

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LORRAINE LAMBERT and U.S. POSTAL SERVICE,
POST OFFICE, Whittier, CA

*Docket No. 02-2148; Submitted on the Record;
Issued February 25, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issues are: (1) whether the Office of Workers' Compensation Programs abused its discretion in denying appellant's request for a review of the written record as untimely filed; and (2) whether appellant has any permanent impairment of her right upper extremity, entitling her to a schedule award.

Appellant's claim, filed on June 30, 1998 after she developed numbness in her hands and weakness and aching in her arms, was accepted for mild right carpal tunnel syndrome.¹ She continued working a limited-duty job and underwent physical therapy and injections.

Appellant had carpal tunnel syndrome surgery on her right hand on June 2, 2000 and her physician, Dr. Jon J. Hanlon, a Board-certified orthopedic surgeon, released her to part-time, limited-duty work on July 25, 2000. On August 14, 2000 appellant had a fitness-for-duty examination with Dr. Milton E. Ashby, also a Board-certified orthopedic surgeon. She subsequently returned to work full time.

On October 10, 2001 the Office denied appellant's request for a schedule award based on Dr. Hanlon's December 28, 2000 report finding no permanent impairment of her right upper extremity. On January 3, 2002 she requested a review of the written record. The Office denied her request as untimely on February 24, 2002.

The Board finds that appellant is not entitled to a review of the written record because her request was not timely filed.

¹ Appellant's earlier claim was accepted for a cervical and shoulder condition in 1995 and she returned to limited duty.

Section 8124(b)(1) of the Federal Employees' Compensation Act² provides:

“Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.”³

Through its implementing regulation,⁴ the Office has determined that in lieu of a hearing, a claimant dissatisfied with an Office decision shall be entitled to a review of the written record, if the request is submitted within 30 days of the date of the decision.⁵

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings or conduct reviews in certain circumstances where no legal provision was made for such hearings or reviews.⁶ The Office must exercise this discretionary authority in deciding whether to grant a hearing.⁷ The Office's procedures, which require the Office to exercise its discretion to grant or deny a claimant's request when such a request is untimely or made after reconsideration or an oral hearing, are a proper interpretation of the Act and Board precedent.⁸

In this case, appellant's request for a review of the written record was dated January 3, 2002, well beyond the 30-day limitation of section 8421(b)(1) and its implementing regulation.⁹ Because appellant failed to request a review of the record within 30 days of the Office's October 10, 2001 decision she is not entitled to such a review as a matter of right.

Appellant argued that she had mailed her request for a written review of the record within 30 days and submitted a copy of her telephone bills showing calls to Washington, D.C. on November 20, December 4 and 10, 2001 during which, she stated, she had inquired whether the Office had received her documents. While these calls were made to the Office's Branch of Hearings and Review, the record contains no evidence that appellant requested a review within the required 30 days. The handwritten letter she faxed to the Office on January 3, 2001 was undated. Therefore, the Board rejects appellant's argument.¹⁰

² 5 U.S.C. §§ 8101-8193.

³ 5 U.S.C. § 8124(b)(1).

⁴ 20 C.F.R. § 10.615.

⁵ *Marilyn F. Wilson*, 51 ECAB 234, 236 (1999).

⁶ *Samuel R. Johnson*, 51 ECAB 612, 614 (2000).

⁷ *Bonnie Goodman*, 50 ECAB 139, 145 (1998).

⁸ *Martha A. McConnell*, 50 ECAB 129, 130 (1998); *Michael J. Welsh*, 40 ECAB 994, 997 (1989).

⁹ 5 U.S.C. § 8421(b)(1); 20 C.F.R. § 10.616(a).

¹⁰ See 20 C.F.R. § 10.616(a) (“The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought”).

While the Office has the discretionary power to grant a hearing or review when a claimant is not entitled as a matter of right, the Office, in its February 25, 2002 decision, stated that it had reviewed appellant's request and determined that whether appellant was entitled to a schedule award could be resolved with a request for reconsideration and evidence establishing that she had a work-related permanent impairment of her right upper extremity.

As the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken which are contrary to both logic and probable deduction from established facts.¹¹ The record does not indicate that the Office acted in any manner in denying appellant's request for a review of the written record that could be found to be an abuse of discretion. Therefore, the Office properly denied appellant's request for a review.

The Board finds that appellant has failed to establish that she is entitled to a schedule award for permanent impairment of her right upper extremity.

Section 8107 of the Act 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.¹² 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.¹³ 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 award losses.¹⁴

In this case, appellant's accepted condition of right carpal tunnel syndrome reached maximum medical improvement on December 28, 2000, according to her treating physician, Dr. Hanlon. He stated that her right hand and extremity symptoms had continued to improve and had basically reached a stationary point. Dr. Hanlon examined and tested appellant's right hand and discharged her from treatment with no ratable factors of disability.

The Office medical adviser reviewed Dr. Hanlon's findings on September 16, 2001 and applied the appropriate criteria from the fifth edition of the A.M.A., *Guides* regarding impairment due to loss of range of motion, of strength and sensory deficit or pain. Based on Dr. Hanlon's report, the Office medical adviser found a zero permanent impairment of appellant's right upper extremity.

With her request for a review of the written record, appellant submitted the results of nerve conduction studies done on June 29, 2001. These showed that appellant still had mild bilateral carpal tunnel syndrome but established no degree of permanent impairment. Inasmuch

¹¹ *Linda J. Reeves*, 48 ECAB 373, 377 (1997).

¹² 5 U.S.C. § 8107.

¹³ *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

¹⁴ 20 C.F.R. § 10.404 (1999).

as the medical evidence clearly establishes that appellant has no ratable impairment of her right upper extremity, the Office properly denied her claim for a schedule award.

The February 25, 2002 and October 10, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
February 25, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member