United States Department of Labor
Employees' Compensation Appeals Board

E.F., Appellant	)	
	)	**Docket No. 07-569**
and	)	**Issued: August 20, 2007**
	)	
DEPARTMENT OF THE NAVY, NAVAL AVIATION DEPOT, Jacksonville, FL, Employer	)	

Appearances:
Appellant, 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 December 26, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' May 11, 2006 merit decision denying his schedule award claim and its October 13, 2006 decision finding that he abandoned his hearing request. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these decisions.

ISSUES

The issues are: (1) whether appellant met his burden of proof to establish that he has permanent impairment of his arms which entitles him to schedule award compensation; and (2) whether the Office properly determined that he abandoned his hearing request.

FACTUAL HISTORY

On May 31, 2005 appellant, then a 59-year-old sheet metal mechanic, filed an occupational disease claim alleging that he sustained carpal tunnel syndrome in both arms due to the repetitive duties of his job which included using tin snips and power tools.[1]

On July 11, 2005 Dr. Steven A. Reid, an attending neurosurgeon, stated that appellant reported that he had "excellent relief" of his left hand pain and tingling, that he only had left hand symptoms when he drove and that appellant continued to experience intermittent right hand tingling and numbness. He stated that appellant had a well-healed left carpal tunnel incision.[2] Dr. Reid indicated that appellant had "symptoms of right carpal tunnel syndrome and satisfactorily treated left carpal tunnel syndrome" which were caused by his repetitive job duties. He stated that he could work in a full-duty capacity.

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and he filed a claim alleging that he had permanent impairment of his arms which entitled him to schedule award compensation. In August 2005, appellant advised the Office that he had moved and provided his new address in Keystone Heights, FL. In October 2005, the Office requested that Dr. Reid provide a rating for permanent impairment. On October 21, 2005 Dr. Reid stated that appellant had not reached maximum medical improvement (MMI) and that he would not assign a rating until appellant had right carpal tunnel surgery. He indicated that appellant had no work restrictions.

On February 13, 2006 Dr. Reid stated that appellant reported excellent relief of his right hand tingling and numbness and occasional mild tenderness in his left carpal tunnel scar. He indicated that appellant's surgical scars appeared well-healed and nontender, that examination revealed unremarkable vital signs and that he had intact strength and sensation throughout both hands. Dr. Reid indicated that appellant had reached MMI with regard to his carpal tunnel surgery and released him to work in a full-duty capacity. He indicated that appellant did not have any ratable permanent impairment of his arms under the standards of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (5th ed. 2001). On May 3, 2006 the district medical adviser evaluated the reports of Dr. Reid and determined that appellant did not have any permanent impairment which would entitle him to schedule award compensation. He indicated that Dr. Reid had noted that appellant did not exhibit any strength or sensory deficits in his arms.

In a May 11, 2006 decision, the Office denied appellant's claim on the grounds that the medical evidence did not show that he had permanent impairment of his arms which entitled him to schedule award compensation.

On June 7, 2006 appellant requested a telephone hearing with an Office hearing representative in connection with the May 11, 2006 decision. In a September 7, 2006 letter, the

[1] Appellant was living in Melrose, FL at the time he filed his claim.

[2] It appears that appellant underwent left carpal tunnel surgery, but the record does not contain any report of this surgery.

Office advised appellant that a telephone hearing would be held with an Office hearing representative at 10:15 a.m. Eastern Standard Time on October 5, 2006. The Office provided appellant with a tollfree telephone number which he was to call a few minutes before the time of the scheduled hearing.[3]

In an October 13, 2006 decision, the Office determined that appellant abandoned his hearing request. It noted that he failed to appear for the hearing because he did not call the hearing representative at the designated time and indicated that appellant did not contact the Office before or after the hearing to explain his failure to appear.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act[4] and its implementing regulation[5] 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, 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* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.[6]

ANALYSIS -- ISSUE 1

The Office accepted that appellant sustained bilateral carpal tunnel syndrome and he filed a claim alleging that he had permanent impairment of his arms which entitled him to schedule award compensation. The Board finds that appellant did not submit medical evidence showing that he has permanent impairment of his arms which entitles him to schedule award compensation.

On February 13, 2006 Dr. Reid, an attending Board-certified neurosurgeon, stated that appellant reported excellent relief of his right hand tingling and numbness and occasional mild tenderness in his left carpal tunnel scar. He indicated that appellant's left surgical scar appeared well healed and that he had intact strength and sensation throughout both hands. Dr. Reid indicated that appellant had reached MMI and concluded that he did not have any ratable permanent impairment of his arms under the standards of the A.M.A., *Guides*. On May 3, 2006 the district medical adviser evaluated the reports of Dr. Reid and determined that appellant did not have any permanent impairment which would entitle him to schedule award compensation.

Although Dr. Reid indicated that appellant reported continuing mild arm symptoms, he clearly indicated that appellant did not have any permanent impairment of his arms which would

[3] The notice was mailed to appellant's new address in Keystone Heights, FL.

[4] 5 U.S.C. § 8107.

[5] 20 C.F.R. § 10.404 (1999).

[6] *Id*.

entitle him to schedule award compensation. He noted that appellant did not have any permanent impairment based on sensory or strength losses and there is no indication in the record that he had limited arm motion or any other impairment under the standards of the A.M.A., *Guides*.[7] The district medical adviser reviewed the relevant medical evidence and also determined that appellant did not have such permanent impairment. Appellant has not submitted any medical evidence showing that he is entitled to schedule award compensation under the relevant standards and the Office properly denied his claim.

LEGAL PRECEDENT -- ISSUE 2

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

> "e. Abandonment of Hearing Requests.
>
> "(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.
>
> "Under these circumstances, H&R [Branch of Hearings and Review] will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the DO [district Office]. In cases involving prerecoupment hearings, H&R will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the DO.
>
> "(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, H&R should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.
>
> "This course of action is correct even if H&R can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend."[8]

ANALYSIS -- ISSUE 2

Appellant requested a telephone hearing with an Office hearing representative in connection with the May 11, 2006 decision and such hearing was scheduled for October 5, 2006. The Board finds that appellant abandoned this request for a hearing.

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[7] *See generally* A.M.A., *Guides* 433-51 for evaluation of arm impairment.

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

The record shows that the Office mailed appropriate notice to the claimant at his last known address. The record also supports that appellant did not request postponement, that he failed to appear at the scheduled hearing by calling the hearing representative at the designated time and that he failed to provide any notification for such failure after the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office's procedure manual, the Office properly found that appellant abandoned his request for an oral hearing before an Office hearing representative.[9]

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he has permanent impairment of his arms which entitles him to schedule award compensation. The Board further finds that the Office properly determined that appellant abandoned his hearing request.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' October 13 and May 11, 2006 decisions are affirmed.

Issued: August 20, 2007
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

[9] *See also Claudia J. Whitten*, 52 ECAB 483, 485 (2001).