

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLAM A. ARCHER and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, TX

*Docket No. 03-1550; Submitted on the Record;
Issued August 28, 2003*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has more than a 16 percent permanent impairment of the left upper extremity or more than a 14 percent permanent impairment of the right; and (2) whether appellant's November 7, 2002 letter constituted a request for an oral hearing before an Office of Workers' Compensation Programs' hearing representative.

On June 22, 1989 appellant, then a 61-year-old rural letter carrier associate (temporary employee), filed an occupational disease claim alleging that his carpal tunnel syndrome was a result of repetitious work. The Office accepted his claim for bilateral carpal tunnel syndrome and authorized surgical intervention. Appellant received compensation benefits.

On June 19, 2001 appellant filed a claim for a schedule award. The attending hand surgeon, Dr. Paul D. Pace, reported that appellant had 16 percent permanent impairment of the left upper extremity and a 14 percent permanent impairment of the right based on motor and sensory deficits. The Office referral physician, Dr. Govindasamy Durairaj, a Board-certified orthopedist, reported that appellant had a 14 percent permanent impairment of the right upper extremity and a 16 percent permanent impairment of the left based on motor and sensory deficits. An Office medical adviser reviewed Dr. Durairaj's findings and confirmed the ratings reported.

On August 28, 2002 the Office issued a schedule award for a 14 percent permanent impairment of the right upper extremity and a 16 percent permanent impairment of the left.

On November 6, 2000 the Office denied appellant's claim for wage loss from 1993 to the present. Appellant requested reconsideration. He submitted an undated claim for wage loss from September 1993 to the present as well as 170 pages of time analysis forms. He also submitted copies of medical records. On April 18, 2001 the Office denied a merit review of his claim on the grounds that his request neither raised substantive legal argument nor included new and relevant evidence. Appellant advised that the information he submitted was now forwarded to the proper office and "will be sufficient for you to reconsider my claim." In a decision dated

November 16, 2001, the Office reviewed the merits of appellant's claim for wage loss and denied modification of its prior decision.

In a letter dated November 7, 2002 and addressed to the Branch of Hearings and Review, appellant requested an appeal of the decision he received from the district Office:

"I requested compensation for time lost due to injuries I received at work at a local post office. Through my U.S. Congressman's office I sent over 100 pages showing the dates I had worked and the days I could not work due to doctor's orders. The time period was from August 4, 1993 through March 2001. I based the request on a 40-hour week. The district's denial was based on the fact that my work schedule was only 37 hours a week."

* * *

"I had sent request 2 times before this request, but received no answer. My case has been handled by 5 or 6 different claims persons, and I received varied answers. I have been informed that I have one year to appeal. This is my third letter within this year. Please help me on this appeal."

In a decision dated December 31, 2002, the Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that the Office had already reconsidered his claim on November 16, 2001 and, therefore, he was not entitled to an oral hearing as a matter of right. The Branch of Hearings and Review considered appellant's request and denied a discretionary hearing on the grounds that he could address the issue in his case equally well through the reconsideration process.

An appeal to the Board must be mailed no later than one year from the date of the Office's final decision.¹ Because appellant mailed his May 27, 2003 appeal to the Board more than one year after the Office's November 16, 2001 decision denying his claim for wage loss, the Board has no jurisdiction to review that decision. The only decisions that the Board may review are the Office's August 28, 2002 schedule award decision and the Branch of Hearings and Review's December 31, 2002 decision denying an oral hearing before an Office hearing representative.

The Board finds that appellant has no more than a 16 percent permanent impairment of the left upper extremity and no more than a 14 percent permanent impairment of the right.

Section 8107 of the Federal Employees' Compensation Act² authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of

¹ 20 C.F.R. § 501.3(d) (time for filing); *see id.* § 501.10(d)(2) (computation of time).

² 5 U.S.C. § 8107.

permanent impairment according to the standards set forth in the specified edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.³

Both appellant's hand specialist, Dr. Pace, and the Office referral orthopedist, Dr. Durairaj, reported that appellant had a 30 percent sensory deficit and a 20 percent motor deficit of the median nerve in both wrists. Table 16-10, page 482, of the A.M.A., *Guides* sets forth the procedure for determining impairment of the upper extremity due to sensory deficits or pain resulting from peripheral nerve disorders.⁴ The identified nerve structure innervating the area of involvement is the median nerve below the midforearm. A 100 percent sensory deficit of the median nerve, or a complete loss of sensation, would impair the upper extremity by 39 percent.⁵ A 30 percent sensory deficit, as graded by Dr. Pace and Dr. Durairaj, would therefore impair the upper extremity by 12 percent ($.30 \times .39 = .117$, which is rounded to 12 percent).

