United States Department of Labor
Employees' Compensation Appeals Board

PATRICIA C. ANDAHL, Appellant	)	
and	)	**Docket No. 05-1699**
	)	**Issued: November 2, 2005**
U.S. POSTAL SERVICE, POST OFFICE, Valley Springs, CA, Employer	)	

Appearances:
Patricia C. Andahl, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 9, 2005 appellant filed a timely appeal from a schedule award decision of the Office of Workers' Compensation Programs dated August 13, 2004, a February 3, 2005 decision in which the Office denied modification of the schedule award and a May 12, 2005 decision in which the Office denied her request for reconsideration. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over this case.

ISSUES

The issues are: (1) whether appellant has more than five percent impairment of each upper extremity for which she received a schedule award; and (2) whether the Office properly refused to reopen appellant's claim for further review of the merits of her claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On February 11, 1999 appellant, then a 43-year-old rural carrier, filed an occupational disease claim alleging that employment activities caused pain, tingling and numbness of her

hands. She stopped work that day and returned to limited duty on February 22, 1999. On April 2, 1999 the Office accepted that appellant sustained bilateral carpal tunnel syndrome. She came under the care of Dr. Gary R. Wisner, Board-certified in orthopedic surgery. On June 1 and August 10, 1999 appellant underwent carpal tunnel releases on the right and left respectively. She returned to limited duty for eight hours a day on October 20, 1999.[1] In form reports dated February 24 and June 8, 2000 and January 4, 2001, Dr. Wisner diagnosed bilateral carpal tunnel syndrome, noted that appellant had good range of motion with no thenar atrophy and provided restrictions to her physical activity.

On June 9, 2003 appellant filed a schedule award claim. The Office referred her to Dr. Philip Wirganowicz, a Board-certified orthopedic surgeon, for a second opinion evaluation and impairment rating. In a report dated February 23, 2004, he noted appellant's past surgical history and history of Hodgkin's lymphoma. Dr. Wirganowicz recorded her complaints of bilateral hand and wrist pain with numbness and provided findings on physical examination. Upper extremity examination revealed well-healed incisions consistent with bilateral carpal tunnel releases. Dr. Wirganowicz found no deformity or muscle atrophy, including the thenar eminence of both hands. Range of motion of the elbows, wrists and fingers was full with intact sensation to light touch throughout the forearms and hands. Motor strength was full throughout. Tinel's and median nerve tests were positive bilaterally. Dr. Wirganowicz diagnosed bilateral carpal tunnel syndrome and attached forms in which he provided range of motion findings for each finger and thumb and both wrists which indicated that all range of motion measurements were normal. He advised that finger grip strength was diminished right to left, 70 to 50 and concluded that there was no sensory loss or alteration in her fingers, hands or wrists and no atrophy or weakness.

In a March 21, 2004 report, an Office medical adviser, found that maximum medical improvement was reached on February 21, 2004, the date of Dr. Wirganowicz' examination. She stated that under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,[2] appellant had no impairment due to loss of range of motion. As she had evidence of residual carpal tunnel syndrome, pursuant to section 16.5d of the A.M.A., *Guides*, appellant had right and left upper extremity impairments of five percent.

By decision dated August 13, 2004, the Office granted appellant a schedule award for five percent impairment of the right and left upper extremities, for a total of 31.2 weeks, to run from February 21 to September 26, 2004. On September 1, 2004 she requested reconsideration and submitted a form report dated September 15, 2004, in which Dr. Wisner again noted good range of motion. He stated, "[appellant's] wrists contribute to a 30 percent disability each [equaling] a 60 percent total." In a February 3, 2005 decision, the Office denied modification of

[1] By decision dated January 20, 2000, the Office found that appellant was not entitled to four hours of compensation on December 23, 1999 because she had been paid for working eight hours on that day.

[2] A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB 331 (2002).

the August 13, 2004 schedule award, noting that Dr. Wisner did not provide an explanation as to how he reached his impairment rating in accordance with the A.M.A., *Guides*.[3] On March 8, 2005 appellant again requested reconsideration, arguing that there was an error in the Office's impairment calculations and that Dr. Wisner's impairment rating should be considered. She also submitted a form report dated March 2, 2005, in which he noted her complaints of wrist, neck and back pain that radiated to appellant's hips bilaterally. Dr. Wisner diagnosed bilateral carpal tunnel syndrome and provided examination findings regarding appellant's back. In a May 12, 2005 decision, the Office denied her reconsideration request, finding that she did not show that the Office erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by the Office. The Office also found that Dr. Wisner's March 8, 2005 report was irrelevant as to whether she was entitled to greater impairment ratings for her upper extremities.

LEGAL PRECEDENT -- ISSUE 1

Under section 8107 of the Federal Employees' Compensation Act[4] and section 10.404 of the implementing federal regulations,[5] schedule awards are payable for permanent impairment of specified body members, functions or organs. The Act, however, does not specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*[6] has been adopted by the Office and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.[7] Chapter 16 provides the framework for assessing upper extremity impairments.[8]

[3] The Board notes that the Office used language in its decision indicating that a claimant would have to show clear evidence that the Office erred in calculating the schedule award. As appellant timely requested reconsideration on September 1, 2004 of the Office's August 13, 2004 decision, the clear evidence of error standard would not apply in this case.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404.

[6] A.M.A., *Guides*, *supra* note 2.

[7] *See Joseph Lawrence, Jr.*, supra note 2; *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

[8] A.M.A., *Guides*, *supra* note 2 at 433-521.

