

FACTUAL HISTORY

On June 15, 1990 appellant, then a 49-year-old mailhandler, filed a notice of occupational disease stating that on June 1, 1990 he sustained an injury to his middle left finger while in the performance of duty. On February 20, 1991 the Office accepted appellant's fracture of the phalanx of the left middle finger and periostitis of the left middle finger. On July 10, 2001 he filed a claim for a schedule award.

On October 22, 2001 the Office advised appellant's attending physician to determine the extent of permanent impairment of the left fracture of one or more phalanges of his left hand due to his June 1, 1990 employment injury, using the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A.), (5th ed. 2001)¹ in his examination.

In a report dated November 16, 2001, Dr. Cloyd Kent Titus, appellant's attending physician and Board-certified in internal medicine, stated that appellant had reached maximum medical improvement on June 1, 1991 and that, based on an examination that day, he retained 70 degrees of flexion-extension of the distal interphalangeal (DIP) joint, 100 degrees of flexion-extension of the proximal interphalangeal (PIP) joint and 80 degrees of active flexion of the metacarpophalangeal (MP) joint.²

In a report dated January 30, 2002, the Office medical adviser reviewed Dr. Titus' data and determined that the range of motion for appellant's MP joint was between 0 and 80 degrees, which resulted in a 6 percent impairment, that the range of motion of his PIP joint was between 0 and 100 degrees, which resulted in a 0 percent impairment and that the range of motion of his DIP joint was between 0 and 70 degrees which also resulted in a 0 percent impairment. The doctor recommended a schedule award of six percent for loss of range of motion of his left long finger. The date of maximum medical improvement was noted as June 1, 1991.

By decision dated April 30, 2002, the Office awarded appellant a schedule award of a six percent for the impairment of his left long finger. The award was for 13 days of compensation and ran from June 1 to 13, 1991.

On July 26, 2002 appellant filed a claim for an additional schedule award. In an attachment, he stated that his children should be entitled to compensation from the time of the acceptance of his claim until they became ineligible for compensation benefits. Appellant also submitted a report from Dr. Titus dated July 25, 2002, in which he stated that appellant was partially disabled from June 1, 1990 to July 25, 2002, as result of inflammation over the IP joints in both hands which was originally attributed to overuse at work. He stated that appellant had low-grade symmetrical polyarthritis consistent with rheumatoid arthritis.

¹ A.M.A., *Guides* 464, Table 16-25.

² Dr. Titus also noted appellant's carpometacarpal (CMC) joint range of motion; however, the Office only accepted that appellant injured his middle left finger while in the performance of duty.

By decision dated August 13, 2002, the Office denied appellant's claim for a schedule award. The Office noted that his April 30, 2002 schedule award was computed at the maximum rate payable for an employee with dependents which was three quarters of his rate of pay.

In a letter received on November 15, 2002, appellant filed a petition for a reconsideration of the Office's April 30, 2002 decision. He included a copy of his schedule award check, his attendance schedules, a November 19, 1996 letter from the Office to appellant regarding his entitlement to buy back leave and a narrative indicating that his children should have been eligible for compensation from the date of the acceptance of his injury until they became ineligible for coverage.

By decision dated March 12, 2003, the Office denied review of appellant's request for reconsideration on the grounds that he failed to submit evidence that would warrant reopening his claim.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ set forth the number of weeks of compensation to be paid for permanent loss, or loss of use, of the members of the body listed in the schedule. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage of loss.⁵ However, neither the Act nor its regulation specify the manner in which the percentage of loss of a member is to be determined. For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides* as a standard for evaluating schedule losses and the Board has concurred in such adoption.⁶

ANALYSIS -- ISSUE 1

In this case, appellant's physician, Dr. Titus, found that appellant achieved maximum medical improvement on June 1, 1991 and that he retained 70 degrees of flexion-extension of the DIP joint, 100 degrees of flexion-extension of the PIP joint and 80 degrees of active flexion of the MP joint. He did not, however, provide an estimated impairment rating in accordance with the A.M.A., *Guides*.

The Office medical adviser, however, correctly applied the A.M.A., *Guides* and determined that appellant had a six percent permanent impairment for loss of use of the left long finger. The doctor noted that, under Figure 16-25, 80 degrees of active flexion of the MP joint resulted in a 6 percent impairment.⁷ The Office medical adviser also noted that appellant's 0 to

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.304.

⁵ 5 U.S.C. § 8107(c)(19).

⁶ *James R. Doty*, 52 ECAB 163 (2000).

⁷ A.M.A., *Guides* 464, Table 16-25.

100 degrees of active flexion of the IP joint resulted in a 0 percent impairment under Figure 16-23⁸ and that, under Figure 16-21, his 0 to 70 degrees of active flexion of the DIP joint also resulted in a 0 percent impairment⁹ The date of maximum medical improvement was noted as June 1, 1991.

Further, appellant's claim for an additional schedule award was properly denied by the Office on the grounds that the A.M.A., *Guides* does not include criteria for schedule awards based on inflammation.¹⁰

LEGAL PRECEDENT -- ISSUE 2

Section 8128 (a) of the Act¹¹ vests the Office with discretionary authority to determine whether it will review an award for or against compensation:¹²

“The Secretary of Labor may review an award for or against compensation at any time or 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.”

Section 10.608 (a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of the standards described in section 10.606(b)(2).¹³ The application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; or (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.¹⁴

Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for review of the merits.¹⁵

⁸ *Id.* at 463, Table 16-23.

⁹ *Id.* at 461, Table 16-21.

¹⁰ *Id.* at 434, section 16.1. The A.M.A., *Guides* evaluates impairments of the upper extremities based on anatomic, cosmetic or functional bases. Inflammation is not a criterion in any of these bases.

¹¹ 5 U.S.C. § 8101-8193.

¹² 5 U.S.C. § 8128(a).

¹³ 20 C.F.R. § 10.608(a) (1999).

¹⁴ 20 C.F.R. § 10.606(b)(1)-(2).

¹⁵ 20 C.F.R. § 10.608(b).

ANALYSIS -- ISSUE 2

In his letter requesting reconsideration, appellant merely asserted that his children should have been eligible for compensation from the date of the acceptance of his injury until they became ineligible for coverage. He, thus, did not allege or demonstrate that the Office erroneously applied or interpreted a specific point of law, or advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).

With respect to the third above-noted requirements under section 10.606(b)(2), with his petition for reconsideration, appellant submitted a copy of Dr. Titus' November 16, 2001 evaluation. However, this report was previously of record and already considered by the Office. The Board has held that the submission of evidence which repeats or duplicates evidence already in the case record does not constitute a basis for reopening a case.¹⁶ Appellant also submitted various administrative documents, but these would not be relevant as the issue of the present case is medical in nature. The Board has held that the submission of evidence which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁷

CONCLUSION

Appellant has not established that he was entitled to more than a six percent permanent impairment of the middle finger, left hand, or that the Office improperly refused to reopen his claim for a review on the merits of its April 20, 2002 decision under section 8128(a) of the Act.

¹⁶ *Freddie Mosley*, 54 ECAB ____ (Docket No. 02-1915, issued December 19, 2002).

¹⁷ *Id.* Appellant submitted a copy of his schedule award check, a copy of his claim for his schedule award dated July 26, 2002, copies of his time and attendance record from June 21, 1990 to February 8, 1991 and a copy of his statement regarding the entitlement of his children to additional compensation, which had been submitted previously.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 12, 2003 and August 13 and April 30, 2002 be affirmed.

Issued: July 7, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member