U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAURA A. SIMMONS and U.S. POSTAL SERVICE,
POST OFFICE, Shawnee Mission, KS

Docket No. 01-1166; Submitted on the Record;
Issued August 8, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has greater than a two percent impairment to her left upper extremity for which she has received a schedule award; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On March 2, 1998 appellant, then a 32-year-old distribution clerk, filed a notice of occupational disease and claim for compensation (Form CA-2a), alleging that she developed carpal tunnel syndrome in both her wrists and tendinitis in her right wrist and both elbows as a result of the continual, repetitive motion she performed as part of her federal employment. By letter dated May 21, 1998, the Office accepted appellant's claim for bilateral carpal tunnel syndrome, bilateral carpal tunnel releases, right medial epicondylitis and right de Quervain's disease. Dr. Daniel D. Weed, a Board-certified orthopedic surgeon, performed a left carpal tunnel release on appellant on April 2, 1998 and a right carpal tunnel release on May 14, 1998.

On April 26, 1999 appellant filed a claim for a schedule award (Form CA-7). By letter dated October 11, 2000, Dr. Weed indicated that appellant's left hand was at maximum medical improvement from carpal tunnel release.

By letter dated November 14, 2000, appellant was referred to Dr. James Zarr, a Board-certified physical and medical rehabilitation specialist, for an evaluation so that a determination of a schedule award for appellant's left hand could be made. In a medical report dated December 4, 2000, Dr. Zarr evaluated appellant's impairment in her left wrist under the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). He noted that, although she had zero percent impairment for range of motion restrictions, weakness and vascular disorders, appellant did have sensory disturbance twice a week for about an hour each time. He indicated that, pursuant to Table 15, page 54 of the A.M.A., *Guides*, the maximum impairment for the median nerve below the mid-forearm level is 38 percent. Then, applying Table 11, page 48, he awarded appellant a 5 percent grade in the distribution of the

median nerve below the mid-forearm level based on the fact that "appellant's sensory disturbance is forgotten during activities." He then took 5 percent of 38 percent and arrived at a 1.9 percent impairment rating, which he rounded up to a two percent impairment rating for appellant's left wrist. Dr. Zarr noted that the date of maximum medical improvement would be one year after the date of her surgery, or April 2, 1999.

In a December 8, 2000 report, the Office medical adviser found that Dr. Zarr's impairment rating of two percent of the left upper extremity was acceptable under the A.M.A., *Guides*, and concluded that the schedule award should be made for a two percent impairment of the left upper extremity.

By decision dated December 19, 2000, the Office issued an award under the schedule based on a two percent impairment of the left arm. By letter dated January 29, 2001, appellant requested reconsideration. In support of her reconsideration request, appellant submitted a May 26, 1999 medical report by Dr. Weed, a report already in the record, wherein he indicated that the repetitive motion required with her work had exacerbated her symptoms, and that appellant should not be doing repetitive work with either of her upper extremities because it exacerbates her subjective pain. Appellant also submitted a note, dated October 12, 1999 by a person at the employing establishment, indicating that appellant was not currently performing the job duties of a distribution clerk, but rather she has been answering telephones, doing occasional light filing and some data entry, and that this was not a permanent job. Finally, appellant submitted a letter dated November 26, 1999 wherein the Office of Personnel Management approved her application for disability retirement. In a decision dated March 16, 2001, the Office found that the new evidence was not relevant to the issue of a schedule award, and was not sufficient to warrant review of the decision.

The Board finds that appellant has no more than a two percent impairment to her left upper extremity for which he has already received an award under the schedule.[1]

The schedule award provision of the Federal Employees' Compensation Act[2] and its implementing federal regulation,[3] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of specified members, functions or organs of the body. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.[4] 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

[1] The Board notes that the issue of a schedule award for impairment in appellant's right upper extremity is not before the Board at this time.

[2] 5 U.S.C. § 8107.

[3] 20 C.F.R. § 10.404 (1999).

[4] 5 U.S.C. § 8107(c)(19).

all claimants. The A.M.A., *Guides* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[5]

In the instant case, both Dr. Zarr and the Office medical adviser, utilizing the A.M.A., *Guides*, agreed that appellant had a two percent impairment of the left upper extremity. There is no other medical evidence of record establishing a higher degree of impairment. Accordingly, the Board finds that under the fourth edition of the A.M.A., *Guides*, appellant has not established a greater impairment to the left upper extremity than the two percent permanent impairment for she has already been awarded.

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

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[6] the Office regulations provide that a claimant may obtain review of the merits of the claim by submitting evidence and argument that: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.[7] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.

In this case, appellant has not raised any new arguments that the Office erroneously applied or interpreted a point of law, nor has appellant submitted any new relevant and pertinent evidence not previously considered by the Office. None of the evidence submitted on reconsideration demonstrates that appellant had more than a two percent impairment of the left upper extremity. The Board has held that evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a claim.[8] Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.[9] Therefore, appellant has not established that the Office abused its discretion in denying appellant's request for review on the merits under section 8128(a) of the Act.

[5] *See* 20 C.F.R. § 10.404 (1999).

[6] 5 U.S.C. § 8128(a).

[7] 20 C.F.R. § 10.606(b)(2).

[8] *See Richard L. Ballard*, 44 ECAB 146 (1992); *Eugene F. Butler*, 36 ECAB 393 (1984).

[9] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated March 16, 2001 and December 19, 2000 are hereby affirmed.

Dated, Washington, DC
August 8, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member