

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AUDREY W. COUNTY and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 98-440; Submitted on the Record;
Issued September 8, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has sustained any permanent impairment to a scheduled member of her body causally related to her accepted condition of carpal tunnel syndrome, left hand, thereby entitling her to a schedule award under 5 U.S.C. § 8107; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

On August 12, 1993 appellant, a 42-year-old special delivery messenger, filed a Form CA-2 claim for benefits, alleging that she had sustained a bilateral carpal tunnel syndrome due to pushing, pulling and lifting heavy mail gurneys and that she became aware that this condition was caused or aggravated by her employment on October 22, 1992.

In support of her claim, appellant submitted a July 12, 1993 report, from Dr. Frederick L. Keppel, a Board-certified orthopedic surgeon. Dr. Keppel stated that he had been treating appellant since July 2, 1992 for tenosynovitis of the right thumb, in addition to carpal tunnel syndrome of the right wrist, which were probably a direct result of the repetitive hand actions she performed at work. Dr. Keppel stated that appellant underwent de Quervain's surgery for release of the right wrist on October 8, 1992 and also underwent surgery for carpal tunnel release of the right wrist on April 28, 1993. By letter dated February 17, 1994, the Office accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant filed several claims for continuing compensation based on her accepted bilateral carpal tunnel syndrome. She received appropriate compensation for intermittent periods of disability due to her accepted employment condition.

On February 23, 1994 appellant filed a Form CA-7 claim for a schedule award based on her accepted right hand condition.

In response to the Office's request, Dr. Keppel submitted a report and impairment rating evaluation dated June 29, 1994. He stated that appellant had no restrictions of movement, no decrease in strength and showed no evidence of atrophy or ankylosis. Dr. Keppel stated that

appellant had some slight numbness of the fingertips, but advised that this was improving. He also noted that appellant had some subjective complaints, which consisted of some discomfort and pain typically associated with climatic changes. Dr. Keppel rated appellant at a five percent impairment of the right upper extremity secondary to the anatomical disruption secondary to carpal tunnel release and de Quervain's release surgery of the right thumb and found that she reached maximum medical improvement on March 22, 1994.

In a report dated July 26, 1994, an Office medical adviser, after reviewing the medical evidence and Dr. Keppel's June 29, 1994 report, stated that an award of five percent impairment of the right upper extremity was in accord with the intent of Diagnosis Based Estimate, as described on page 84 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fourth edition) (A.M.A., *Guides*), for the surgical release procedures.

On September 26, 1994 the Office granted appellant a schedule award for a 5 percent permanent impairment of the right upper extremity for the period from March 22 to July 9, 1994, for a total of 15.60 weeks of compensation.

In reports dated August 12, 25 and September 12, 1994, Dr. Keppel noted increasing pain in appellant's left hand and wrist. He performed carpal tunnel release surgery on her left hand and wrist on October 13, 1994.

On April 3, 1995 appellant filed a Form CA-7 claim for a schedule award based on her accepted left hand condition.

In support of her claim, appellant submitted a November 16, 1995 report from Dr. Keppel, in which he advised that appellant reached maximum medical improvement on November 9, 1995. Dr. Keppel stated that appellant did not appear to have any restriction in movement of any of the joints of both the left and right hands, with no evidence of atrophy or ankylosis and had normal sensation in both hands. He opined that, based on the previous carpal tunnel release surgeries and a trigger finger release, there was anatomical disruption secondary to the surgery, but Dr. Keppel noted that she apparently had done "quite well" in recovering from these surgeries. He stated:

"I could possibly give a two to three percent permanent disability in both of her hands secondary to anatomical disruption. There is a possibility that [appellant] may require surgery in the future in her right long finger if triggering reoccurs."

By letter dated April 11, 1996, the Office advised Dr. Keppel that he could perform an impairment evaluation, pursuant to the applicable tables in the A.M.A., *Guides*, for a scheduled award for impairment of the affected member of appellant's anatomy resulting from the accepted condition. The Office requested that Dr. Keppel provide the grading of the impairment and reasons for the grading selected. Lastly, the Office requested that he provide the date on which appellant reached maximum medical improvement. He did not respond to this letter.

In an Office memorandum dated October 1, 1996, an Office medical adviser reviewed the statement of accepted facts and the medical evidence. The Office medical adviser stated that Dr. Keppel's November 16, 1995, opinion did not meet the requirements of Office regulations for the determination of a scheduled award and he, therefore, recommended that the Office

obtain an impairment evaluation from a Board-certified specialist. The Office medical adviser stated that the evaluation should include a detailed description of the objective findings and a record of the pertinent subjective complaints, should rely on the fourth edition of the A.M.A., *Guides* and should reference the percent impairment to the proper tables in the A.M.A., *Guides*.

By letters dated October 30, 1996, the Office scheduled appellant for second opinion medical examination with Dr. Richard L. Meyer, a Board-certified orthopedic surgeon.

