

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BRENDA J. KETTLE and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Texas City, TX

*Docket No. 01-97; Submitted on the Record;  
Issued August 13, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether appellant established a permanent impairment entitling her to a schedule award under 5 U.S.C. § 8107; and (2) whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for merit review.

On March 24, 1997 appellant, then a 39-year-old letter carrier, filed an occupational disease claim alleging that she suffered from carpal tunnel syndrome as a result of her federal employment. The Office accepted appellant's claim for bilateral carpal tunnel syndrome. Additionally, the Office authorized surgery for bilateral carpal tunnel release. Following surgery, appellant resumed her regular duties as a letter carrier on February 25, 1999.

On June 16, 1999 appellant filed a claim for a schedule award. In support of her claim, appellant submitted an August 12, 1999 report from her surgeon, Dr. Kenneth R. First, who found that appellant had full range of motion, no sensory deficit and excellent strength. Dr. First determined that appellant had reached maximum medical improvement. Based upon his examination, Dr. First concluded that appellant had a zero percent impairment.

The Office medical adviser reviewed the record, including Dr. First's August 12, 1999 report and concluded, in a report dated February 16, 2000, that there was no medical evidence to support a finding of permanent partial impairment of either upper extremity.

By decision dated May 23, 2000, the Office denied appellant's claim for a schedule award.

On September 8, 2000 the Office received an undated request for reconsideration from appellant. In a decision dated September 13, 2000, the Office denied appellant's request for reconsideration without addressing the merits of her claim. The Office specifically noted that appellant had not submitted additional medical evidence.

The Board finds that appellant failed to establish entitlement to a schedule award.

Section 8107 of the Federal Employees' Compensation Act<sup>1</sup> sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Act's implementing regulation has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the appropriate standard for evaluating schedule losses.<sup>2</sup>

When the Office issued its May 23, 2000 decision denying appellant's claim for a schedule award, the relevant evidence of record consisted of Dr. First's August 12, 1999 report and the Office medical adviser's February 16, 2000 report. Inasmuch as both physicians concluded that there was no evidence of permanent partial impairment, the Board finds that the Office properly denied appellant's claim for a schedule award.

The Board further finds that the Office abused its discretion in refusing to reopen appellant's case for merit review under 20 C.F.R. § 10.608.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>3</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>4</sup>

In its September 13, 2000 decision denying appellant's request for reconsideration, the Office erroneously concluded that appellant failed to submit any new and relevant evidence. The record includes several recent medical reports and objective studies administered in June 2000 that are date stamped as being received by the Office on September 8, 2000. This evidence documents appellant's ongoing complaints of numbness, tingling and pain in both hands. Additionally, it is noteworthy that the examining physician recommended further surgery. While this evidence may not clearly establish the extent of appellant's impairment, it is clearly relevant to the issue of whether appellant had reached the point of maximum medical improvement.

The Board's jurisdiction over a case is limited to reviewing that evidence which was before the Office at the time of its final decision.<sup>5</sup> Inasmuch as the Board's decisions are final as

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

<sup>3</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>4</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>5</sup> 20 C.F.R. § 501.2(c).

to the subject matter appealed, it is crucial that all relevant evidence that was properly submitted to the Office prior to the time of issuance of its decision be addressed by the Office.<sup>6</sup> Consequently, the Office's failure to acknowledge and consider appellant's newly submitted evidence constitutes an abuse of discretion and, therefore, the Office's September 13, 2000 decision denying reconsideration is set aside.

The May 23, 2000 decision of the Office of Workers' Compensation Programs is affirmed and the September 13, 2000 decision denying reconsideration is hereby set aside and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC  
August 13, 2001

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Willie T.C. Thomas  
Member

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<sup>6</sup> 20 C.F.R. § 501.6(c); *see William A. Couch*, 41 ECAB 548, 553 (1990).