

sustained an injury in the performance of duty.¹ The June 6, 2006 Board decision is herein incorporated by reference.

On July 28 2003 appellant, then a 57-year-old supervisor, filed an occupational disease claim alleging that he developed bilateral carpal tunnel syndrome as a result of his federal employment. On September 1, 2006 he underwent a right carpal tunnel release. Appellant underwent a left carpal tunnel release on October 26, 2006. On January 10, 2007 Dr. Edwin Melendez, an attending Board-certified orthopedic surgeon, noted that appellant had returned to full duty with no limitations. On January 21, 2007 the Office accepted appellant's claim for a bilateral carpal tunnel syndrome. On February 7, 2007 appellant submitted a claim for a schedule award.

On January 30, 2007 Dr. Frank A. Luckay, a Board-certified orthopedic surgeon, reviewed appellant's medical history and provided findings on physical examination. He stated that appellant was at maximum medical improvement on January 10, 2007, following his two surgical procedures for bilateral carpal tunnel syndrome. Appellant missed one week of work following each surgery and was not required to attend any physical or occupational therapy. Dr. Luckay found that appellant had no impairment based on the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*.² He stated:

“[Appellant] presently no longer notices any numbness of the fingertips, but does feel some tingling into the index finger when he pushes the heavy carts at work.... He is able to pull satisfactorily without any tingling. [Appellant] states that there is normal feeling in the hands and no pain. He reports that he has good hand strength.”

* * *

“Physical examination showed a pleasant, cooperative, robust-appearing gentleman who was well muscled in the upper limbs.... The shoulders were normal. The right elbow lacked the last 15 to 20 degrees of full extension secondarily to old healed fractures of the right forearm. The wrists showed normal range of motion without pain. Phalen's test was negative and Tinel's [test] was negative but when I performed the test there was local pain over the well-healed carpal tunnel release scars. There was excellent strength of the thenar muscles. Two-point discrimination was normal at six mm [millimeters] of all fingertips of both hands.”

On February 27, 2007 Dr. Ronald Blum, an Office medical adviser found that appellant had no impairment of his upper extremities based on the fifth edition of the A.M.A., *Guides* and

¹ Docket No. 06-402 (issued June 6, 2006). By decisions dated September 19, 2003 and December 23, 2004, the Office denied appellant's claim for bilateral carpal tunnel syndrome on the grounds that the medical evidence was insufficient to establish causal relationship. On November 21, 2005 the Office denied appellant's request for reconsideration.

² A.M.A., *Guides* (5th ed. 2001).

Dr. Luckay's report, which noted normal range of motion, normal sensory function and excellent strength in the thenar muscles and found no impairment of the upper extremities.

On March 9, 2007 the Office denied appellant's claim for a schedule award on the grounds that the evidence did not establish that he had any permanent impairment of his upper extremities causally related to his accepted bilateral carpal tunnel syndrome.

Appellant requested reconsideration and contended that Dr. Luckay had not performed an adequate medical examination. He did not submit any additional evidence.

By decision dated March 28, 2007, the Office denied appellant's reconsideration request on the grounds that he did not provide sufficient evidence or argument to warrant further merit review of his claim.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act³ and its implementing regulation⁴ 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.⁵

ANALYSIS -- ISSUE 1

Dr. Luckay reviewed appellant's medical history and provided findings on physical examination. He stated that appellant was at maximum medical improvement on January 10, 2007, following his two surgical procedures for bilateral carpal tunnel syndrome. Dr. Luckay noted that appellant missed one week of work following each surgery and was not required to attend any physical or occupational therapy. Physical findings on examination included no numbness of the fingertips, normal feeling in his hands and no pain. Appellant had good hand strength. His shoulders were normal. Appellant's wrists showed normal range of motion without pain. Phalen's and Tinel's tests were negative. There was excellent strength of the thenar muscles. Two-point discrimination was normal. Dr. Luckay determined that appellant had no impairment of his upper extremities based on the A.M.A., *Guides*, fifth edition.

Dr. Blum stated that appellant had no impairment of his upper extremities based on the Dr. Luckay's report, which noted normal range of motion, normal sensory function and excellent strength in the thenar muscles.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ A.M.A., *Guides* (5th ed. 2001).

There is no medical evidence of record which establishes that appellant has sustained any impairment of his upper extremities causally related to his bilateral carpal tunnel syndrome. Therefore, the Office properly denied his claim for a schedule award.

LEGAL PRECEDENT -- ISSUE 2

Section 8128(a) of the Act⁶ vests the Office with discretionary authority to determine whether it will review an award for or against compensation. The Act states:

“The Secretary of Labor may review an award for or against payment of compensation at any time on [her] own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

The Code of Federal Regulations 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.⁷ When an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁸

ANALYSIS -- ISSUE 2

Appellant did not submit any additional evidence in support of his reconsideration request. He asserted that Dr. Luckay had not performed an adequate medical examination. However, lay individuals such as appellant are not competent to render a medical opinion.⁹ Consequently, appellant’s opinion regarding Dr. Luckay’s medical examination does not constitute relevant and pertinent evidence not previously considered by the Office.

Appellant did not show that the Office erroneously applied or interpreted a specific point of law, advance a relevant legal argument or constitute relevant and pertinent evidence not considered previously by the Office. Therefore, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant failed to establish that he had any impairment of his upper extremities causally related to his accepted bilateral carpal tunnel syndrome. The Board further

⁶ 5 U.S.C. § 8128(a).

⁷ 20 C.F.R. § 10.606(b)(2).

⁸ 20 C.F.R. § 10.608(b).

⁹ See *Robert J. Krstyen*, 44 ECAB 227 (1992).

finds that the Office did not abuse its discretion in denying appellant's request for reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated March 28 and 9, 2007 are affirmed.

Issued: September 18, 2007
Washington, DC

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board