

FACTUAL HISTORY

Appellant, a 58-year-old former letter carrier, has occupational disease claims accepted for right carpal tunnel syndrome, right arm cubital tunnel syndrome and left carpal tunnel syndrome. Appellant's initial injury dates back to May 30, 1991. His three claims were combined under file number A16-0200810. Appellant received conservative treatment for his accepted conditions and was unable to resume his regular duties as a letter carrier. Appellant currently works limited duty as a modified clerk.

On September 15, 2003 appellant filed a claim for a schedule award. The claim was accompanied by two September 4, 2003 attending physician's reports (Form CA-20) from Dr. John Schmidt, an osteopath and appellant's treating physician. He diagnosed employment-related bilateral carpal tunnel syndrome. Also submitted was a May 30, 1991 electromyographic report that revealed carpal tunnel syndrome on the right side.

On September 23, 2002 the Office advised appellant of the need for additional medical evidence. Specifically, the Office requested that appellant submit a physician's opinion regarding the extent of any permanent impairment due to the accepted bilateral carpal tunnel syndrome. The Office advised that the impairment rating should be prepared in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*) (5th ed. 2001).

By decision dated October 31, 2003, the Office denied appellant's claim for a schedule award. The Office explained that Dr. Schmidt's September 4, 2003 reports did not include an impairment rating and appellant had not submitted evidence in response to the Office's September 23, 2002 letter.

Appellant requested reconsideration on November 7, 2003 and submitted an October 24, 2003 letter from Dr. Schmidt, who advised that appellant had reached maximum medical improvement and that the physician had referred him for an evaluation and determination of his disability under the A.M.A., *Guides*.

In a decision dated November 19, 2003, the Office denied appellant's request for reconsideration. The Office found that while Dr. Schmidt stated that appellant reached maximum medical improvement, the October 24, 2003 letter did not otherwise provide the information necessary to process appellant's claim for a schedule award.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation 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.² 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 under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The implementing regulations have adopted the A.M.A.,

² 5 U.S.C. § 8107.

Guides as the appropriate standard for evaluating schedule losses.³ Effective February 1, 2001, schedule awards are determined in accordance with the A.M.A., *Guides* (5th ed. 2001).⁴

ANALYSIS -- ISSUE 1

Appellant failed to submit sufficient medical evidence to establish entitlement to a schedule award for his accepted bilateral carpal tunnel syndrome. Dr. Schmidt's September 4, 2003 reports did not include an impairment rating nor did the doctor provide an adequate description of appellant's physical condition. In order to determine entitlement to a schedule award appellant's physician must provide a sufficiently detailed description of his condition so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.⁵ As Dr. Schmidt did not describe appellant's condition or correlate his findings with the A.M.A., *Guides*, his September 4, 2003 reports are insufficient to establish the extent of appellant's permanent impairment.⁶ Without the necessary rationalized medical opinion evidence establishing the type and extent of appellant's impairment under the A.M.A., *Guides*, appellant has failed to establish that he sustained a permanent impairment as a result of his accepted conditions.⁷

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Title 20 of the code of federal regulation provides that the application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (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.⁸ Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS -- ISSUE 2

Appellant's November 7, 2003 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by

³ 20 C.F.R. § 10.404 (1999).

⁴ FECA Bulletin No. 01-05 (issued January 29, 2001); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (June 2003).

⁵ *Renee M. Straubinger*, 51 ECAB 667, 669 (2000).

⁶ *Lela M. Shaw*, 51 ECAB 372 (2000).

⁷ *Id.*

⁸ 20 C.F.R. § 10.606(b)(2) (1999).

⁹ 20 C.F.R. § 10.608(b) (1999).

the Office. Consequently, appellant is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under section 10.606(b)(2).¹⁰

With respect to the third requirement, that the information submitted constitute relevant and pertinent new evidence not previously considered by the Office, appellant submitted Dr. Schmidt's October 24, 2003 letter. Other than noting that appellant had reached maximum medical improvement, this letter did not provide any relevant information regarding the extent of any permanent impairment due to the accepted conditions.¹¹ While this particular document was not previously of record, Dr. Schmidt's October 24, 2003 letter does not constitute "relevant and pertinent" new evidence. Consequently, appellant is not entitled to a review of the merits of his claim based on the third requirement under section 10.606(b)(2).¹²

As appellant is not entitled to a review of the merits of his claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office properly denied appellant's November 7, 2003 request for reconsideration.

CONCLUSION

The Board finds that appellant failed to establish that he is entitled to a schedule award. The Board further finds that the Office properly denied appellant's November 7, 2003 request for reconsideration.

¹⁰ 20 C.F.R. §§ 10.608(b)(2)(i) and (ii) (1999).

¹¹ Dr. Schmidt had previously indicated on September 23, 1997 that appellant reached maximum medical improvement.

¹² 20 C.F.R. § 10.608(b)(2)(iii) (1999).

ORDER

IT IS HEREBY ORDERED THAT the November 19 and October 31, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 14, 2004
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member