

**United States Department of Labor
Employees' Compensation Appeals Board**

ANGELIA RUSS, Appellant)	
)	
and)	Docket No. 04-1037
)	Issued: August 12, 2004
U.S. POSTAL SERVICE, POST OFFICE,)	
Tampa, FL, Employer)	
)	
)	

Appearances:
Angelia Russ, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On March 10, 2004 appellant filed a timely appeal from a nonmerit Office of Workers' Compensation Programs' decision dated May 29, 2003. Because more than one year has elapsed between the last merit decision dated October 31, 2002 and the filing of this appeal on March 10, 2004, the Board lacks jurisdiction to review the merits of appellant's claim pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2).

ISSUE

The issue is whether the Office properly refused to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

Appellant, a 49-year-old letter carrier, filed a claim for benefits on December 17, 1999, claiming that she sustained a bilateral plantar fasciitis condition caused by factors of her employment. The Office accepted the claim for bilateral heel spurs.

On July 19, 2002 appellant filed a Form CA-7 claim for a schedule award based on a partial loss of use of her left and right lower extremities. In a report dated July 31, 2002, Dr. Stanley M. Kaplan, a podiatrist, found that appellant had a 10 percent impairment of each lower extremity and a 14 percent impairment of each foot causally related to her accepted employment injury, pursuant to the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (fifth edition). Dr. Kaplan stated that he had applied the diagnosis-based estimate found on page 545 17.2j of the A.M.A., *Guides*, as well as general materials found on pages 542 and 547 of the A.M.A., *Guides* to evaluate appellant's feet impairments.

In a memorandum/impairment evaluation dated September 13, 2002, an Office medical adviser reviewed Dr. Kaplan's findings and conclusions and determined that appellant was not entitled to an impairment rating based on either calcaneal spurs of the foot or plantar fasciitis. He concluded that there was no provision under the A.M.A., *Guides* for a diagnosis based permanent impairment for calcaneal spurs or plantar fasciitis, which was the same diagnosis.

By decision October 31, 2002, the Office accepted appellant's claim for bilateral calcaneal spurs, but denied the claim for a schedule award, finding that there was no provision under the A.M.A., *Guides* for calculating an award based on impairments for calcaneal spurs of the foot or plantar fasciitis.

By letter dated April 30, 2003, appellant requested reconsideration of the Office's October 31, 2002 decision. Appellant submitted the March 5, 2003 report of Dr. James D. Loebell, a podiatrist, who stated findings of previously diagnosed and treated plantar fasciitis/calcaneal spur, with fifth metatarsal based enthesopathy, along with possible capsulitis, fifth metatarsal cuboid joint, and capsulitis, fifth metacarpophalangeal joint secondary to excessive pressure from bilateral orthotics. His report did not contain an impairment rating under the A.M.A., *Guides*.

By decision dated May 29, 2003, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

LEGAL PRECEDENT

5 U.S.C. § 8128(a) of the Federal Employees' Compensation Act states that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." To require the Office to reopen a case for merit review under this section of the Act the Office's regulations provide pursuant to 20 C.F.R. § 10.606(b) that 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 evidence not previously considered by the Office.¹ 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.²

¹ 20 C.F.R. § 10.606(b)(1); *see generally* 5 U.S.C. § 8128(a).

² *Howard A. Williams*, 45 ECAB 853 (1994).

ANALYSIS -- ISSUE 2

In the present case, the Office denied appellant's claim for schedule award as appellant had not submitted substantial evidence substantiating a permanent impairment due to his bilateral heel spurs which was compensable pursuant to the A.M.A., *Guides*. Appellant thereafter requested reconsideration but appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not relevant to the issue on appeal.

The March 5, 2003 report from Dr. Loebell addressed findings on examination of her feet and stated that appellant had the previously diagnosed heel spur/plantar fasciitis condition, as well as fifth met base enthesopathy with possible capsulitis in some of her joints. The report, however, did not address the relevant issue of whether appellant's accepted heel spur/plantar fasciitis condition caused a permanent impairment which would be compensable pursuant to the A.M.A., *Guides*. The Board notes in this regard that impairment of the medial plantar nerve or the lateral plantar nerve could result in a compensable impairment pursuant to Table 17-37, page 552 of the A.M.A., *Guides*. Dr. Loebell however offered no information or opinion in his report which would be relevant to an impairment evaluation pursuant to this Table of the A.M.A., *Guides*. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.³ Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.⁴

CONCLUSION

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

³ See *David J. McDonald*, 50 ECAB 185 (1998).

⁴ The Board notes that appellant submitted additional evidence to the record following the May 29, 2003 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the May 29, 2003 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: August 12, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member