U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VANESSA REED and DEPARTMENT OF THE TREASURY, FINANCIAL MANAGEMENT SERVICE, Chicago, IL

Docket No. 01-554; Submitted on the Record;
Issued October 11, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issues are: (1) whether appellant has established that she has greater than a three percent impairment of her left hand, for which she received a schedule award; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On February 21, 1997 appellant, then a 39-year-old check wrapper operator, sustained an injury to her left hand when it became caught in the check wrapper machine. She sustained crush injuries to her left index and pointer fingers. The Office accepted appellant's claim for crush injury to the left fingers. On October 30, 1997 appellant filed a claim for a schedule award and submitted an undated and unsigned report from her physician, who indicated that appellant, had a five degree extensor lag of the long finger PIP joint and decreased sensation of the injured finger. He did not suggest an impairment estimate within the guidelines.

The Office subsequently referred appellant's file to an Office medical adviser who in an April 18, 1999 report, determined that appellant had limitations restricted to a five degree extensor lag of the left ring PIP joint, and decreased sensation in the same finger. He noted that according to Figure 19, page 3/32 of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993), two percent impairment of the finger was assigned for five degree extension lag. The Office medical adviser further noted that 13 percent of the finger was added for partial sensory loss, according to Table 8, page 3/31. He therefore concluded that impairment of the ring finger due to sensory deficit and decreased range of motion was 15 percent, according to the combined values chart on page 322. He further stated that Table 1, page 3/18 converted this to one percent impairment of the hand. He stated that the date of maximum medical improvement was February 21, 1998.

In a May 21, 1999 memorandum, the Office requested clarification regarding the long finger as opposed to a ring finger. Additionally, the Office requested an impairment assessment of the long and middle fingers.

In a May 31, 1999 report, the Office medical adviser indicated that the finger in question was the long or middle finger, not the ring finger as previously reported. He indicated that impairment of the left middle finger was therefore 15 percent. The Office medical adviser indicated that Table 1, page 3/18 of the A.M.A., *Guides* converted this value to a three percent impairment of the hand.

Appellant submitted a February 29, 2000 report from Dr. Cavalenes, a Board-certified orthopedic surgeon, who indicated that she had a crush injury with laceration, to the left index finger and left long finger. He stated that she was initially treated by another physician and had follow-up care with him since April 11, 1997. Dr. Cavalenes indicated that he did not see appellant again until November 1998 when she returned complaining of pain in her left hand. He opined that she had reached maximum medical improvement. Dr. Cavalenes stated that her two point discrimination was two millimeters on the left index finger and left long finger. He further noted that she had full flexion and extension of the fingers of the left hand except for the proximal interphalangeal joint of the left long finger, which had a five degree extension lag. A copy of the previously unsigned and undated report was enclosed.

On July 20, 2000 the Office granted appellant a schedule award for a three percent impairment of use of her left hand. The award covered a period of 7.32 weeks from February 21 to April 13, 1998.[1]

On August 19, 2000 appellant requested reconsideration. Appellant stated that she was only awarded compensation for one finger; however, she had two fingers which were injured.

In a decision dated October 12, 2000, the Office found that the evidence submitted on reconsideration was of an immaterial nature and therefore insufficient to warrant a merit review of the claim.

The Board finds that appellant has not established that she has greater than a three percent impairment of her left hand, for which she received a schedule award

Section 8107 of the Federal Employees' Compensation Act[2] 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 Office has adopted the A.M.A., *Guides* (4th ed. 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.[3]

[1] The record reflects that the Office initially issued the schedule award on June 21, 1999; however, appellant had a change of address and never received the initial award. The Office subsequently reissued the award on July 20, 2000.

[2] 5 U.S.C. § 8107.

[3] *James J. Hjort*, 45 ECAB 595 (1994).

In the instant case, the July 20, 2000 schedule award was based on the May 31, 1999 report of the Office medical adviser, who reviewed the findings of Dr. Mark Cavalenes. The Office medical adviser properly reviewed the findings in Dr. Cavalene's report and determined that appellant had a 15 percent impairment of her left long finger. According to Table 1, page 3/18 of the A.M.A., *Guides*, an impairment between 13 and 17 percent to the index or middle finger is equivalent to a three percent impairment to the hand.[4]

The record also reflects that the Office medical adviser did not provide a rating of impairment for the injury to the left index finger. The evidence of record suggests that he did not address the left index finger, as the injury was not sufficient to result in a ratable impairment. In his February 29, 2000 report, Dr. Cavalenes stated: [h]er two point discrimination was two millimeters on the left index finger and left long finger. She had full extension and flexion of the fingers of the left hand except for the proximal interphalangeal joint of the left long finger, which had a 5 degree extension lag. Hopefully, this will clear up our findings as of that date." Dr. Cavalenes only reported impairment to the left index finger was that her "two point discrimination was two millimeters." As this was the only findings relevant to the left index finger, the A.M.A., *Guides* suggest that no impairment rating be provided when there is a two point discrimination sensibility of six millimeter or less as this is normal and does not constitute an impairment.[5] Therefore, the Office medical adviser properly provided a rating with respect to the left long finger. His calculation of appellant's impairment is complete and based on the findings provided by appellant's physician. Appellant has no more than a three percent impairment of the left hand due to the left long finger. She has presented no other probative evidence to establish that her left-hand impairment is greater than the three percent awarded.

Furthermore, the Board finds that the Office properly denied appellant's request for reconsideration.

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

The Secretary of Labor may review an award for or against payment of compensation at any time on his or her own motion or on application. The Secretary in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2)(1999), a claimant may obtain review of the merits of the claim by submitting evidence and argument: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) constituting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) (1999) provides that, where the request is timely but

[4] A.M.A., *Guides*, 18, Table 1.

[5] A.M.A., *Guides*, Sensory Loss of Fingers, page 30.

fails to meet at least one of the standards described in section 10.606(b)(2) (1999), the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

In appellant's August 19, 2000 request for reconsideration, she submitted a letter expressing her disagreement with the Office's July 20, 2000 decision. She contended that she had sustained an injury to two fingers of her left hand and not one, as indicated in the schedule award. However, appellant did not provide any medical reports with her request. This is important, since the underlying issue in the claim, whether appellant has established that she has greater than a three percent impairment of her left hand, is essentially medical in nature. Appellant's arguments have no probative value regarding whether she is entitled to a greater schedule award. Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[7]

Appellant has not shown that the Office erroneously applied or interpreted a specific point of law, she has not advanced a relevant legal argument that had not been previously considered by the Office, and she has not submitted relevant and pertinent new evidence not previously considered by the Office. Consequently, appellant is not entitled to a merit review of the claim based upon any of the above noted requirements under section 10.606(b)(2). Accordingly, the Board finds that the Office properly denied appellant's August 19, 2000 request for reconsideration.[8]

[6] 20 C.F.R. § 10.608(b) (1999).

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

[8] The Board notes that, subsequent to the Office's October 12, 2000 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

The October 12 and July 20, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
October 11, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member