

Office accepted appellant's claim for herniated disc displacement without myelopathy on December 13, 2002. The Office medical adviser opined that a right L4-5 discectomy was necessary due to the employment injury. Appellant underwent right L4-5 discectomy in December 2002. On December 17, 2002 while he was hospitalized due to his back injury he experienced grand mal seizures due to Demerol administered for pain control. On January 6, 2003 the Office informed appellant that the additional conditions of aggravation of spinal stenosis and aggravation of grand mal seizures were accepted as employment related. The Office entered him on the periodic rolls on January 24, 2003.

Appellant and his physician attributed a right shoulder injury to his grand mal seizure on December 17, 2002. On February 28, 2003 he underwent a right rotator cuff arthroscopy. The Office accepted that appellant sustained a right shoulder strain.

In a report dated June 6, 2004, Dr. Michael Young, a Board-certified orthopedic surgeon, noted appellant's history of injury and opined that he had 10 percent impairment of the whole person due to his back injury. He also found 14 percent impairment of the right upper extremity. Dr. Young concluded that appellant had 18 percent impairment of the whole person. The Office requested additional information from him regarding appellant's permanent impairment on June 18, 2004. On July 6, 2004 Dr. Young opined that appellant had reached maximum medical improvement. He stated that appellant had a limited range of motion and decreased strength in the right shoulder. Appellant also had intermittent symptoms in his right lower extremity due to his accepted herniated disc. Dr. Young opined that appellant had 14 percent impairment of the right upper extremity as well as 10 percent impairment of the whole person due to his back injury, or a total of 18 percent impairment of the whole person.

Appellant requested a schedule award on August 9, 2005. An Office medical adviser reviewed Dr. Young's reports on October 25, 2005. He found that Dr. Young failed to provide specific range of motion figures for appellant's right shoulder and had based his rating on impairment to the spine, which was not a scheduled member under the Federal Employees' Compensation Act. The medical adviser recommended a second opinion evaluation.

On February 1, 2006 the Office referred appellant for a second opinion evaluation with Dr. Thomas Rooney, a Board-certified orthopedic surgeon. On March 1, 2006 Dr. Rooney noted appellant's history of injury and performed a physical examination recording appellant's range of motion. He stated: "In summary, [appellant] does have degenerative disc disease at L4-5 postop[erative] discectomy, as well as residual pain following rotator cuff repair of the right shoulder; however, there are no objective findings of residuals from either condition in the extremities, therefore, there is no permanent impairment." The Office medical adviser reviewed this report on May 15, 2006. He concurred with Dr. Rooney's findings that, as there was no radiculopathy and no loss of range of motion, appellant had no impairment of his extremities due to his accepted employment injuries.

By decision dated June 16, 2006, the Office denied appellant's request for schedule awards finding that he had no ratable impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment* and that therefore he was not entitled to a schedule award.

Dr. Young completed a report on August 7, 2006 and again stated that appellant had limited range of motion of the right shoulder and decreased strength. He concluded that appellant had 14 percent impairment of the right upper extremity. Dr. Young stated that appellant had 10 percent impairment of the whole person due to his spine condition and combined the two impairments to reach a total of 18 percent impairment of the whole person.

Appellant requested reconsideration on May 26, 2007. He submitted a statement dated May 25, 2007 describing impairments to his right shoulder and right leg following his employment injuries. Appellant also submitted a statement from his wife.

By decision dated July 16, 2007, the Office declined to reopen appellant's claim for reconsideration of the merits on the grounds that he failed to submit relevant and pertinent new evidence.

LEGAL PRECEDENT

To require the Office to reopen a case for merit review under section 8128(a) of the Act,¹ the Office's regulations provide that the evidence or argument submitted by a claimant must: (1) show that the Office erroneously applied or interpreted a specific point of law; (2) advance a relevant legal argument not previously considered by the Office; or (3) constitute relevant and pertinent new evidence not previously considered by the Office.² When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for review on the merits.³

ANALYSIS

In support of his claim for a schedule award, appellant submitted reports from Dr. Young, a Board-certified orthopedic surgeon, opining that he had 14 percent impairment of his right upper extremity due to loss of strength and loss of range of motion. Dr. Young also opined that appellant had 10 percent impairment of the whole person due to his herniated disc. He concluded that appellant had a total whole person impairment rating of 18 percent. The Office medical adviser reviewed Dr. Young's reports and properly noted that Dr. Young did not provide the specific range of motion figures in his reports and did not explain how he reached his impairment rating in accordance with the A.M.A., *Guides*.⁴ He also noted that Dr. Young improperly provided his impairment rating in terms of the whole person as a result of appellant's

¹ 5 U.S.C. §§ 8101-8193, § 8128(a).

² 20 C.F.R. § 10.606(b)(2).

³ 20 C.F.R. § 10.608(b).

⁴ Before the A.M.A., *Guides* can be utilized, a description of appellant's impairment must be obtained from appellant's physician. In obtaining medical evidence required for a schedule award, the evaluation made by the attending physician must include a description of the impairment including, where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decreases in strength or disturbance of sensation, or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations. *Robert B. Rozelle*, 44 ECAB 616, 618 (1993).

accepted back injury.⁵ He noted that as the schedule award provisions of the Act include the extremities, appellant might be entitled to a schedule award for permanent impairment to his extremities even though the cause of the impairment originated in the spine.⁶ The Office referred appellant for a second opinion evaluation with Dr. Rooney, a Board-certified orthopedic surgeon, who found that appellant had no loss of range of motion or other rating impairment of his right upper extremity. Dr. Rooney further found that appellant had no symptoms of radiculopathy such that his back injury was causing impairment to a scheduled member. The Office medical adviser reviewed Dr. Rooney's findings and agreed that appellant had no ratable impairment for schedule award purposes.

Appellant requested reconsideration and submitted an additional report from Dr. Young dated August 7, 2006 in which he again stated that appellant had limited range of motion of the right shoulder and decreased strength. Dr. Young concluded that appellant had 14 percent impairment of the right upper extremity. He repeated his previous conclusion that appellant had 10 percent impairment of the whole person due to his spine condition and again combined the two impairments to reach a total of 18 percent impairment of the whole person.

As Dr. Young did not offer any additional findings on physical examination or provide the figures that he relied upon to reach his impairment ratings, his report does not constitute relevant pertinent and new evidence. Instead this report is repetitious of reports previously included in the record and is not sufficient to require the Office to reopen appellant's claim for consideration of the merits of his request for a schedule award.

Appellant and his wife also submitted statements regarding his physical abilities and continuing impairment. As neither he nor his wife are physicians, their statements cannot constitute the medical evidence necessary to establish his permanent impairment for schedule award purposes. These statements are not relevant or pertinent to the issue for which appellant's claim was denied, the lack of detailed medical opinion evidence supporting permanent impairment of a scheduled member entitling appellant to a schedule award.

CONCLUSION

The Board finds that appellant failed to include with his timely request for reconsideration any relevant or pertinent new evidence which would require the Office to reopen his claim for consideration of the merits.

⁵ A schedule award is not payable for a member, function or organ of the body not specified in the Act or in the implementing regulations. As neither the Act nor the regulations provide for the payment of a schedule award for the permanent loss of use of the back or for the whole person, no claimant is entitled to such an award. *George E. Williams*, 44 ECAB 530, 533 (1993).

⁶ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 21, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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