

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA J. PITTMON and DEPARTMENT OF THE ARMY,
PINE BLUFF ARSENAL, Pine Bluff, Ark.

*Docket No. 97-1884; Submitted on the Record;
Issued March 15, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established any permanent impairment of her left upper extremity for which she is entitled to a schedule award pursuant to 5 U.S.C. § 8107; and (2) whether the Office of Workers' Compensation Programs' refusal of merit review and denial of appellant's request for reconsideration pursuant to 5 U.S.C. § 8128 constituted an abuse of discretion.

On December 4, 1995 appellant, then a 43-year-old protective equipment inspector and repairer, filed an occupational disease claim, alleging that she sustained injury to her left shoulder and arm which she first became aware of and realized was causally related to factors of her federal employment on November 27, 1995. Appellant was last exposed to the identified factor of handling protective masks on December 4, 1995 when she was placed in another position. On February 14, 1996 the Office accepted appellant's claim for left shoulder strain and left lateral epicondylitis. Appellant received appropriate compensation for all periods of temporary total disability. On June 11, 1996 appellant underwent lateral epicondylar release and debridement of the extensor fascia surgery. On September 9, 1996 appellant filed a claim for a schedule award. In a decision dated January 15, 1997, the Office denied appellant's request for a schedule award on the grounds that she did not have any ratable impairment. By decision dated April 1, 1997, the Office denied appellant's request for reconsideration on the grounds it was *prima facie* insufficient to warrant merit review of the prior decision.

The Board has carefully reviewed the entire case record on appeal and finds that appellant has not established a ratable permanent impairment in relation to her November 27, 1995 employment injury.

Section 8107 of the Federal Employees' Compensation Act¹ and its implementing regulations² set forth the number of weeks of compensation payable to employees sustaining

¹ 5 U.S.C. § 8107(c).

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.³

In the present case, the Office requested that Dr. John O. Lytle, a Board-certified orthopedic surgeon and appellant's treating physician, provide an assessment of appellant's work-related injuries and an impairment rating, if any, in accordance with the 4th edition of the A.M.A. *Guides*. In a report dated October 23, 1996, Dr. Lytle indicated that appellant had full range of motion in both elbows from 0 to 135 degrees, subjective tenderness and decreased strength in her arm which he rated as "4+/5" and full pronation and supination without limitation. He found no restrictive motion and that she had reached maximum medical improvement with respect to her left elbow surgery. Although he noted residual pain, Dr. Lytle also indicated that appellant's injury involved an over-use syndrome and that if she did not engage in heavy or repetitive work, her elbow would not be sore. Dr. Lytle concluded that according to the 4th edition of the A.M.A. *Guides*, appellant had no long-term impairment from her injury. Based on the opinion of appellant's treating physician, who found no permanent impairment related to appellant's employment injuries, the Office properly determined that appellant had not met her burden of proof in establishing that she was entitled to a schedule award in relation to her November 1995 injuries.

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

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her 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.⁴ 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.⁵ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.⁶

² 20 C.F.R. § 10.304.

³ *Quincy E. Malone*, 31 ECAB 846 (1980).

⁴ 20 C.F.R. § 10.138(b)(2).

⁵ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

⁶ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

On reconsideration appellant noted her disagreement with the determination of the Office but did not submit any evidence or advance any point of law or fact not previously considered by the Office. Accordingly, appellant has not provided a sufficient evidentiary or legal basis for reopening her claim and the Office properly employed its discretion in refusing to reopen the case for further review of the merits.⁷

The decisions of the Office of Workers' Compensation Programs dated April 1 and January 15, 1997 are hereby affirmed.

Dated, Washington, D.C.
March 15, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *John F. Critz*, 44 ECAB 788 (1993); *Jimmy O. Gilmore*, 37 ECAB 257 (1985).