# United States Department of Labor
# Employees' Compensation Appeals Board

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| **D.B., Appellant** | ) | |
| **and** | ) | **Docket No. 07-2426** |
| | ) | **Issued: April 15, 2008** |
| **U.S. POSTAL SERVICE, POST OFFICE, New Orleans, LA, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director,

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

### ***JURISDICTION***

On September 25, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' schedule award decision dated February 22, 2007 and an April 9, 2007 nonmerit decision, which denied his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these issues.

### ***ISSUES***

The issues are: (1) whether appellant sustained any permanent impairment due to his accepted injury; and (2) whether the Office properly refused to reopen his case for further review of the merits under 5 U.S.C. § 8128(a).

### ***FACTUAL HISTORY***

On March 21, 2006 appellant, then a 62-year-old mail handler, filed an occupational disease claim alleging carpal tunnel due to his federal employment. He described throwing third class bundles, pulling, pushing and loading mail and using heavy equipment. Appellant noted hand symptoms of tingling and cramping and stated that he was diagnosed with carpal tunnel

syndrome. He did not stop work. The Office accepted appellant's claim for bilateral carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on June 23, 2006 and a left carpal tunnel release on July 27, 2006. He received appropriate compensation benefits.[1]

On July 15, 2006 appellant filed a claim for a schedule award.

By letter dated September 29, 2006, the Office requested that Dr. Melvin L. Parnell, Jr., an attending Board-certified orthopedic surgeon, provide an opinion regarding his work-related condition. The Office advised Dr. Parnell to utilize the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) to determine whether appellant had any permanent impairment and, if so, the percentage of impairment with an explanation of how the calculation was derived.

In a September 25, 2006 report, Dr. Parnell noted that appellant was seen in follow up and was doing well. Appellant had some mild discomfort when he used his hands but did not having any significant pain. Dr. Parnell conducted a physical examination and found that appellant had a full range of motion of each wrist with some mild discomfort at the extremes of motion. The Tinel's and Phalen's tests were negative bilaterally. Dr. Parnell noted that appellant had a full range of motion of the fingers of each hand with normal sensation and capillary refill. He was pleased with appellant's progress and noted that, since the pressure was released from his nerves, he expected continued improvement. Appellant was able to return to work without any significant exacerbation of symptoms. Dr. Parnell stated that he did "not feel that [appellant] has sustained any permanent impairment." On October 13, 2006 he advised that appellant reached maximum medical improvement on September 25, 2006. Dr. Parnell again indicated that appellant did not have any impairment of the upper extremities.

In a February 16, 2007 report, an Office medical adviser noted appellant's history of injury and treatment including Dr. Parnell's September 25, 2006 report. The medical adviser concurred that appellant had reached maximum medical improvement on September 25, 2006 but did not have any impairment to his upper extremities.

By decision dated February 22, 2007, the Office denied appellant's claim for a schedule award. The Office found that the medical evidence did not establish that appellant sustained any impairment to this upper extremities due to his accepted condition.

By letter dated March 27, 2007, appellant requested reconsideration. He contended that Dr. Parnell did not provide an impairment rating because it was too soon after the operation. Appellant indicated that his physician advised him to wait four to six months after the operation to do an accurate test. He noted that his physician had requested authorization for testing and was waiting for approval.[2]

[1] The record reflects that appellant returned to full duty on September 12, 2006.

[2] The Office authorized the testing on April 4, 2007.

By decision dated April 9, 2007, the Office denied appellant's request for reconsideration without a review of the merits. It found that his request neither raised substantial legal questions nor included new and relevant evidence and was insufficient to warrant further review.

## ***LEGAL PRECEDENT -- ISSUE 1***

Section 8107 of the Federal Employees' Compensation Act[3] 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.[4] 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 for all claimants under the law, good administrative practice requires the use of uniform standards applicable to all claimants.[5] 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 Board finds that the medical evidence does not establish that appellant sustained any impairment to his upper extremities based on his accepted carpal tunnel condition.

By letter dated September 29, 2006, the Office requested that Dr. Parnell describe appellant's condition following surgery to determine whether he sustained any impairment.

In a September 25, 2006 report, Dr. Parnell noted that appellant had a full range of motion of the fingers and wrist of each hand and had returned to work without any significant exacerbation of symptoms. He opined that appellant did not have any impairment. Dr. Parnell repeated his assessment in his October 13, 2006 report and opined that appellant reached maximum medical improvement on September 25, 2006. The Office medical adviser reviewed Dr. Parnell's findings and concurred that appellant did not sustain any permanent impairment to his upper extremities.

Appellant did not submit any medical reports from a physician explaining how, pursuant to the fifth edition of the A.M.A., *Guides,* his accepted bilateral carpal tunnel syndrome caused any permanent impairment to his right or left arms. As noted the Office evaluates schedule award claims pursuant to the standards set forth in the A.M.A., *Guides*. Appellant has the burden of proof to submit medical evidence supporting permanent impairment of a schedule member of the body.[7] As such evidence has not been submitted, appellant is not entitled to a schedule award. The Office properly denied his claim.

[3] 5 U.S.C. §§ 8101-8193.

[4] 5 U.S.C. § 8107.

[5] *Ausbon N. Johnson*, 50 ECAB 304, 311 (1999).

[6] 20 C.F.R. § 10.404.

[7] *See Annette M. Dent*, 44 ECAB 403 (1993).

## ***LEGAL PRECENT -- ISSUE 2***

Under section 8128(a) of the Act,[8] the Office may reopen a case for review on the merits in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provides that a claimant may obtain review of the merits if the written application for reconsideration, including all supporting documents, sets forth arguments and contains evidence that:

> "(i) Shows that [the Office] erroneously applied or interpreted a specific point of law; or
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> "(ii) Advances a relevant legal argument not previously considered by the Office; or
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> "(iii) Constitutes relevant and pertinent new evidence not previously considered by the [the Office]."[9]

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[10]

## ***ANALYSIS -- ISSUE 2***

Appellant disagreed with the denial of his schedule award claim and requested reconsideration on March 27, 2007. The underlying issue on reconsideration, whether appellant has any permanent impairment, is medical in nature. Appellant did not submit any medical evidence. He noted that Dr. Parnell did not provide an impairment rating because it was too soon after surgery and needed to wait for several months to obtain an accurate rating. As noted, however, Dr. Parnell found maximum medical improvement to have been reached by September 25, 2006. Without a relevant and pertinent new report from his physician, appellant has not provided a basis for reopening his claim for merit review.

Since appellant did not provide a new and relevant medical report regarding his permanent impairment due to his accepted employment-related conditions, he did not satisfy the third criterion for reopening a claim for merit review. Appellant has not shown that the Office erroneously applied or interpreted a specific point of law or advanced a relevant new argument not previously submitted. Therefore, the Office properly denied his request for reconsideration.[11]

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[8] 5 U.S.C. § 8128(a).

[9] 20 C.F.R. § 10.606(b).

[10] *Id*. at § 10.608(b).

[11] The Board notes that appellant retains the right to file his for any increased impairment based on new medical evidence indicating that the progression of an employment-related condition. *See Linda T. Brown*, 51 ECAB 115 (1999).

## ***CONCLUSION***

The Board finds that the Office properly denied appellant's claim for a schedule award. The Board also finds that the Office properly refused to reopen appellant's case for further review of the merits under 5 U.S.C. § 8128(a).[12]

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 9 and February 22, 2007 are affirmed.

Issued: April 15, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[12] The Board notes that subsequent to the Office's April 9, 2007 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell,* 5 ECAB 35, 36 n.2 (1952)