

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of CECELIA VASQUEZ and U.S. POSTAL SERVICE,  
POST OFFICE, Sun City, Ariz.

*Docket No. 97-373; Submitted on the Record;  
Issued November 19, 1998*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has established her entitlement to a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration of her claim under 5 U.S.C. § 8128.

The Office accepted that appellant sustained a right wrist sprain and a ganglion on the right wrist causally related to an April 18, 1989 employment injury. The Office further accepted appellant's occupational disease claim for tendinitis of both wrists and bilateral carpal tunnel syndrome, and authorized median nerve compression surgeries on both the right and left wrists.

On February 12, 1996 appellant filed a claim for a schedule award. By decision dated June 6, 1996, the Office denied appellant's claim for a schedule award on the grounds that the evidence established that she did not have a ratable permanent impairment of either upper extremity. By decision dated July 30, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was repetitious and insufficient to warrant review of the prior decision.

The Board has duly reviewed the case record and finds that appellant has not submitted sufficient medical evidence to establish that she has a ratable permanent impairment which would entitle her to a schedule award.

Under section 8107 of the Federal Employees' Compensation Act,<sup>1</sup> and section 10.304 of the implementing federal regulations,<sup>2</sup> 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

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.304.

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* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.<sup>3</sup>

Appellant did not submit sufficient medical evidence to establish that she had a permanent impairment of either upper extremity due to her accepted employment injuries. In a report dated July 26, 1994, received by the Office on July 26, 1994, Dr. Sebastian B. Ruggeri, a Board-certified orthopedic surgeon and appellant's attending physician, noted that he had successfully treated appellant for bilateral thoracic outlet syndrome and bilateral carpal tunnel syndrome and opined that her condition was stationary. He found that she had no loss of strength, decrease in motion or pain but did have a 5 percent permanent impairment of both the right and left wrists due to residual scarring.<sup>4</sup> In a report dated June 27, 1995, Dr. Ruggeri found that appellant had no loss of motion, loss of strength or pain in either hand. He concluded that she had a zero percent impairment of the right and left hands.

The Office medical adviser reviewed Dr. Ruggeri's June 27, 1995 report, referenced the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4<sup>th</sup> ed. 1993) and discussed his finding of "full range of motion, full strength and normal sensory findings." The Office medical adviser concurred with Dr. Ruggeri's opinion that appellant had a zero percent impairment of the right and left upper extremities. Therefore, the Office properly determined that appellant did not have a ratable permanent impairment of her upper extremities which would entitle her to a schedule award.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128.

The Office has issued regulations regarding its review of decisions under section 8128(a) of the Federal Employees' Compensation Act. Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by written request to the Office identifying the decision and the specific issue(s) within the decision which claimant wishes the Office to reconsider and the reasons why the decision should be changed and by:

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

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

"(iii) Submitting relevant and pertinent evidence not previously considered by the Office."<sup>5</sup>

---

<sup>3</sup> *James J. Hjort*, 45 ECAB 595 (1994).

<sup>4</sup> In a form report dated March 12, 1996, Dr. Ruggeri again indicated that appellant has a five percent impairment of the left and right wrist due to residual scarring. However, under the Act an award is made for scarring or disfigurement only to the face, head or neck such that it would handicap an individual from obtaining employment; see 5 U.S.C. § 8107(c)(21).

<sup>5</sup> 20 C.F.R. § 10.138(b)(1).

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.<sup>6</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary values and does not constitute a basis for reopening a case.<sup>7</sup> Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.<sup>8</sup>

In support of her request for reconsideration, appellant submitted Dr. Rosseri's July 26, 1994, June 27, 1995 and March 12, 1996 reports. However, as this evidence duplicated evidence already contained in the case record it does not constitute a basis for reopening appellant's case for merit review under 20 C.F.R. § 10.138.<sup>9</sup>

Appellant argued in her request for reconsideration that Dr. Rosseri's June 26, 1994 report should be dated June 26, 1995 and thus be considered the later report of record. However, the Office received Dr. Rosseri's June 26, 1994 report on August 15, 1994, and thus appellant has not raised a legal argument sufficient to require reopening of the case for merit review.

As abuse of discretion can generally only be shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.<sup>10</sup> Appellant has made no such showing here, and thus the Board finds that the Office properly denied her application for reconsideration of her claim.

---

<sup>6</sup> See 20 C.F.R. § 10.138(b)(2).

<sup>7</sup> *Daniel Deparini*, 44 ECAB 657 (1993).

<sup>8</sup> *Id.*

<sup>9</sup> *Richard L. Ballard*, 44 ECAB 146 (1992).

<sup>10</sup> *Rebel L. Cantrell*, 44 ECAB 660 (1993).

The decisions of the Office of Workers' Compensation Programs dated July 30 and June 6, 1996 are hereby affirmed.

Dated, Washington, D.C.  
November 19, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member