Regarding carpal tunnel syndrome, section 16.5d of the A.M.A., *Guides* provides:

"If, after an *optimal recovery time* following surgical decompression, an individual continues to complain of pain, paresthesias, and/or difficulties in performing certain activities, three possible scenarios can be present:

> (1) Positive clinical findings of median nerve dysfunction and electrical conduction delay(s): the impairment due to residual carpal tunnel syndrome is rated according to the sensory and/or motor deficits as described earlier.
>
> (2) Normal sensibility and opposition strength with abnormal sensory and/or motor latencies or abnormal EMG testing of the thenar muscles: a residual carpal tunnel syndrome is still present, and an impairment rating not to exceed five percent of the upper extremity may be justified.
>
> (3) Normal sensibility (two-point discrimination and Semmes-Weinstein monofilament testing), opposition strength and nerve conduction studies: there is no objective basis for an impairment rating."[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant does not have more than a five percent impairment of her right and left upper extremities. In determining her schedule award, the Office relied on the February 23, 2004 report of Dr. Wirganowicz, who provided an impairment rating. He advised that she had normal range of motion of her fingers and wrists bilaterally and no sensory deficit, atrophy or weakness. He noted positive Tinel's and median nerve tests bilaterally and diagnosed bilateral carpal tunnel syndrome. Office procedures indicate that referral to an Office medical adviser is appropriate when a detailed description of the impairment from a physician is obtained.[10]

The Office medical adviser rated appellant's upper extremity impairment and provided a basis for her impairment rating in accordance with the A.M.A., *Guides*. She referenced the specific section of the A.M.A., *Guides* that provides guidance for assessing carpal tunnel syndrome impairments, section 16.d and found that appellant had no impairment due to loss of range of motion. As there was evidence of residual carpal tunnel syndrome, she rated the impairment as five percent for each upper extremity.[11] While Dr. Wisner provided a September 15, 2004 report in which he stated that appellant had a 30 percent impairment of each wrist, he did not provide any explanation regarding how he reached this conclusion. He did not explain the estimate under the A.M.A., *Guides* and an estimate of permanent impairment is not

[9] *Id.* at 495.

[10] *See Thomas J. Fragale*, 55 ECAB ____ (Docket No. 04-835, issued July 8, 2004). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Evaluation of Schedule Awards*, Chapter 2.808.6(d) (August 2002).

[11] A.M.A., *Guides*, *supra* note 2 at 495.

probative where it is not based on the A.M.A., *Guides*.[12] The Board further notes that, generally, there is no impairment rating based on loss of grip strength in carpal tunnel cases.[13] The medical evidence of record does not demonstrate a greater impairment rating. The Board finds that the Office medical adviser's impairment rating does not establish greater than the five percent awarded for each upper extremity.[14]

LEGAL PRECEDENT -- ISSUE 2

Section 10.606(b)(2) of Office regulations provides that a claimant may obtain review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.[15] 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.[16] Evidence or argument that repeats or duplicates evidence previously of record has no evidentiary value and does not constitute a basis for reopening a case.[17] Likewise, evidence that does not address the particular issue involved does not constitute a basis for reopening a case.[18]

ANALYSIS -- ISSUE 2

In her letter requesting reconsideration, appellant argued that the Office erred in calculating her schedule award and should consider Dr. Wisner's rating. The Board, however, finds that her argument does not 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 a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2).[19]

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[12] *Shalanya Ellison*, 56 ECAB ____ (Docket No. 04-824, issued November 10, 2004).

[13] *Cristeen Falls*, 55 ECAB ____ (Docket No. 03-1665, issued March 29, 2004).

[14] Office procedures state that claims for increased schedule awards may be based on incorrect calculation of the original award or new exposure. To the extent that a claimant is asserting that the original award was erroneous based on his or her medical condition at that time, this would be a request for reconsideration. A claim for an increased schedule award may be based on new exposure or on medical evidence indicating the progression of an employment-related condition without new exposure to employment factors, has resulted in a greater permanent impairment than previously calculated. *Linda T. Brown*, 51 ECAB 115 (1999).

[15] 20 C.F.R. § 10.606(b)(2).

[16] 20 C.F.R. § 10.608(b).

[17] *Helen E. Paglinawan*, 51 ECAB 591 (2000).

[18] *Kevin M. Fatzer*, 51 ECAB 407 (2000).

[19] 20 C.F.R. § 10.606(b)(2).

With respect to the third above-noted requirement under section 10.606(b)(2), with her reconsideration request appellant submitted a March 2, 2005 report in which Dr. Wisner diagnosed bilateral carpal tunnel syndrome and provided examination findings regarding her back. 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[20] and in his March 2, 2005 report, Dr. Wisner merely reiterated her accepted diagnosis of bilateral carpal tunnel syndrome and provided examination findings regarding her back which is not relevant as to whether appellant is entitled to an increased impairment rating for her upper extremities. She, therefore, did not submit relevant and pertinent new evidence not previously considered by the Office and the Office properly denied her reconsideration request.

CONCLUSION

The Board finds that appellant has failed to establish that she has more than a five percent impairment of the right and left upper extremities. The Board further finds that the Office properly refused to reopen her case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).[21]

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 12 and February 3, 2005 be affirmed.

Issued: November 2, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[20] *David J. McDonald*, 50 ECAB 185 (1998).

[21] The Board notes that appellant submitted evidence subsequent to issuance of the May 12, 2005 decision. The Board cannot consider this evidence, however, as its review of the record is limited to that evidence which was before the Office at the time it rendered the May 12, 2005 decision. 20 C.F.R. § 501.2(c).