Table 16-11, page 484, of the A.M.A., *Guides* sets forth the procedure for determining impairment of the upper extremity due to motor deficits or pain resulting from peripheral nerve disorders.⁶ The identified nerve structure innervating the area of involvement is, again, the median nerve below the midforearm. A 100 percent motor deficit of the median nerve, or a complete loss of power, would impair the upper extremity by 10 percent.⁷ A 20 percent motor deficit, as graded by Dr. Pace and Dr. Durairaj, would therefore impair the upper extremity by 2 percent ($.20 \times .10 = .02$ or 2 percent).

Applying the Combined Values Chart,⁸ appellant has a 14 percent permanent impairment of the right and left upper extremity due to sensory and motor deficits of the median nerve. Dr. Pace and Dr. Durairaj agreed on this point. They differed, however, on whether appellant also had a sensory deficit of the ulnar nerve on the right or left. Dr. Pace found a 30 percent sensory deficit of the ulnar nerve in the right wrist, while Dr. Durairaj found a 30 percent sensory deficit of the ulnar nerve in the left wrist. The difference has no effect on the sum total of appellant's schedule award, but the Board notes that Dr. Durairaj reported diminished sensation of the little and ring fingers of the left hand on physical examination, which supports his evaluation.

A 100 percent sensory deficit of the ulnar nerve below the midforearm, or a complete loss of sensation, would impair the upper extremity by 7 percent.⁹ A 30 percent sensory deficit would therefore impair the upper extremity by 12 percent ($.30 \times .07 = .021$, which is rounded to 2

³ 20 C.F.R. § 10.404 (1999). Effective February 1, 2001, the Office began using the fifth edition of the A.M.A., *Guides*. FECA Bulletin No. 01-05 (issued January 29, 2001).

⁴ A.M.A., *Guides* 482, Table 16-10 (5th ed. 2001).

⁵ *Id.* at 492, Table 16-15.

⁶ *Id.* at 494, Table 16-11.

⁷ *Id.* at 492, Table 16-15.

⁸ *Id.* at 604.

⁹ *Id.* at 492, Table 16-15.

percent). The 2 percent impairment of the left upper extremity due to sensory deficit of the ulnar nerve combines with the 14 percent impairment due to sensory and motor deficits of the median nerve for a total impairment of 16 percent.

The Board finds that the Office followed standardized procedures for determining the extent of appellant's permanent impairment and properly determined that he had a 14 percent permanent impairment of the right upper extremity and a 16 percent permanent impairment of the left. The Board will affirm the August 28, 2002 schedule award.

The Board also finds that appellant's November 7, 2002 letter was not a request for an oral hearing before an Office hearing representative.

Appellant made clear in his November 7, 2002 letter that he was seeking review of the Office's decision to deny his claim for wage loss, but he did not make clear which avenue of review he was seeking. The inside address belonged to the Branch of Hearings and Review, but the review rights attached to the Office's November 16, 2001 decision denying his claim for wage loss offered no recourse to the Branch of Hearings and Review.¹⁰ Moreover, at no point in the body of the letter did appellant indicate that he wanted to appear at an oral hearing to testify before an Office hearing representative.

After a careful reading of the November 7, 2002 letter, the Board finds that appellant's request constitutes a request for reconsideration rather than a request for an oral hearing before an Office hearing representative.¹¹ This finding is supported by appellant's reference to the one-year time limitation. A request for an oral hearing before an Office hearing representative must be made within 30 days after the date of the issuance of the Office's decision,¹² not one year, as in the case of reconsideration.¹³ The finding is also supported by appellant's remark that this was his third such request in the year. The record shows that appellant twice previously requested reconsideration of the Office's decision to deny his claim for wage loss. He did not previously request an oral hearing before an Office hearing representative. The Board notes that appellant's request was timely filed within one year of the Office's November 16, 2001 decision denying his claim for wage loss. The Board will set aside the Office's December 31, 2002 decision and remand the case to the district Office for an appropriate final decision on appellant's November 7, 2002 request for reconsideration.

¹⁰ A claimant is not entitled to a hearing before an Office hearing representative as a matter of right if he has previously submitted a reconsideration request. 5 U.S.C. § 8124(b)(1); 20 C.F.R. § 10.616(a) (1999).

¹¹ Appellant repeatedly used the word "appeal," but this in itself is no indication that he was seeking review by the Employees' Compensation Appeals Board, particularly when the notice of rights attached to the Office's decision is labeled Federal Employees' Compensation Act "Appeal Rights."

¹² 5 U.S.C. § 8124(b)(1).

¹³ 20 C.F.R. § 10.607(a) (1999).

The December 31, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion. The Office's August 28, 2002 decision is affirmed.

Dated, Washington, DC
August 28, 2003

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member