

FACTUAL HISTORY

This case was previously before the Board.¹ By decision dated May 21, 2003, the Board affirmed a January 13, 2003 decision granting appellant a schedule award based on a 12 percent impairment of the left upper extremity.

On November 16, 1981 appellant, then a 29-year-old clerk, filed a traumatic injury claim alleging that on November 6, 2001 she injured her back and left shoulder when she lifted a tub of mail. The Office accepted her claim for a thoracic strain.

In a report dated October 22, 2002, Dr. Albert C. Molnar, a Board-certified physiatrist, opined that appellant had a nine percent impairment of the left lower extremity based on gait derangement and loss of sensation. He did not explain how appellant's left leg problems were caused or aggravated by the November 6, 2001 thoracic strain.

In a report dated September 2, 2003, the Office district medical director reviewed the schedule award calculation and indicated that appellant had a six percent impairment of the left lower extremity based on the October 22, 2002 report of Dr. Molnar.

By decision dated September 18, 2003, the Office denied appellant's claim for a schedule award for the left lower extremity. The Office noted that the district medical director calculated a six percent impairment of the left leg but the evidence of record failed to establish that this impairment was causally related to appellant's November 6, 2001 employment injury.

By letter postmarked November 3, 2003, appellant requested a review of the written record. By decision dated December 18, 2003, the Office denied appellant's request for a review of the written record on the grounds that her November 3, 2003 request was not timely submitted within 30 days of the Office's September 18, 2003 decision and her request for further merit review could equally well be addressed through a request for reconsideration and the submission of additional evidence establishing that the impairment of her left lower extremity was causally related to her November 6, 2001 employment injury.²

LEGAL PRECEDENT -- ISSUE 1

A claimant seeking compensation under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of her claim by the weight of the reliable,

¹ Docket No. 03-789 (issued May 21, 2003).

² Appellant submitted additional evidence subsequent to the Office decision of December 18, 2003. However, the Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c).

³ 5 U.S.C. §§ 8101-8193.

probative and substantial evidence.⁴ Section 8107 provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.⁵ The schedule award provision of the Act⁶ and its implementing federal regulation⁷ 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, the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001) as the uniform standard applicable to all claimants.⁸

Although a schedule award may not be issued for an impairment to the back under the Act, such an award is payable for a permanent impairment of the legs that is due to an employment-related back condition.⁹

ANALYSIS -- ISSUE 1

In this case, appellant submitted a medical report from Dr. Molnar who opined that she had a nine percent impairment of the left lower extremity. However, he did not explain how her impairment was caused or aggravated by her accepted thoracic strain on November 6, 2001. As noted above, a schedule award may be granted for impairment of a leg if it was caused by an employment-related back condition. There is no evidence of record establishing that appellant's left leg impairment was causally related to her accepted back condition. Therefore, the Office properly denied her schedule award claim.

LEGAL PRECEDENT -- ISSUE 2

Section 8124(b)(1) of the Act provides that, before review under section 8128(a), a claimant not satisfied with a decision of the Secretary of Labor is entitled, on a request made within 30 days after the date of issuance of the decision, to a hearing on her claim.¹⁰ This section is unequivocal in setting forth the 30-day time limitation.¹¹ The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is

⁴ *Edward W. Spohr*, 54 ECAB ____ (Docket No. 03-1173, issued September 10, 2003); *Nathaniel Milton*, 37 ECAB 712 (1986).

⁵ 5 U.S.C. § 8107(a).

⁶ 5 U.S.C. § 8107.

⁷ 20 C.F.R. § 10.404.

⁸ *Id.*

⁹ *Gordon G. McNeill*, 42 ECAB 140 (1990).

¹⁰ 5 U.S.C. § 8124(b)(1).

¹¹ *John M. Scales*, 42 ECAB 376 (1991).

untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.¹²

ANALYSIS -- ISSUE 2

Appellant requested a hearing (review of the written record) in this case. However, her November 3, 2003 request was not made within 30 days of the Office's September 18, 2003 decision and, therefore, she was not entitled to a hearing as a matter of right under section 8124(b)(1) of the Act. The Office properly exercised its discretion and determined that her request for a review of the written record could equally well be addressed by requesting reconsideration and submitting additional evidence establishing that her left lower extremity impairment was causally related to her November 6, 2001 employment injury. There is no evidence of record that the Office abused its discretion in denying appellant's request for a review of the written record.

CONCLUSION

The Board finds that appellant failed to establish that she was entitled to a schedule award for the left lower extremity. The Board further finds that the Office properly denied her request for a review of the written record.

¹² *Claudio Vasquez*, 52 ECAB 496 (2002); *Herbert C. Holley*, 33 ECAB 140 (1981).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated December 18 and September 18, 2003 are affirmed.

Issued: July 12, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member