U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MOHAMMED IQBAL and U.S. POSTAL SERVICE,
POST OFFICE, Salt Lake City, Utah

Docket No. 96-2317; Submitted on the Record;
Issued November 9, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met his burden of proof in establishing greater than an eight percent permanent impairment of his right leg causally related to his May 14, 1993 accepted injury of lumbar strain for which he received a schedule award; and (2) whether the Office of Workers' Compensation Programs' refusal to reopen the record for reconsideration of the merits of appellant's claim pursuant to section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On May 13, 1993 appellant, then a 45-year-old clerk, filed a claim alleging that he had injured his back while lifting a package out of a hamper. Appellant stopped work that day and returned to limited duty on May 17, 1993. On June 17, 1993 the Office accepted appellant's claim for back strain and later indicated that appellant's claim was accepted for lumbar strain. Appellant received continuation of pay from June 7 to July 21, 1993 and received compensation for temporary total disability from July 22 to September 5, 1993. On September 6, 1993 appellant returned to limited-duty work. On November 18, 1993 appellant received a notice of removal from the employing establishment due to an assault on his supervisor and insubordination from an incident that arose November 12, 1993. Appellant was terminated effective November 24, 1993. On November 25, 1993 appellant filed a claim for continuing compensation. In a decision dated January 4, 1994, the Office denied appellant's claim for continuing compensation on the grounds that his loss of wage-earning capacity was due to removal for disciplinary reasons as opposed to a disability causally related to his accepted employment injury. On March 31, 1994 appellant filed a request for a schedule award. By decision dated October 12, 1994, an Office hearing representative affirmed the Office's loss of wage-earning capacity decision. By decision dated March 7, 1995, the Office granted appellant a schedule award for an eight percent permanent impairment of his right leg for the period February 9 to July 20, 1995 for a total of 23.04 weeks of compensation. In a decision dated December 11, 1995, an Office hearing representative affirmed the Office's schedule award determination. By decision dated April 24, 1996, the Office denied appellant's request for

reconsideration on the grounds that the evidence submitted was repetitive and was therefore insufficient to warrant review of the prior decision.

The Board has carefully reviewed the entire case record in this appeal and finds that appellant has not established that he has greater than an eight percent permanent impairment of his right lower extremity for which he received a schedule award.[1]

Section 8107 of the Act[2] and its implementing regulation[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of specified 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 American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating losses.[4]

In the present case, the Office determined that appellant had an eight percent loss of use of his right leg based on the February 9, 1995 report by Dr. Walter A. Reichert, a Board-certified neurologist and one of appellant's treating physicians. In response to a letter for additional information dated January 13, 1995 from the Office, Dr. Reichert reported that appellant had impairments to both his upper extremities and to his right lower extremity and provided the following pertinent impairment figures: right S1 nerve root dysfunction, electromyogram (EMG) differentiator is the equivalent of a 5 percent maximum sensory deficit times 60 percent for an impairment rating of 3 percent according to Tables 11 and 83 of the A.M.A., *Guides* plus a 20 percent maximum motor deficit times 25 percent for an additional impairment rating of 5 percent under Tables 12 and 83 of the A.M.A., *Guides* for a total permanent impairment rating of 8 percent for the lower right extremity.[5] An Office medical adviser properly reviewed the report by Dr. Reichert and determined that the rating of an eight percent permanent impairment for the right lower extremity was appropriate. As appellant's physician, Dr. Reichert applied the appropriate standards in findings an eight percent permanent impairment of the right lower extremity in accordance with the fourth edition of the A.M.A, *Guides* and since an Office medical adviser has concurred in that assessment, the Board finds that this report constitutes the

[1] The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed his appeal with the Board on July 24, 1996, the only decisions before the Board are the Office's December 11, 1995 and April 24, 1996 decisions. *See* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

[2] 5 U.S.C. § 8107(c).

[3] 20 C.F.R. § 10.304.

[4] *Quincy E. Malone*, 31 ECAB 846 (1980).

[5] While Dr. Reichert also provided impairment ratings for appellant's cervical and thoracic spine, the record does not contain any decision which provides that a claim was accepted for injury to these areas. Rather, appellant's claim was accepted solely for low back strain.

weight of the medical evidence given the absence of any evidence of an additional impairment to the right lower extremity. Appellant has not established greater than an eight percent permanent impairment of his right leg.

The Board further finds that Office did not abuse its discretion in refusing to reopen the case for merit review.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.[6] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[7] Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[8]

On reconsideration, appellant submitted an additional report by Dr. Reichert in which he outlined permanent impairment to appellant's left and right upper extremities which he had previously provided in his February 9, 1995 report. Schedule awards are granted to employees for permanent impairment of specified members and functions of the body for accepted employment injuries. In this case, appellant's claim was accepted for lumbar strain. Consequently, any impairment ratings which address other areas of the spine are not relevant to this case as they do not address the accepted injury. Therefore, the Office properly denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant merit review.

[6] 20 C.F.R. § 10.138(b)(2).

[7] *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

[8] *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The decisions of the Office of Workers' Compensation Programs dated April 24, 1996 and December 11, 1995 are hereby affirmed.

Dated, Washington, D.C.
November 9, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member