

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

J.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Milwaukee, WI, Employer**

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**Docket No. 10-78
Issued: July 27, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 13, 2009 appellant filed a timely appeal from a June 5, 2009 schedule award decision of the Office of Workers' Compensation Programs and a September 15, 2009 decision denying his request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(e), the Board has jurisdiction over the merits of the case.

ISSUES

The issues are: (1) whether appellant has more than two percent impairment to her right arm and two percent impairment to her left arm, for which she received schedule awards; and (2) whether the Office properly determined that appellant's application for reconsideration was insufficient to warrant further merit review of the claim under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On April 28, 2004 appellant, then a 46-year-old mail handler, filed an occupational disease claim alleging that on April 9, 2004 she first realized her bilateral carpal tunnel condition was employment related. The Office accepted the claim for bilateral synovitis/tenosynovitis and

bilateral carpal tunnel syndrome. It authorized right and left carpal tunnel surgery and wrist endoscopy/surgery, which were performed on April 16 and May 21, 2007. On August 23, 2007 appellant accepted a limited-duty job offer.

In an April 29, 2008 report, Dr. David W. Olson, a treating Board-certified orthopedic surgeon and hand surgeon, advised that appellant had two percent impairment to each wrist. A physical examination revealed a normal sensory examination and pinch strength.

In a report dated February 6, 2009, Dr. Olson reported that appellant's carpal tunnel surgery scars were well healed and that her ulnar and median intrinsic function was satisfactory. Appellant had a negative Tinel's sign and Phalen's flex test. Dr. Olson reported that appellant continued to have significant bilateral upper extremity pain, but had significant relief of hand tingling and numbness following surgery. He noted that magnetic resonance imaging scan findings were compatible with probable ulnar impaction.

The record was referred to an Office medical adviser for review. In a report dated April 22, 2009, Dr. Amon Ferry, an Office medical adviser, utilized the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, (A.M.A., *Guides*), to rate impairment. He found two percent left upper extremity and two percent right upper extremity impairment. Dr. Ferry used Table 15-23, page 449 and Modifier 1 for carpal tunnel syndrome. He noted that Modifier 1 was appropriate for both extremities based on appellant's normal physical findings and her continued complaints of pain.

By decision dated June 5, 2009, the Office issued schedule awards for two percent impairment to the left and right upper extremities. The period of the awards was 12.48 weeks commencing February 6, 2009 and ending May 4, 2009.

On September 8, 2009 appellant requested reconsideration. In a June 17, 2009 medical report, Dr. Olson advised that appellant was capable of working an eight-hour day with breaks as required, but was not to work any more than 40 hours per week. In an August 25, 2009 response to interrogatories, Dr. Kevin A. Weidman, a Board-certified orthopedic surgeon, diagnosed carpal tunnel syndrome, bilateral ulnar impaction syndrome, right medial epicondylitis, fibromyalgia and right shoulder bursitis with a partial rotator cuff tear. He stated that these conditions were employment related and that appellant was capable of working with restrictions.

By decision dated September 15, 2009, the Office denied appellant's reconsideration request finding that the evidence was insufficient to warrant merit review of the claim.

LEGAL PRECEDENT -- ISSUE 1

The schedule award provision of the Federal Employees' Compensation Act¹ and its implementing regulations² 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

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

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 regulations as the appropriate standard for evaluating schedule losses.³ Effective May 1, 2009, the Office adopted the sixth edition of the A.M.A., *Guides* as the appropriate edition for all awards issued after that date.⁴

ANALYSIS -- ISSUE 1

On February 2, 2009 Dr. Olson found that appellant had two percent impairment of both her right and left upper extremities. However, he provided no explanation as to how he arrived at his impairment rating. Moreover, he did not reference the A.M.A., *Guides*. The only medical evidence discussing the A.M.A., *Guides* and the relevant tables in the sixth edition is the April 22, 2009 report of Dr. Ferry, the Office medical adviser. The sixth edition requires grade modifiers be applied to test results, history and physical findings when evaluating entrapment/compression neuropathy impairments.⁵ The net adjustment formula is grade modifier for history + grade modifier for physical findings + grade modifier for test findings. Dr. Ferry applied Table 15-23 and found a Grade Modifier 1 for carpal tunnel syndrome as appellant had normal physical finding but continued pain. He found that under Table 15-23 this resulted in two percent impairment of the right and left upper extremities.

Dr. Ferry, the Office medical adviser provided a rationalized medical opinion on the issue. His impairment rating represents the weight of the medical evidence. There is no probative medical evidence to establish greater than two percent right and left upper extremity impairments.

LEGAL PRECEDENT -- ISSUE 2

The Act provides that the Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁶ The employee shall exercise this right through a request to the district Office. The request, along with the supporting statements and evidence, is called the application for reconsideration.⁷

An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by the Office in the final decision. The application for reconsideration, including all supporting documents, must be in writing and must set forth

³ *Id.*

⁴ Federal (FECA) Procedure Manual, Part 3 -- Claims, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 9, 2010).

⁵ A.M.A., *Guides* (6th ed. 2008) 448-49.

⁶ 5 U.S.C. § 8128(a). See *Tina M. Parrelli-Ball*, 57 ECAB 598 (2006).

⁷ 20 C.F.R. § 10.605.

arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁸

An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁹ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.¹⁰

ANALYSIS -- ISSUE 2

In her September 8, 2009 request for reconsideration, appellant 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. She submitted a June 17, 2009 medical report from Dr. Olson, an August 25, 2009 response to interrogatories by Dr. Weidman and an April 13, 2009 functional capacity evaluation report previously of record. None of the evidence submitted addresses the relevant issue of the permanent impairment to her upper extremities. Neither Dr. Olson nor Dr. Weidman addressed the nature or extent of appellant's permanent impairment. As the evidence did not address the issue in question, *i.e.*, the degree of her upper extremity impairments, it is not relevant or pertinent to this claim. The Board finds that appellant did not submit relevant and pertinent new evidence not previously considered by the Office. Because she did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2), the Office properly denied further merit review.

CONCLUSION

The Board finds that appellant has two percent left and right upper extremity impairments. The Office properly refused to reopen her case for further merit review.

⁸ *Id.* at § 10.606. See *Susan A. Filkins*, 57 ECAB 630 (2006).

⁹ *Id.* at § 10.607(a). See *Joseph R. Santos*, 57 ECAB 554 (2006).

¹⁰ *Id.* at §10.608(b). See *Candace A. Karkoff*, 56 ECAB 622 (2005).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated September 15 and June 5, 2009 are affirmed.

Issued: July 27, 2010
Washington, DC

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

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

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