

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EUNICE E. SANCHEZ and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Washington, D.C.

*Docket No. 97-2288; Submitted on the Record;
Issued June 2, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant met her burden of proof to establish that she has more than a 10 percent permanent impairment of her right and left upper extremities, for which she received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

The Board has duly reviewed the case record in the present appeal and finds appellant has not met her burden of proof to establish that she has more than a 10 percent permanent impairment of her right and left upper extremities, for which she received a schedule award.

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he sustained an injury in the performance of duty as alleged and that his disability, if any, was causally related to the employment injury.³

Section 8107 of the Act provides that if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁴ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment*

¹ 5 U.S.C. §§ 8101-8193.

² *Donna L. Miller*, 40 ECAB 492, 494 (1989); *Nathanial Milton*, 37 ECAB 712, 722 (1986).

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ 5 U.S.C. § 8107(a).

(A.M.A., *Guides*) (4th ed. 1993) as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁵

In the present case, the Office accepted that appellant sustained bilateral carpal tunnel syndrome due to factors of her federal employment and authorized surgical release of her left hand on March 16, 1993. On May 10, 1994 appellant received a schedule award for a 10 percent permanent loss of use of her left hand.

The Office based its schedule award on an August 26, 1996 evaluation, in which an Office medical adviser applied the standards⁶ of the fourth edition of the A.M.A., *Guides* to the June 11, 1996 evaluation by Dr. William E. Lightfoote, II. In the June 11, 1996 report, Dr. Lightfoote diagnosed a normal dorsiflexion, ulnar deviation and radial deviation of the left wrist and a 40 degree palmar flexion of the left wrist with no ankylosis. He also noted grip strength of 36 pounds in the left wrist and 70 pounds in the right wrist and that there was no evidence of sympathetic nerve pain or dysautonomia. As appellant has already been awarded a schedule award for a 10 percent permanent impairment of her left wrist, she is not entitled to an additional schedule award.⁷

The Board also finds that the Office properly denied appellant's request for reconsideration.

Section 10.138(b)(1) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁸ 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 three criteria, the Office will deny the application for review without reviewing the merits of the claim.⁹

With her March 3, 1997 request for reconsideration, appellant did not attempt to show that the Office erroneously applied or interpreted a point of law. She did not attempt to advance a point of law or a fact not previously considered by the Office. She did not submit relevant and

⁵ *James Kennedy, Jr.*, 40 ECAB 620, 626 (1989); *Charles Dionne*, 38 ECAB 306, 308 (1986).

⁶ Table 16, p. 57.

⁷ Appellant filed a request for reconsideration which the Office denied on May 29, 1997 on the basis that she failed to submit any new evidence or advance a point of law not previously considered.

⁸ 20 C.F.R. § 10.138(b)(1).

⁹ *Id.* § 10.138(b)(2).

pertinent evidence not previously considered by the Office.¹⁰ Because her request does not meet one of the three criteria for obtaining a merit review of her claim, the Board finds that the Office properly denied her request on May 29, 1997.

The decisions of the Office of Workers' Compensation Programs dated May 29, 1997 and September 9, 1996 are hereby affirmed.

Dated, Washington, D.C.
June 2, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

¹⁰ Appellant submitted a (Form CA-1303-8) dated September 7, 1995, signed by Dr. Lightfoote and notes dated December 3, 1996 and February 20, 1997 from Dr. Lightfoote. As the Office correctly noted the September 7, 1995 form had been considered by the Office in rendering its September 9, 1996 decision, as it was in the record. The Office then informed appellant that the notes dated December 3, 1996 and February 20, 1997, in which Dr. Lightfoote opined that appellant is entitled to more than a 10 percent schedule award due to her "continuing painful difficulties," were not relevant as he had not provided objective medical evidence based upon the A.M.A., *Guides* (4th ed.) that she was entitled to a schedule award for more than a 10 percent permanent impairment of the left upper extremity.