

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY L. MARLER and U.S. POSTAL SERVICE,
SAPPINGTON BRACH, St. Louis, MO

*Docket No. 02-2220; Submitted on the Record;
Issued December 20, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has more than a four percent impairment of her left upper extremity and six percent impairment of her right upper extremity, for which she received a schedule award; and (2) whether the Office of Workers' Compensation Programs, by decision dated May 29, 2002, properly refused to reopen appellant's case for further review of the merits of her claim.

On April 4, 2000, appellant, then a 41-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-1) alleging that she had carpal tunnel syndrome as a result of carrying mail. The employing establishment controverted the claim. By letter dated July 28, 2000, the Office accepted appellant's claim for bilateral carpal tunnel syndrome and bilateral carpal tunnel releases.

On July 18, 2000 and January 3, 2002, appellant filed claims for compensation for a schedule award (Form CA-7).

By medical report dated December 21, 2001, Dr. Richard J. Hehmann, a Board-certified surgeon, noted:

“[Appellant] is a patient I have been taking care of since March 27, 2000. At that time, patient had essentially bilateral carpal tunnel syndrome and did have temporary response to instillation of a steroid/Xylocaine injection in the carpal canal. Eventually, patient had recurrences and had bilateral carpal tunnel releases, the left being done before the right on September 14 and October 12, 2000, respectively. Patient made a satisfactory postoperative recovery from these and had good relief from her carpal tunnel symptomatology for a good period of time. After patient returned to work, she developed recurrent symptoms, which would temporarily respond to a steroid/Xylocaine injection. Patient had a repeat nerve conduction study, which did reveal recurrent bilateral carpal tunnel syndrome.

“Patient continues to have bilateral carpal tunnel syndrome. I believe that patient was at maximal medical improvement when I examined her on October 21st.”

On February 26, 2002 the Office medical adviser noted that appellant was eligible for impairment ratings due to carpal tunnel syndromes.

By letter dated March 6, 2002, appellant was referred to Dr. John Gragnani, a Board-certified physiatrist, for a second opinion. By medical report dated March 20, 2002, Dr. Gragnani noted that he examined appellant and that his impressions were: (1) bilateral carpal tunnel, surgically released; (2) residual complaints of numbness and weakness involving both hands, by history; (3) maximum medical improvement October 2001; and (4) hypothyroidism, treated. Dr. Gragnani proceeded to rate appellant with a six percent impairment of the right upper extremity and a four percent impairment of the left upper extremity. He applied the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*)¹ as stated:

“For the right upper extremity at the wrist level for carpal tunnel, I utilized Figure 16-31. For radial deviation of 32 degrees, there is no impairment. Ulnar deviation of 42 degrees results in no impairment. Using Figure 16-28 for flexion and extension, extension of 60 degrees results in no impairment. For flexion of 52 degrees, there is 2 percent impairment. Utilizing Tables 16-10 and 16-11 for sensory changes, a normal two-point discrimination with subjective numbness results in Grade IV from Table 16-10 for 10 percent sensory deficit. This is multiplied times 39 percent from Table 16-15 for median nerve below mid forearm, yielding 3.9 percent sensory change, rounded to 4 percent. For Table 16-11 for motor changes, the grip strength was sufficient to provide Grade V for 0 percent motor deficit. Therefore, there was no rating from Table 16-11. There is no additional rating from Section 16.2.

“Therefore, for the right upper extremity the combined rating for sensory deficit and range of motion is 6 percent.

“For the left upper extremity from Table 16-28, left wrist extension of 62 degrees results in no impairment. For flexion of 60 degrees, there is no impairment. From Figure 16-31, radial deviation of 30 degrees results in no impairment. For ulnar deviation of 30 degrees, there is no impairment. From Table 16-10, sensory changes were Grade IV for 10 percent sensory impairment times 39 percent for sensory changes due to median nerve below mid forearm from Table 16-15, yielding 3.9 percent sensory deficit rounded to 4 percent. There is no weakness measurable in the left hand and no atrophy of muscle groups. Therefore, from Table 16-11 for muscle strength, there is no impairment. There is no additional rating from Section 16.2.

“Therefore, the rating for the left upper extremity is 4 percent due to sensory changes reported in the left upper extremity.”

¹ A.M.A., *Guides* (5th ed. 2001).

On March 22, 2002 the Office medical adviser found Dr. Gragnani's ratings under the A.M.A., *Guides* acceptable.

By decision issued April 12, 2002, the Office granted appellant a schedule award for a four percent loss of use of the left upper extremity and six percent loss of use of the right upper extremity.

In a letter received by the Office on April 24, 2002, appellant requested reconsideration.

By decision dated May 29, 2002, the Office denied appellant's request for reconsideration as it found that appellant's letter neither raised substantive legal questions nor included new and relevant evidence.

The Board finds that appellant has no greater than a four percent impairment of her left upper extremity and a six percent impairment of her right upper extremity, for which she received a schedule award.

The schedule award provisions of the Federal Employees' Compensation Act² and its implementing regulation³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled 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 A.M.A., *Guides*⁴ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

Dr. Gragnani examined appellant, applied the A.M.A., *Guides* and determined that appellant had a four percent impairment of her left upper extremity and a six percent impairment of her right upper extremity. The Office medical adviser concurred. Appellant has not submitted a medical report that indicates any different impairment evaluation and the Board notes no factual error made by Dr. Gragnani or the Office medical adviser. As Dr. Gragnani's rating is supported by the A.M.A., *Guides* and appellant has not provided medical evidence, which would indicate that she has a greater impairment under the A.M.A., *Guides*, the Board affirms the schedule award determination of the Office.

The Board further finds that the Office, by its May 29, 2002 decision, properly refused to reopen appellant's case for further review of the merits of her claim.

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.404.

⁴ A.M.A., *Guides* (5th ed. 2001).

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 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.”⁵

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) 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 claim. 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

Appellant submitted no new evidence with his request for reconsideration. Furthermore, appellant’s request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, nor does it advance a relevant legal argument not previously considered by the Office. Accordingly, the Office properly denied appellant’s request for reconsideration on the merits.

⁵ 5 U.S.C. § 8128(a).

⁶ *James R. Bell*, 52 ECAB ____ (Docket No. 99-2133, issued July 2, 2001); *Eugene F. Butler*, 35 ECAB 393 (1984).

The May 29 and April 12, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
December 20, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Michael E. Groom
Alternate Member