Dr. Meyer examined appellant on November 13, 1996 and, in a report issued that date, reviewed appellant's medical history and listed findings on examination. He stated that "It is my impression that [appellant] has undergone successful bilateral carpal tunnel releases as well as de Quervain's release on the right and a right long trigger release. There is no evidence of any objective findings to substantiate any type of permanent impairment due to this injury. This is based on A.M.A., *Guides*."

In an Office note dated February 8, 1997, an Office medical adviser reviewed Dr. Meyer's report and concluded that he found no medical evidence that supported a permanent partial impairment of either upper extremity.

In a decision dated February 13, 1997, the Office denied appellant's claim for a schedule award. The Office stated that the medical evidence of record did not support appellant's claim that she had sustained an employment-related permanent impairment.

By letters dated March 8 and 28, 1997, appellant requested reconsideration. In support of her request, appellant submitted reports dated January 9, April 29 and September 4, 1997, from Dr. Keppel in which he stated findings pertaining to her right wrist, two form reports dated November 13, 1996, from Dr. Keppel and Dr. Keppel's November 16, 1995 report, which she had previously submitted.

By decision dated October 15, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant has not sustained a permanent partial impairment to a scheduled member of her body causally related to her accepted condition of carpal tunnel syndrome, left hand, thereby entitling her to a schedule award under 5 U.S.C. § 8107.

The Federal Employees' Compensation Act¹ does not specify the manner, in which the percentage loss of a scheduled member shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office. For consistent results and to insure 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.

¹ 5 U.S.C. § 8101.

The schedule award provisions of the Act² set forth the number of weeks of compensation to be paid for permanent loss of use of the members listed in the schedule. The Act, however, does not specify the manner, in which the percentage loss of a member shall be determined. The method used in making such determinations is a matter which rests in the sound discretion of the Office. However, as a matter of administrative practice and to ensure consistent results to all claimants, the A.M.A., *Guides* have been adopted by the Office as a standard for evaluating schedule losses and the Board has concurred in such adoption.³

In the instant case, Dr. Keppel, in his November 16, 1995 report, stated that appellant “could possibly” have a “2 to 3 [percent] permanent partial impairment” as a result of her injury and surgery on her left hand. This estimate of impairment, however, does not conform with the A.M.A., *Guides*. The Office advised Dr. Keppel in its April 11, 1996 letter, that he could perform an impairment evaluation, pursuant to the applicable tables in the A.M.A., *Guides*, for a schedule award for impairment of the affected member of appellant’s anatomy resulting from the accepted condition. Dr. Keppel, however, did not respond to this request. Therefore, the rating assigned by Dr. Keppel does not provide a basis for a schedule award under the Act.

The Office thereafter, referred appellant to Dr. Meyer, who found no evidence of any objective findings to substantiate any type of permanent impairment due to this injury, based on the A.M.A., *Guides*. The Office medical adviser determined that appellant had no permanent impairment of her left arm based on the report submitted by Dr. Meyer. Although Dr. Meyer did not specify the specific section or tables of the A.M.A., *Guides* he relied upon it in making his rating of no impairment, the Office medical adviser could properly rely on the opinion of Dr. Meyer in finding that appellant had no impairment of the left upper extremity and, therefore, no basis for a scheduled award, as appellant failed to meet her burden to provide sufficient medical evidence to establish that she had a permanent impairment pursuant to the applicable tables of the A.M.A., *Guides*.

As there is no other medical evidence establishing that appellant sustained any permanent impairment of a scheduled member, the Office properly found that appellant was not entitled to a schedule award of the left upper extremity due to her accepted condition of carpal tunnel syndrome, left hand.

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

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.⁴ 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 requirements, the Office will deny the application for review without reviewing the merits of the

² 5 U.S.C. § 8107.

³ *Thomas D. Gunthier*, 34 ECAB 1060 (1983).

⁴ 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

claim.⁵ 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.⁶

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; she has not advanced a point of law or fact not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. Although appellant submitted several medical reports and form reports from Dr. Keppel, her request did not contain any new and relevant medical evidence for the Office to review. This is important since the outstanding issue in the case, whether appellant is entitled to a schedule award due to her left carpal tunnel syndrome, is medical in nature. All the medical evidence submitted by appellant was either previously of record and considered by the Office in reaching prior decisions, or it did not specifically address the nature of her alleged permanent impairment. Additionally, appellant's March 8 and 28, 1997 letters, did not show the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although appellant generally contended that she was entitled to a schedule award due to her left carpal tunnel syndrome, she failed to submit new and relevant medical evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated October 15 and February 13, 1997 are hereby affirmed.

Dated, Washington, D.C.
September 8, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 20 C.F.R. § 10.138(b)(2).

⁶ *Howard A. Williams*, 45 ECAB 853 (1994).