the right radial styloid and mild symptoms of right de Quervain's tendinitis. Dr. Braun's findings with respect to appellant's right hand were essentially repetitious of Dr. Kaplan's earlier findings and did not offer any relevant information not already before the Office at the time of its December 20, 1994 decision. Material which is repetitious or duplicative of that already in the case record has no evidentiary value in establishing a claim and does not constitute a basis for reopening a case.[10]

As appellant failed to submit any new relevant and material evidence not previously reviewed by the Office and failed to raise any error of fact or law in the prior decision, the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

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[7] 5 U.S.C. § 8128(a).

[8] 20 C.F.R. § 10.138(b)(1).

[9] 20 C.F.R. § 10.138(b)(2).

[10] *See Kenneth R. Mroczkowski*, 40 ECAB 855, 858 (1989); *Marta Z. DeGuzman*, 35 ECAB 309 (1983); *Katherine A. Williamson*, 33 ECAB 1696, 1705 (1982).

The decisions of the Office of Workers' Compensation Programs dated November 22, 1995 and December 20, 1994 are hereby affirmed.[11]

Dated, Washington, D.C.
January 7, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[11] As the Office has not issued a final decision on appellant's entitlement to a schedule award for her left hand, the issue is not before the Board in this appeal; *see* 20 C.F.R. § 501.2(c).