United States Department of Labor
Employees' Compensation Appeals Board

CAROLYN A. PAYNE, Appellant	)	
	)	**Docket No. 05-21**
and	)	**Issued: March 2, 2005**
	)	
U.S. POSTAL SERVICE, POST OFFICE, Atlanta, GA, Employer	)	

Appearances:
Carolyn A. Payne, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On September 27, 2004 appellant filed a timely appeal of a May 18, 2004 decision of the Office of Workers' Compensation Programs, denying reconsideration of an April 15, 2004 schedule award finding no more than a five percent permanent impairment for each arm. Pursuant to 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has more than a five percent permanent impairment to each arm, for which she received a schedule award on March 19, 2002; and (2) whether the Office properly denied appellant's request for reconsideration.

FACTUAL HISTORY

On January 10, 2001 appellant, then a 56-year-old manager of statistical programs, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of keyboard activities during her federal employment. The Office accepted the claim for

bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on May 30, 2001 and a left carpal tunnel release on October 3, 2001. She retired from federal employment effective June 1, 2001.

On January 7, 2002 appellant submitted a claim for compensation (Form CA-7) requesting a schedule award. Appellant submitted a report dated January 7, 2002 from Dr. Frank Joseph, an orthopedic surgeon, who provided results on examination. Dr. Joseph opined that under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, A.M.A., *Guides* (5th ed. 2001), appellant had a 10 percent impairment to each upper extremity with an estimated maximum medical improvement of April 1, 2002.

The Office referred the medical evidence to an Office medical adviser for an opinion as to the degree of permanent impairment. In a report dated February 14, 2002, the Office medical adviser opined that the A.M.A., *Guides* (at page 495) would allow only a five percent impairment to each arm for the accepted carpal tunnel syndrome. The medical adviser reported the date of maximum medical improvement as January 7, 2002.

By decision dated March 19, 2002, the Office granted schedule awards for a five percent permanent impairment to the right and left arms. The period of the awards was 31.2 weeks from January 7, 2002.

On January 26, 2004 appellant filed a Form CA-7 claiming an additional schedule award. Appellant submitted a December 8, 2003 report from Dr. Joseph, who noted that appellant reported increased pain, aching and stiffness in both hands and he indicated that Phalen's test and Tinel's signs were negative. At the bottom of the report Dr. Joseph provided a handwritten note opining that appellant had a 10 percent impairment to each arm under the A.M.A., *Guides.* In a report dated March 8, 2004, Dr. Joseph provided results on examination and indicated that appellant would proceed with neurologic consultation and nerve conduction velocity studies.

In a report dated March 24, 2004, Dr. Eli Finkelstein, a specialist in physical medicine and rehabilitation, provided results of electromyogram (EMG) and nerve conduction studies. Dr. Finkelstein stated that the evidence showed a moderate bilateral carpal tunnel syndrome; in comparison with a February 2001 test the numbers were improved but still abnormal.

The medical evidence was referred to an Office medical adviser for evaluation. In a report dated March 29, 2004, the Office medical adviser opined that the medical evidence did not establish any increased impairment. The medical adviser noted the March 8, 2004 examination results of Dr. Joseph and found no evidence of an increased impairment.

By decision dated April 15, 2004, the Office denied appellant's claim for an increased schedule award.

Appellant requested reconsideration by letter dated May 5, 2004. She contended that Dr. Joseph was a hand specialist and his opinion should be respected. Appellant submitted an April 19, 2004 report from Dr. Joseph, providing results on examination and physical therapy treatment notes.

In a decision dated May 18, 2004, the Office denied appellant's request for reconsideration without merit review of the claim. The Office found that the evidence submitted was insufficient to warrant further merit review.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of the Federal Employees' Compensation Act 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.[1] Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[2]

ANALYSIS -- ISSUE 1

Dr. Joseph provided an opinion that appellant had a 10 percent permanent impairment to each arm in both his January 7, 2002 and December 8, 2003 reports. Although Dr. Joseph stated that his opinion was based on the A.M.A., *Guides*, he did not refer to any specific section of the A.M.A., *Guides* or provide any explanation as to how he calculated 10 percent in conformance with the A.M.A., *Guides*. A medical report that provides an opinion as to the degree of permanent impairment, but does not provide specific references to appropriate tables or figures explaining how the percentage was calculated, is of diminished probative value in establishing the degree of permanent impairment.[3]

The A.M.A., *Guides* discuss impairments due to carpal tunnel and provide three possible methods: (1) For positive clinical findings of median nerve dysfunction and electrical conduction delays, the impairment due to residual carpal tunnel syndrome is rated using the appropriate sensory or motor deficit tables as described in Chapter 16.5; (2) for normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles, an impairment rating not to exceed 5 percent may be justified; and (3) normal sensibility, opposition strength and nerve conduction studies result in no objective basis for an impairment rating.[4]

The March 19, 2002 schedule award was based on the report of the Office medical adviser, who provided an impairment rating based on the second method described above. To the extent that Dr. Joseph was attempting to apply the first method, he did not discuss the relevant tables for sensory or motor deficits or otherwise provide a reasoned medical opinion as

[1] 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

[2] *A. George Lampo*, 45 ECAB 441 (1994).

[3] *See Kenneth D. Loney*, 47 ECAB 660, 662 (1996).

[4] A.M.A., *Guides* 495.

to the degree of permanent impairment in this case. The report from Dr. Finkelstein provided only the result of electrodiagnostic studies, without providing any opinion regarding permanent impairment. The only probative medical report of record that provided an opinion as to permanent impairment and explained how that impairment was calculated under the A.M.A., *Guides,* is the Office medical adviser's opinion that appellant had a five percent impairment to each arm. Appellant did not submit probative medical evidence showing more than a five percent permanent impairment to her right and left arms. In the absence of such evidence, the Board finds that the Office properly determined that she was not entitled to an additional schedule award.

LEGAL PRECEDENT -- ISSUE 2

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[5] the Office's regulation provides that a claimant may obtain review of the merits of the claim by (1) showing that the Office erroneously applied or interpreted a specific point of law or (2) advancing a relevant legal argument not previously considered by the Office or (3) constituting relevant and pertinent evidence not previously considered by the Office.[6] Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by the Office without review of the merits of the claim.[7]

ANALYSIS -- ISSUE 2

On reconsideration appellant argued that the opinion of Dr. Joseph should constitute the weight of the medical evidence. As noted above, his report is of diminished probative value as he did not explain how he determined a 10 percent impairment to each arm. Appellant did not submit any new medical evidence with an opinion as to the degree of permanent impairment conforming with the A.M.A., *Guides*. The April 19, 2004 report from Dr. Joseph did not provide any new or relevant information regarding his opinion as to the degree of permanent impairment. Appellant did not show that the Office erroneously applied or interpreted a point of law, advance a new and relevant legal argument, or submit new and relevant medical evidence. As appellant did not meet the requirements of section 10.606(b)(2), she was not entitled to a merit review of her claim.

CONCLUSION

The Board finds that the probative medical evidence does not establish that appellant has more than a five percent permanent impairment to each arm, for which she received a schedule award on March 19, 2002. The Board further finds that the Office properly denied appellant's request for reconsideration without merit review of the claim.

[5] 5 U.S.C. § 8128(a) (providing 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").

[6] 20 C.F.R. § 10.606(b)(2).

[7] 20 C.F.R. § 10.608(b); *see also Norman W. Hanson,* 45 ECAB 430 (1994).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 18 and April 15, 2004 are affirmed.

Issued: March 2, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member